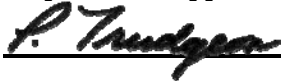


REQUEST FOR CITY COUNCIL ACTION

DATE: 7/16/2012

ITEM NO: BOA

Department Approval



City Manager Approval



Item Description: Review appeals from Karen Schaffer and from Solidarity of West Area Roseville Neighbors regarding City staff's administrative decision that Wal-Mart is a permitted use under the zoning code for the property located along County Road C between Prior Avenue and Cleveland Avenue, and make a recommendation for the Board of Adjustments and Appeals about whether the administrative decision should be supported or rejected.

1.0 BACKGROUND

- 1.1 On June 8, 2012, the Roseville Community Development Department received a formal request by Wal-Mart Stores, Inc. to determine whether a 160,000 sq. ft. retail store, is a permitted use under the zoning ordinance (Attachment C).
- 1.2 On June 21, 2012 the Community Department completed its review of the Roseville Zoning Ordinance (Title 10), the 2030 Roseville Comprehensive Plan, the 2001 Twin Lakes Business Park Master Plan, and Twin Lakes AUAR, finding that the a retail development of 160,000 sq. ft. within the Twin Lakes Redevelopment Area (the Wal-Mart project) is under the thresholds of the Twin Lakes AUAR, is not prohibited by the 2001 Twin Lakes Business Park Master Plan nor the 2030 Roseville Comprehensive Plan, and is permitted by the Roseville Zoning Ordinance (Attachment D).
- 1.3 On July 2, 2012, the City of Roseville received appeals by Karen Schaffer (Attachment A) and from Solidarity of West Area Roseville Neighbors (Attachment B) to the Community Development Departments administrative decision of the Walmart project.

2.0 COMMUNITY DEVELOPMENT ANALYSIS

The following is a brief review of the Community Development Department's findings regarding is analysis of the Roseville Zoning Ordinance (Title 10), the 2030 Roseville Comprehensive Plan, the 2006 Court of Appeals Decision, the 2001 Twin Lakes Business Park Master Plan, and the Twin Lakes AUAR:

2.1 Zoning Code – Statement of Purpose

The Community Development Department finds that the Statement of Purpose within Section 1005.01 of the zoning ordinance allows for the Wal-Mart project since it does not include any prohibitions or limitations regarding use or size, and that the purpose statement is merely a guide for future development.

2.2 Zoning Code – Use Chart

The Community Development Department finds that the proposed Wal-Mart is permitted since general retail, banks, personal service, and grocery stores are listed as permitted use

within the (CMU) district without specific limitations, restrictions, or prohibitions on the size of such uses.

2.3 Zoning Code – Statement of Purpose – Community Mixed Use District

The Community Development Department finds that the statement of purpose for the Community Mixed Use (CMU) District does not preclude the Wal-Mart project since it does not limit, restrict and/or prohibit retail use or any size retail use.

2.4 Zoning Code – Regulating Plan

The Community Development Department finds that the Twin Lakes Sub-Area 1 Regulating Plan does not control use nor limit overall building size and therefore does not prohibit the Wal-Mart project.

2.5 2006 Court of Appeals Decision

The Community Development Department finds that the 2006 Court of Appeals Twin Lakes decision supports the determination that the Wal-Mart project is a permitted use. The Court of Appeals decision regarding a “big box” use on the same piece of land as the proposed Wal-Mart project concluded that without stated limitations on size or use, or a prohibition on use, within either, the comprehensive plan or the zoning ordinance, a large retail use, is permitted. Although the 2006 decision was predicated on the B-6 zoning district, the Court of Appeals decision and its application to our current comprehensive plan and zoning ordinance is still very much relevant and applicable.

2.6 2030 Comprehensive Plan

A Comprehensive Plan is a broad vision and general guide for cities to follow in achieving their desired goals, objectives, and policies. A comprehensive plan is not a document that is directly utilized to enforce the identified goals and objectives. Zoning Codes and other ordinances and City programs are utilized to implement the goals and objectives identified in the Comprehensive Plan. The overall Comprehensive Plan should not be construed as an enforcement mechanism for property development. In fact, Minnesota State Statutes recognizes this fact in Chapter 462.356 (2) and requires adoption of a zoning code to put the Comprehensive Plan into effect and the Comprehensive Plan includes a chapter on using the Plan to make progress towards achieving its goals. Therefore, it is clear that the Comprehensive Plan cannot be directly used to directly regulate development.

The City Attorney has advised staff that to the extent that a zoning code is inconsistent with the comprehensive plan, the zoning code should be amended to reflect the comprehensive plan. Therefore staff has prepared an analysis reviewing the Comprehensive Plan and the Zoning Code. Staff’s analysis finds that the Roseville Zoning Code is consistent with Comprehensive Plan and therefore the regulations within the Zoning Code are enforceable.

2.7 Square Foot Limitations

The Community Development Department finds that due to the exclusion of any square footage limitations regarding building size in the Comprehensive Plan, the Roseville Zoning Code is consistent with the Comprehensive Plan and therefore the Wal-Mart project is permitted under the Comprehensive Plan.

2.8 Comprehensive Plan - Land Use Designation

The Community Development Department finds that the land use categories in the Comprehensive Plan contain general vision statements of the sorts of things that are

desired within a specific land use designation including a range of uses, but do not have specific guidance for individual parcels or developments.

2.9 Comprehensive Plan – Community Mixed Use Designation

The Community Development Department finds that the Wal-Mart project is allowed since CMU description neither restricts nor limits specific uses or sizes and further finds that the zoning code has incorporated a small-area plan and design principles to ensure the mix of uses and connections through the Twin Lake Regulating Plan contained in Chapter 1005.07 (E) of City Code in compliance with the Comprehensive Plan.

2.10 Comprehensive Plan – Community Business Designation

The Community Development Department finds that the Wal-Mart project is allowed since the Community Business description neither restricts nor limits specific uses or sizes and further finds that the zoning code has incorporated design standards that promote community orientation and scale through the Twin Lake Regulating Plan contained in Chapter 1005.07 (E) of City Code in compliance with the Comprehensive Plan.

Based on that analysis, the Community Development Department finds that the Roseville Zoning Ordinance is consistent with and has incorporated the goals and policies identified in the 2030 Comprehensive Plan.

2.11 Twin Lakes Business Park Master Plan

The Community Development Department finds that the Twin Lakes Business Park Master Plan, approved by the City Council on June 26, 2001, is a guiding document and not a regulatory document.

Community Development Department also finds that the zoning ordinance has embraced the Twin Lakes Business Park Master Plan by including specific regulations into the Chapter 1005.07 (CMU district and the Twin Lakes Regulating Plan).

The Community Development Department further finds that the issue of lot coverage, open space, and/or impervious area, is consistent between the master plan and the zoning ordinance where by both advocate a 15% minimum green area.

The Community Development also finds that references regarding big-box retail development as not recommended or not encouraged do not embody a limitation or prohibition on such a use, and therefore retail of any size as a use within Twin Lakes is permissible under the Master Plan.

2.12 ALTERNATIVE URBAN AREAWIDE REVIEW (AUAR)

The Twin Lakes Alternative Urban Areawide Review (AUAR) is not a land use or zoning document, it does not regulate use or size of buildings, and it is not a regulatory document *per se*. The AUAR is however, an environmental review document that is used by the City to determine a proposed project's impact thresholds and the required mitigations to make that project consistent with the AUAR.

The Community Development Department finds that the proposed Wal-Mart project is not inconsistent with the Twin Lakes AUAR and can proceed forward under the terms and/or mitigations addressed within the AUAR document.

3.0 SUMMARY OF APPEALS

- 3.1 The appeal received from Karen Schaffer, a Roseville resident, lists several instances where she believes that the proposed Wal-Mart use is inconsistent with the goals and aspirations reflected in the Comprehensive Plan. In her appeal, Ms. Schaffer states that the proposed Wal-Mart is not a cohesive, compact, pedestrian development, does not meet the need of Roseville residents, does not diversify or expand the tax base, and does not provide head of household jobs and therefore the Wal-Mart project is inconsistent with the Comprehensive Plan.
- 3.2 Ms. Schaffer's full appeal letter is attached as Attachment A.
- 3.3 The appeal received from the neighborhood group, Solidarity of West Area Roseville Neighbors (SWARN), listed the following as grounds for their appeal to Community Development staff's decision that Wal-Mart is a permitted use in Twin Lakes. They are as follows:
- a. The basis for appeal includes the complete record regarding the compliance of the Wal-Mart development with City of Roseville Policies, Plans, and Regulations.
 - b. The Zoning Ordinance is in conflict with Comprehensive Plan.
 - c. The Wal-Mart proposal is incompatible with Roseville's Comprehensive Plan in the following additional ways (see chapter 4 on District 10: Twin Lakes).
 - d. The Zoning Ordinance is in conflict with the Twin Lakes Business Park Master Plan.
 - e. The most recent staff determination of compliance fundamentally misunderstands the role of the Roseville Comp Plan.
- 3.4 SWARN's full analysis of Community Development staff's decision is contained in Attachment B.

4.0 PLANNING COMMISSION ACTION

- 4.1 On July 11, 2012, the Roseville Planning Commission held the required hearing for the two appeals of the Community Development Department's administrative determination that a 160,000 sq. ft. retail store is permitted within the Community Mixed Use zoning district.
- 4.2 At the hearing Karen Schaffer presented her arguments as to why the staff was in error in its conclusion that a 160,000 sq. ft. retail store is a permitted use, addressing the points contained in her appeal letter.
- 4.3 Also at the hearing, SWARN representatives presented their arguments, as articulated in their appeal letter, as to why the staff was in error in its conclusion.
- 4.4 Other members of the community addressed the Commission regarding their opposition the staff determination including; Mr. Tim Callahan who stated Section 1001.04, Relationship to Comprehensive Plan "it is the policy of the City of Roseville that the enforcement, amendment, and administration of this Code be accomplished with due consideration of the recommendations and policies contained in the Comprehensive Plan as developed and amended from time to time by the Planning Commission and City Council. The City Council recognizes the Comprehensive Plan as the policy for regulation of land use and development in accordance with the policies and purpose

herein set forth.” Mr. Callahan opined that the Community Development Department was not appropriately following this acknowledgement. Ms. Janet Olsen addressed the Commission stating that her concern was that staff’s determination that Walmart fits into the Community Mixed Use district was inappropriate, especially given the Community Business reference in the Comprehensive Plan and Zoning Ordinance definitions. Ms. Olsen added that the WalMart proposal should be categorized as a Regional Business proposal and therefore not an allowed use in the Twin Lakes Area. Ms. Olsen also indicated that areas identified in Roseville’s Zoning Map as Community Business areas include smaller businesses with specialized products, some grouped in larger buildings such as HarMar mall or strip malls such as the area at Lexington and Larpentour Avenues and that a WalMart does not fit that category. She also stated that since the existing Target Super Store in Roseville is considered a Regional Business in the Zoning Code, a strong argument can be made to classify the WalMart proposal as a Regional Business.

- 4.5 The Chair of the Planning Commission closed the hearing and thanked all who testified before the Commission and opened up Commission discussion on the appeal.
- 4.6 The Planning Commission voted 4-2 that the Community Development Department was correct in its decision regarding the use determination for the proposed 160,000 sq. ft. Walmart project, based on their articulated findings contained in the minutes of the meeting. Please note that the minutes of the meeting will be forward when available.

Prepared by: City Planner Thomas Paschke

Attachments: A: Karen Schaffer appeal of the City use determination letter dated June 21, 2012

B: Solidarity of West Area Roseville Neighbors appeal of the City use determination letter dated June 21, 2012

C: Letter dated June 8, 2012 from Sue Steinwall representing Wal-Mart Stores requesting staff make a zoning use determination on the proposed Wal-Mart use.

D: Letter dated June 21, 2012 for City Staff affirming that the proposed Wal-Mart store is a permitted use under the Roseville Zoning Code.

JUL -2 2012

Chris Miller, Acting City Manager
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Notice of Appeal of Determination of Community Development Department Dated June 21, 2012
with Respect to Proposed Walmart Development ("Determination")

Dear Mr. Miller:

I respectfully submit this appeal of the above-referenced Determination that was signed by city staff on June 21, 2012. While the Determination is carefully crafted, it nonetheless merits review and reconsideration.

While not entirely inaccurate or incorrect, the Determination, nonetheless, is essentially sophistic, in the dictionary sense of the word. The dictionary defines sophistic as apparently correct but actually invalid. In the present context, I would argue that it is (or arguably is) legally or legalistically correct but is actually invalid in the sense that it is wildly out of synchronicity with the values and goals of the Roseville Comprehensive Plan. The Determination displays hypertechnical conclusions which, taken together, would lead one to conclude that not only is the proposed use "not inconsistent" with the Comprehensive Plan (and other standards) but is for all intents a purposes a proposal which exemplifies in a superior way the values embodied in the Comprehensive Plan (and other standards).

For example, on page 2, Policy 14.2 references to the goal of ensuring that mixed use development is cohesive, compact and pedestrian-oriented cannot, by definition, be true with respect to a 160,000 sq. ft. facility and associated parking. While the zoning code may include parking area flexibility and more landscaping, a retail facility of this size simply cannot be cohesive and compact and pedestrian-oriented.

On Page 3, Policy 9.3, promoting the use of on-site transit stops, cannot be implemented by the City. There is no argument with that. However, the text included in the Determination indicates that transit could be beneficial to the proposed facilities' employees and patrons. If this be so, it would seem that the proposed development is not oriented to the community but is oriented to the region. In short, the proposal is not a community business, regardless of its absolute size. It is and must be regional.

With respect to Policy 10.2 on page 4, emphasizing meeting the needs of Roseville residents, since Roseville residents already have more retail per capita than any other Minnesota city, and approximately five times the national average, a 160,000 sq. ft. of retail is not only not needed by Roseville residents, such a facility cannot succeed by marketing only to local people.

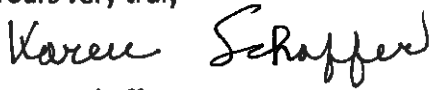
Goal 2 on page 6 is patently disserved by the proposed development. Roseville's tax base is already characterized by a large retail tax base. Policy 3.2 on page 7 references the desirability of expanding the tax base. While the proposal will add to the tax base in a technical way, the recent study conducted by the Minnesota Department of Revenue reminds us that the increased operational costs to be incurred by the City occasioned by the development will outweigh any increases in tax revenues based upon the tax base. The same problem occurs on page 11 Goal 2. This proposal does not diversify the tax base. The implication that the facility will offer head of household employment (page 11 Policy 2.2) is patently

not true. Certainly there will be employment, but generally not the type of employment that will allow a head of household trying to live in Roseville.

While there are many accurate statements in the Determination, it is a document that identifies not a single shortcoming of the proposal. The Determination essentially hollows out the vibrancy, hope, aspirations and desires for a brighter, more diverse, more economically sustainable future for Roseville. It does this by finding that a proposal for simply more of the same is what is needed for the future.

I respectfully request that the City Council take a closer look at the values and aspirations reflected in the Comprehensive Plan and conclude that the proposed facility is inconsistent with them.

Yours very truly

A handwritten signature in black ink that reads "Karen Schaffer". The signature is written in a cursive, flowing style.

Karen Schaffer
2100 Fairview Avenue North
Roseville, MN 55113

July 1, 2012

Administrative Appeal by SWARN
(Solidarity of West Area of Roseville Neighbors)

Regarding the Community Development Department's Determination
As to the Compliance of the Wal-Mart proposal with Roseville
Policies, Plans, and Zoning Ordinance

(Prepared June 30, 2012 for Roseville City Council members and the general public by the Strategies Committee of Solidarity of West Area Roseville Neighbors (SWARN))

INTRODUCTION:

This appeal was drafted by the SWARN Strategies Committee which functions as a steering committee for this Roseville neighborhood association. On this issue we represent over 67 households in the western area of Roseville. Strategies Committee members signing this Appeal are a quorum of the committee and are all property owners residing in Roseville.

Below you will find our concerns and issues regarding the proposed Wal-Mart development and its compliance with City policies and the requirements of the Zoning Ordinance. This appeal was developed by Roseville residents without legal consultation and in words which we hope convey our frustration with a system which requires residents to appeal a decision by city employees in order for our elected officials to make a decision which we had naively thought was only theirs to make.

We also submit this appeal in the hope that our elected officials would review it as an honest and candid articulation of issues which many residents feel city staff have not up to now sufficiently considered, explained, or justified.

We do not speak for all the people of Roseville, we speak for ourselves and our members. And we speak from our experience as Roseville residents who have been engaged in this community's civic governance, understand that all of us have rights and responsibilities, and that to appeal a staff determination is not to suggest improper motivation or malfeasance on their part.

We also recognize, however, that this appeal is in itself recognition that the process could and should be improved so that future residents do not have to have recourse to legal representation, and can feel confident that their opinions and perceptions will be acknowledged, respected, and responded to by their elected officials and public employees. We regret that it took a letter from a high-powered law firm serving the world's largest corporation to extract a written justification from city staff when similar requests from residents and property taxpayers went unanswered.

GROUND FOR APPEAL:

1) Basis for Appeal Includes the Complete Record regarding the Compliance of the Wal-Mart development with City of Roseville Policies, Plans, and Regulations

We find it necessary to state that a determination of compliance was made well before the request of Walmart (Attorney Susan Steinwall letter of June 8, 2012) and the response from the Community Development Department dated June 21st.) The June 21st Community Development Letter is just the last of several statements of compliance issued by city staff, and for the record we are not therefore restricting ourselves to the June 21st determination signed by Community Development Director Pat Trudgeon and City Planner Thomas Paschke. In fact several residents requested a similar explanation as to how the Wal-Mart proposal was in compliance with the Comprehensive Plan at the February 1st Planning Commission meeting, but their request was ignored.

We are basing our appeal on the various communications to the Council from the City Attorney beginning with City Attorney Charles Bartholdi letter last December, and the reports and recommendations made by staff beginning with their September 26, 2011, Request for Council Action on Approving a Twin Lakes Overlay District and continuing throughout this review process, starting with the February 1st public hearing held by the Planning Commission and extending through the May 21st City Council meeting on the plat subdivision and the public comments offered at that time. ,

At the February 1st Planning Commission public hearing several residents presented their concerns¹ that the Planning Department's recommendation first analysis failed to present any rationale as to how the Wal-Mart proposal met more than several of the goals and objectives of the Roseville Comprehensive Plan. In fact one resident asked that the Commission send the staff recommendation back to the Community Development Department with the request that it provide findings of fact as to the proposal's compatibility with the Comprehensive Plan.²

At that meeting the Planning Staff presented their determination that the Wal-Mart proposal was in compliance with the Roseville Zoning Ordinance and Comprehensive Plan.

Note the following statements excerpted from the February 1, 2012, staff report³:

- *Planning Division staff believes that the proposed development is consistent with many of the Comprehensive Plan's other citywide, non-transportation-*

¹ Cr. February 1, 2012, Minutes of the Roseville Planning Commission, including all attachments

² Remarks of Roseville Resident Gary Grefenberg as distributed to Planning Commission February 1, 2012

³ Staff Report dated

specific goals and policies, and that the proposed development does not appear to be in conflict with any of them.

- *The Comprehensive Plan addresses development of the Twin Lakes area in the greatest detail in its discussion of Planning District 10. Specifically, the Comprehensive Plan says that future development in Twin Lakes may include retail uses (although retail uses should not be the primary focus of the redevelopment area), and that development proposals should be evaluated against the zoning regulations, the Twin Lakes Business Park Master Plan, the Twin Lakes Alternative Urban Area wide Review, and the Twin Lakes Redevelopment Area Design Principles; analysis of the proposed development against these items is provided below.*
 - *a. TWIN LAKES ALTERNATIVE URBAN AREAWIDE....*
 - *b. TWIN LAKES BUSINESS PARK MASTER PLAN....*
 - *c. ZONING REGULATIONS AND TWIN LAKES REDEVELOPMENT AREA DESIGN PRINCIPLES....Because the entire zoning code has been updated over the past couple of years to be consistent with the Comprehensive Plan, a development that meets the zoning requirements would be, by definition, consistent with the Comprehensive Plan.*

For all of the reasons detailed above, Planning Division staff believes that the proposed development facilitated by disposal of the City-owned land identified on the PRELIMINARY PLAT is in compliance with the Comprehensive Plan.

The above statement, namely that the zoning code is supposed to be consistent with the Comp Plan and that if the Wal-Mart proposal meets the zoning requirements it is therefore consistent with the Comp Plan, is more an aspiration than a statement of fact.

Such a statement of faith is more appropriate for a forum of shared faith believers than a staff presentation at a public hearing. When this assertion was challenged by several residents at the public hearing, the response ignored their questions by focusing on the subdivision issues. (See referenced Minutes and written comments.)

- We also find the February 1, 2012, assertion that the Wal-Mart proposal *does not appear to be in conflict with any of them*, referring to the Comp Plan's goals and policies, not credible. Attached is a highlighted summary of some of the Plan's goals and policies which clearly demonstrate non-compliance (See Attachment #2).

We find it both curious and confusing that this first determination of compliance is now being overshadowed by all the emphasis on the latest determination of compliance issued by the Community Development Department in response to a request from the Wal-Mart's attorney. It is difficult to avoid the conclusion that Wal-Mart in effect wanted to give the City an opportunity to issue a more

compelling and cogent defense of its February assertion that the Wal-Mart project was in compliance with city policies and regulations.

To believe that city staff had not made a determination as to the project's compliance when the city review process first began well before the June 21st Determination of Compliance letter is to suggest that city staff is incompetent or failed to perform its duties

We therefore request that the record for this administrative appeal include the February 1st Planning Commission minutes, the written communications submitted by residents at that time, and the staff recommendation to the Planning Commission.

2) Zoning Ordinance is in Conflict with Comprehensive Plan

- a) The city staff determination avoids one key conflict with the Comprehensive Plan: This district is Community Mixed-Use, which is described in the Comprehensive Plan in [Chapter 4 on Land Use](#) as *"The mix of land uses [that] may include Medium- and High-Density Residential, Office, Community Business, Institutional, and Parks and Open Space uses"* (page 4-8). In our view, **Wal-Mart does not qualify as a community business**, but rather as a regional business which is defined in the Comp Plan as *"freestanding large-format stores [that] are located in places with visibility and access from the regional highway system (I35W and State Highway 36)"* (page 4-8).
- b) According to a legal counsel letter from city attorney Charles Bartholdi dated December 9, 2011, and addressed to Roseville's City Manager Bill Malinen, the Comprehensive Plan is in conflict with the Zoning Ordinance with respect to allowing a Regional Business to develop in the Community Mixed-Use (CMU) district, and that, he indicates, is problematic and ought to be changed:
 - i. *"To the extent that a Regional Business use is allowed in a Community Mixed-Use District under the Zoning Code, there is an apparent conflict between the Comprehensive Plan and Zoning Code"* (page 3, 1st paragraph).
 - ii. Additionally, the lawyer advises that *"the general rule is that in the event of a conflict between the Comprehensive Plan and the Zoning Code, the Comprehensive Plan controls"* (page 3, 2nd paragraph).
 - iii. And finally, the city attorney concludes *"I would recommend that to the extent the Comprehensive Plan and Zoning Code may conflict as described... above, the City Council amend either its*

Zoning Code or Comprehensive Plan to eliminate the conflict”
(page 3, 3rd paragraph).

3) The Wal-Mart proposal is incompatible with Roseville’s Comprehensive Plan in the following additional ways (see chapter 4 on District 10: Twin Lakes):

- a. *“No additional commercial/retail development of this scale (in reference to Rosedale Square and Roseville Crossings) is planned for District 10”* (page 4-23). The zoning ordinance fails to take this into account by not prohibiting large-scale retail business.
- b. *“Twin Lakes should not be developed with shopping as the primary focus of future land use”* (page 4-23). The zoning ordinance fails to take this into account by not prohibiting limiting retail business in this area.
- c. *“The desire to have employment as the primary orientation of future development...”* This proposal is retail oriented, not employment.
- d. Additional conflicts with the Comprehensive Plan’s Economic Development Goals and Objectives are listed on Attachment #2 of this appeal.

4) The Zoning Ordinance is in Conflict with the Twin Lakes Business Park Master Plan

It appears the Twin Lakes Business Park Master Plan also guides development in this area because: **a)** the Comprehensive Plan states: *“The City intends to rely on the following official controls and environmental studies to guide land use and to evaluate specific development proposals: ...Twin Lakes Business Park Master Plan”* (page 4-23); and **b)** city staff indicated in their report from just last fall (dated 9/12/11) for the Request to approve the Twin Lakes Sub-Area 1 Regulating Plan for City Council that, *“The City will continue to follow the 2001 Twin Lakes Business Park Master Plan to mitigate the cumulative impacts of development...”*.

The Wal-Mart proposal is incompatible with the Twin Lakes Business Park Master Plan (see Section V on Proposed Land Use) in the following ways:

1. The proposed future land use is 0% retail (see page 9). The plan was, in fact, withdrawn from review by Met Council when asked to provide additional information regarding retail traffic and its impacts on 35W because there will not be retail in the area (section II, page 2).

2. **Big box retail is not recommended** because of the following elements (see page 11), all of which are going to be an issue for Roseville if and when this Wal-Mart is built:
 - i. Increased level of traffic
 - ii. Longer hours of operation (this would be 24/7)
 - iii. Reduce quality and quantity of jobs created
 1. Lower value of building finish
 2. Large parking lots required due to parking demands
3. Section XIV on Land Use and Zoning states (see page 20): “**Retail is not encouraged especially large scale regional and subregional big box developments. ...The City has adopted a policy of not expanding retail area. ...** In addition, the City policy for redevelopment is to attract head-of-household job opportunities to the City and nearby workforce.”
4. In addition, the AUAR which governs this development and which formed the basis of the Traffic Impact Analysis, did not take into account this scale of development. At the time the AUAR was finalized in 2007 (and the Twin Lakes BP Master Plan was finalized in 2001), this land was considered Business Park district. Currently, BPD requires general retail sale to adhere to Standards (see Table 1006-1 of Allowable Uses for Employment Districts) which provide additional protections to the city. This is no longer the case, and therefore the AUAR, based on a set of assumptions set forth in the zoning, becomes less relevant to this development proposal.

5) The Most Recent Staff Determination of Compliance Fundamentally Misunderstands the Role of the Roseville Comp Plan

The Comprehensive Plan and its Land Use chapter is not a vision statement, as articulated in the June 21st Staff Determination (page 6); but a guide for Roseville’s future development and a blueprint for the development of a Zoning Ordinance.

City staff argue in their June 21st Determination letter (under *Comprehensive Plan Land Use Designations*) that the Plan’s land use categories are *general vision statements...but do not have specific guidance for individual parcels or developments*.⁴ That is not the language which was used by city staff when the Comp Plan was first drafted by city staff and reviewed and revised by the Steering Committee. In fact, the vision statement element was found in the previous community engagement process of Imagine Roseville 2025.

4

The staff spin at the time the Comprehensive Plan was being formulated was that this would be a compact between the residents of Roseville and its city government., This is the message most Roseville residents who participated in the public process resulting in the Comprehensive Plan heard at the time of the Plan's introduction to the citizens of Roseville, a recollection reiterated in the testimony of several residents at the May 21st City Council discussion on the plat division.

To argue that the Comprehensive Plan does not prohibit Big Box Retail and thus the Wal-Mart development is consistent with the Plan is a *reductio ad absurdum* argument, as if every prohibited use needs to be specifically cited. That has never been the criteria for previous decisions by the City acting as a zoning authority, and so its use as a justification in this case is spurious.

The Comp Plan is understood as a city's plan for future development, and provides guidance for future development. It is intended to lay out the goals and objectives for future land use which the Zoning Code then is instructed by state law to codify.

The very first two paragraphs of the 2030 Comp Plan state its purpose as follows:

A comprehensive plan is a tool for guiding the growth, redevelopment, and overall improvement of a city. The traditional view of this type of plan focused on physical planning through the development of a land-use plan. The purpose of the land-use plan was to reinforce desirable land-use patterns, identify places requiring change, and determine the location and form of future growth.

However, the vision for Roseville is more than a rational pattern of development; thus, Roseville's 2030 Comprehensive Plan (the Plan) identifies not only a land-use plan, but also develops a broader framework to help shape the character of the community and enhance the quality of life in Roseville.

The Comp Plan must reflect the land use described in the Comp Plan. The Plan's purpose was intended to direct the zoning code's update, resulting in a legal codification of the Comp Plan's goals and objectives. In that sense the Comp Plan was the blueprint for the Zoning Code development, and not a collection of visionary statements open to staff's interpretation.

The zoning ordinance is clearly an official control, and we also question whether the Financial Agreement for this development is not a fiscal device.

The City's adopted Zoning Code itself describes this relationship between the Comp Plan and Zoning in its Intent and Purpose provision (1001.03). as follows:

This Title shall divide the City into districts and establish regulations in regard to land and the buildings thereon. These regulations are established to:

- A. Protect and to promote the public health, safety, peace, comfort, convenience, prosperity, and general welfare of the community and its people through the establishment of **minimum regulations governing land development and use**;*
- B. Protect and enhance the character, stability, and vitality of residential neighborhoods as well as commercial areas;*
- C. Promote orderly development and redevelopment;*
- D. Assist in the implementation of the Comprehensive Plan. (Emphasis Added)***
- E. Foster a harmonious, workable relationship among land uses;*
- F. Promote the stability of existing land uses that conform with the Comprehensive Plan and to protect them from inharmonious influences and harmful intrusions;*
- G. Insure that public and private lands ultimately are used for the purposes which are **most appropriate and most beneficial for the City as a whole**;...*

Note that these Code provision above (subdivision A) describes its regulations in terms of meeting **minimum** requirements; it does not describe its provisions in terms indicating that anything not prohibited is therefore allowed.

This Code provision subdivision G also speaks to its purposes (...*most appropriate and most beneficial for the City as a whole*) in language which clearly allows some discretionary judgment to elected officials.

In addition the Code in subdivision D also clearly speaks to the relationship between itself and the Comprehensive Plan. Risking oversimplification, the Comp Plan Speaks and the Zoning Implements.

If the zoning ordinance does not adequately reflect the Comp Plan then the Zoning Ordinance is defective in those aspects wherein such inadequateness is found. And pursuant to Minnesota Statutes 473.864, subdivision 2, *a local government unit shall not adopt any fiscal device or official control which is in conflict with its comprehensive plan.*

City staff agrees with this assessment. In the June 21st Determination city staff state the following on page 5:

The City Attorney has advised staff that to the extent that a zoning code is inconsistent with the comprehensive plan, the zoning code should be amended to reflect the

comprehensive plan. Therefore staff has prepared an analysis reviewing the Comprehensive Plan and the Zoning Code.

City staff concludes in its latest determination of compliance, however, with the following statement with which we respectfully and vigorously disagree.

Staff's analysis finds that the Roseville Zoning Code is consistent with Comprehensive Plan and therefore the regulations within the Zoning Code are enforceable

6) The existing Zoning Ordinance allows rejection of Wal-Mart

According to our reading, this proposal is not permitted in our current zoning and should not have been approved by city planning staff. This district is Community Mixed-Use, which is described in the Comprehensive Plan in [Chapter 4 on Land Use](#) as, “*The mix of land uses [that] may include Medium- and High-Density Residential, Office, Community Business, Institutional, and Parks and Open Space uses*” (page 4-8).

Note that there is absolutely no reference to retail uses. If one assumes the current staff criteria that it is permitted since retail is not specifically prohibited, then rationally heavy industrial and mining would also be allowed.

In our view, Wal-Mart does not qualify as a community business, but rather as a regional business. Regional business, according to the Comp Plan, includes “*freestanding large-format stores [and] is located in places with visibility and access from the regional highway system (I35W and State Highway 36)*” (page 4-8).

The Target store location is situated in a land-use designated Regional Business. There was an effort made during the Comprehensive Plan update several years ago to designate the area Community Business, but several council members, staff, and the Planning Commission insisted that its land use category fit the regional nature of this big-box retailer.

It is noteworthy that this comparison is no longer being made by those who insisted on this land use designation but are now arguing that Wal-Mart is a community business use.

The current zoning ordinance allows some discretion to the City when it comes to the question of approving plats. Section 1017.23 entitled Subdivision/Platting Provisions states under subdivision B the following:

Signed: SWARN - Strategies Committee

Mark Bradley
1851 Shryer Ave
Roseville, MN 55113

Megan Dushin
2249 St. Stephens
Roseville, MN 55113

Sue Gilbertson
2000 Cleveland Ave.
Roseville MN 55113

Gary Grefenberg
91 Mid Oaks Lane
Roseville, MN 55113

Dave Nelson
2280 Highway 26 W
Roseville, MN 55113

Attachments: May 21, 2012, written SWARN statement to the City Council

February 1, 2012. Compilation of Economic Development Chapter
of the 2030 Comprehensive Plan's Goals and Objective in Conflict
with the Marl-Wart development

ATTACHMENTS

To SWARN Administrative Appeal

Solidarity of West Area Roseville Neighbors

SWARN

ATTACHMENT #1:

Concerns Re: Proposed Wal-Mart Development

And legal reasons to vote No Monday May 21 on Agenda Item 12b

Prepared May 19, 2012 for Roseville City Council members and the general public by members of Solidarity of West Area Roseville Neighbors (SWARN).

We represent over 67 households in the city of Roseville. Below you will find our concerns regarding the proposed preliminary plat:

- 4)** The MN League of Cities states that Roseville's Comprehensive Plan and referenced area master plan guide zoning and subdivision ordinances.⁵ However, issues concerning the Comprehensive Plan (and area Twin Lakes Master Plan) are not considered "relevant" in this subdivision decision, according to the staff report, a conclusion with which we do not agree.
- 5)** The Development Agreement puts the City in the position of subsidizing Wal-Mart to the tune of \$1.6 million. The Zoning Ordinance does not reflect the Comprehensive Plan or the Twin Lakes Master Plan and so it needs to be changed. Wal-Mart should not be considered--nor do we believe the citizens of Roseville--consider Wal-Mart a community based business.

Mike Gregory will summarize a series of unbiased academic studies which demonstrate the economic and social impacts a development such as Wal-Mart has on its host community. These impacts contradict the Comprehensive Plan and Twin Lakes Master Plans for Roseville.

⁵ According to the [Handbook for Minnesota Cities](#), "...the comprehensive plan... guides current development in administering its zoning ordinance and subdivision ordinance. The city subdivision ordinance regulates the division of land... with safe streets, appropriate environmental features, and character. Finally, the city zoning ordinance regulates the use and density of city zones... to prevent congestion, environmental contamination, and other negative human health hazards" (ch. 14, pg 2).

We need systemically to explore our current zoning process and consider the need for PUD or other changes to allow our elected officials to make these decisions that are in the best interests of the residents of Roseville.

- 6) Local experience with increased demand for Police services required by Wal-Mart compared to another Big Box retailer (*data presented on overhead indicating Wal-Mart in Vadnais Heights had 4 times the police calls than Target in the same area and notes from a conversation with Roseville police department regarding increase in calls and dollars to pay for additional police to monitor the area*).
- 7) The Council clearly has the authority under City Code 1001.03 to reject this proposed development:

1001.03: Intent and Purpose

This Title shall divide the City into districts and establish regulations in regard to land and the buildings thereon. These regulations are established to:

- A. Protect and to promote the public health, safety, peace, comfort, convenience, prosperity, and general welfare of the community and its people through the establishment of minimum regulations governing land development and use;
- B. Protect and enhance the character, stability, and vitality of residential neighborhoods as well as commercial areas;
- C. Promote orderly development and redevelopment;
- D. Assist in the implementation of the Comprehensive Plan;

- 8) The Council also has the ability under the Platting Code to require changes “necessary for the health, safety, general welfare and convenience of the City”
- 9) According to our reading, this proposal is not permitted in our current zoning and should not have been approved by city planning staff. This district is Community Mixed-Use, which is described in the Comprehensive Plan in [Chapter 4 on Land Use](#) as, “The mix of land uses [that] may include Medium- and High-Density Residential, Office, Community Business, Institutional, and Parks and Open Space uses” (page 4-8).
 - In our view, **Wal-Mart does not qualify as a community business**, but rather as a regional business. Regional business, according to the Comp Plan, includes “freestanding large-format stores [and] are located in places with visibility and access from the regional highway system (I35W and State Highway 36)” (page 4-8).

10) This proposal is incompatible with Roseville's **Comprehensive Plan** in the following additional ways (see chapter 4 on District 10: Twin Lakes):

- e. "No additional commercial/retail development of this scale (in reference to Rosedale Square and Roseville Crossings) is planned for District 10" (page 4-23). The **zoning ordinance fails to take this into account by not prohibiting large-scale retail business.**
- f. "Twin Lakes should not be developed with shopping as the primary focus of future land use" (page 4-23). The **zoning ordinance fails to take this into account by not prohibiting limiting retail business in this area.**
- g. "The desire to have employment as the primary orientation of future development..." (Page 4-23). **This proposal is retail oriented, not employment.**

It appears the **Twin Lakes Business Park Master Plan** also guides development in this area:

- h. According to the city staff report dated 9/12/11, "Request to approve the Twin Lakes Sub-Area 1 Regulating Plan" for City Council: "The City will continue to follow the 2001 Twin Lakes Business Park Master Plan to mitigate the cumulative impacts of development..."
- i. In the Comprehensive Plan (see chapter 4 on District 10: Twin Lakes):
 - i. "The City intends to rely on the following official controls and environmental studies to guide land use and to evaluate specific development proposals: ...Twin Lakes Business Park Master Plan" (page 4-23).
 - ii. "To ensure that the desired mix of uses and connections are achieved, a more detailed small-area plan, master plan, and/or area-specific design principles is required to guide individual developments within the overall mixed-use area" (page 4-8). We presume this means the Twin Lakes Business Park Master Plan.

Given that the [Twin Lakes Business Park Master Plan](#) applies to any development proposals in the district (as noted above); this proposal is also incompatible in the following ways:

- j. Section V on Proposed Land Use indicates that:
 - i. **The proposed future land use is 0% retail** (see page 9), yet this proposal is the epitome of large-scale retail. The plan was in fact withdrawn from review by Met Council when asked to provide additional information regarding retail traffic and its impacts on 35W because there **will not be retail in the area** (section II, page 2).

- ii. **Big box retail is not recommended** because of the following elements (see page 11), all of which are going to be an issue for Roseville if and when this Wal-Mart is built:
 - 1. Increased level of traffic
 - 2. Longer hours of operation (this would be 24/7)
 - 3. Reduce quality and quantity of jobs created
 - 4. Lower value of building finish
 - 5. Large parking lots required due to parking demands
 - k. Section XIV on Land Use and Zoning states (see page 20): **“Retail is not encouraged especially large scale regional and subregional big box developments. ... The City has adopted a policy of not expanding retail area. ...** In addition, the City policy for redevelopment is to **attract head-of-household job opportunities** to the City and nearby workforce.” Are Wal-mart jobs “head-of-household job opportunities”? Most definitely not. And where is this policy of “not expanding retail area”? Was it achieved by zoning this area as a CMU district?
 - l. **Twin Lakes Business Park AUAR revised in 2007 governs much of this development, and yet it is outdated.**
 - i. The Traffic Impact Analysis was based on the AUAR which, as noted above and in the letter from MnDOT on 2/24/12 was based on a lower volume traffic generator.
 - ii. Should not the Council await the new AUAR required by October 15, 2012, before giving final approval? Why do it after the fact?
 - iii. At the time this document was finalized, this area was considered Business Park district (thus the title of the document), which also did not intend to be for large-scale retail, however it had greater protections (see Table 1006-1 of Allowable Uses for Employment Districts: “General retail sale” is permissible however it must adhere to standards).
- 11) Insufficient traffic support plan, both locally and on corridors.**
- m. There are several issues with the traffic study, as noted by SRE in the letter dated 11/30/11 and as noted by MnDOT in the letter dated 2/24/12. MnDOT specifically advises that “immediate consideration... be given... before developments are approved.” It is not clear if these issues were addressed.
 - n. The original study was conducted at a time when 2 of the critical roadways were closed to traffic due to construction.
 - o. All traffic studies and mitigation plans fail to address corridor congestion at both I35W and Highway 36, both of which have stop and go traffic twice daily.
- 12) Roseville can’t afford to subsidize a big box store.** We will have to pay more in property taxes to support the additional city services and

infrastructure needs of this developer. BECAUSE this site is within the Twin Lakes District which is a Tax-Increment District there must be a public purpose achieved by this development. What public purpose is served by allowing Wal-Mart to benefit from all the past public improvements within this Tax Increment District?

Since All increased taxes resulting from this development flow into the Tax Increment District to pay for **past** public improvements in the Twin Lakes District and not into the City's general fund, for the next 19 years Roseville homeowners and local businesses will also have to subsidize the world's largest corporation to pay for Wal-Mart's future police and fire protection, any necessary street and utilities improvements not now foreseen, and any measures to mitigate future traffic congestion. Another example of 'Private Enterprise for the Middle Class, Socialism for the Rich?

Therefore the Council should put off final plat approval and building permit approval until these questions can be addressed. By approving everything tonight you will be disregarding all the work you and other Roseville residents put in during the Twin Lakes planning process and the Comprehensive Plan. Nor do you need to do so tonight. (The Zoning Ordinance provides for **separate** consideration for these distinct plat approvals.)

These issues are too critical to the perceived integrity of the City's commitment to its residents as found in the Comprehensive Plan and the Twin Lakes Master Plan to not be addressed before final approval is given. We would respectfully request a written answer from staff before the Council next addresses these issues. These questions are too important to be addressed tonight in an impromptu manner by staff, a staff at the planning division level appears to us to have been motivated for several months to advocate for this project.

Summary Requests

Therefore, we respectfully request that the City Council:

1. Not sign a development agreement which was incomplete until noon today, and therefore has not had any opportunity for public review;
2. Not approve the final plat (or any building permits) until the AUAR is updated;
3. Amend the zoning ordinance to better reflect the Comprehensive and Twin Lakes Master Plans, as noted above;
4. Consider other ways to involve Roseville residents in city decisions before staff becomes advocates of development plans, advocates both to the Planning Commission and the City Council, such as requiring Community Meetings on important development proposal with city-wide impact and the reintroduction dissolution of the Planned Unit Development process.

5. Request that the city “push” information regarding this and future developments which will have a city-wide impact on the community through cost-effective channels, such as the new neighborhood communication tool Nextdoor.com as well as press releases to local news media for those not signed up.

Should this proposal be accepted by the City Council, we request that City Council:

1. Add the following conditions to the development agreement:
 - a. Prohibit 24/7 operation and subsequent overnight RV and trucking parking allowances as is common among Wal-Marts nationwide
 - b. Traffic congestion be mitigated (with Wal-Mart participating in the costs in a 2 mile radius on the corridors, as well as side streets.
2. Direct Planning Department to hold an open house for the community when and if Walmart plans evolve.
3. Notify us specifically at swarn@gmail.com if and when a permit application has been submitted.

Signed: for SWARN Strategies Committee

Mark Bradley

Megan Dushin

Sue Gilbertson

Gary Grefenberg

Mike Gregory

Dave Nelson

Attachment #2:

Roseville Comprehensive Plan

Pages 7.2-7.3, and page 7.5 of the Economic Development and Redevelopment Section

Goals and Policies

The following goals and policies guide City actions related to economic development and redevelopment...

Goal 1: Foster economic development and redevelopment in order to achieve Roseville's vision, create sustainable development, and anticipate long-term economic and social changes....

Policy 1.2: Ensure that local controls allow for contemporary retail, office, and industrial uses that are part of the community vision.

Policy 1.3: Encourage an open dialogue between project proposers, the surrounding neighborhood, and the broader community through individual and neighborhood meetings and use of technology.

Policy 1.4: Enhance communication of the community's objectives for promoting business development to enhance the quality of life in Roseville.

Goal 2: Enhance opportunities for business expansion and development that maintains a diverse revenue base in Roseville.

Policy 2.1: Foster strong relationships with existing and prospective businesses to understand their needs and to maximize opportunities for business retention, growth, and development.

Policy 2.2: Support existing businesses and welcome new businesses to serve Roseville's diverse population and/or provide attractive employment options that encourage people to live within the community....

Policy 2.4: Encourage locally owned and/or small businesses to locate or expand in Roseville....

Goal 4: Encourage reinvestment, revitalization, and redevelopment of retail, office and industrial properties to maintain a stable tax base, provide new living wage job opportunities and increase the aesthetic appeal of the city....

Policy 4.5: Continue to give attention to creating and maintaining aesthetic quality in all neighborhoods and business districts.

Goal 6: Integrate environmental stewardship practices into commercial development.

Policy 6.1: Foster transit-supportive development along existing and planned transit corridors....

Keys to Implementation

The experience of Roseville shows that several factors are important to achieving goals and policies for economic development and redevelopment.

Commitment: Commitment to the Comprehensive Plan and patience go hand-in-hand. This Plan does not simply seek to attract development to Roseville; it also seeks to move Roseville toward a vision for the future. There is a difference. Commitment to the Comprehensive Plan means the willingness to actively promote public and private investments that achieve its goals, and to deter developments that do not fit. Not all of these decisions will be easy.



June 8, 2012

VIA EMAIL AND U.S. MAIL

Patrick Trudgeon
Community Development Director
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Wal-Mart Stores, Inc. – Request for Administrative Decisions from the Community Development Department as to the Redevelopment of a Parcel of Land Bounded by County Road C, Cleveland Avenue, Twin Lakes Parkway and Prior Avenue (PF12-001)

Dear Mr. Trudgeon:

On behalf of our client Wal-Mart Stores, Inc., we hereby request that the Community Development Department provide Wal-Mart with a written final decision as to the following:

- Determining that the operation of a retail and grocery store at a parcel of land to be platted as Lot 1, Block 1, Twin Lakes 2nd Addition (the "Site") is a permitted use under the Roseville City Zoning Code.

We believe that the other decisions of the Community Development Department relating to specific Site Plan Review items, as set forth in the City's letters of November 23, 2011 and February 29, 2012, are no longer at issue and that the applicable appeal periods have lapsed.

This requested determination is based on the City's Zoning Code, the City's 2030 Comprehensive Plan, the City's correspondence referenced above, the comments presented in this letter, and all materials and plans that Wal-Mart or its local consultants have submitted to the City to date, including the following:

1. August 9, 2011 – Traffic Impact Analysis
2. August 16, 2011 – Building Elevations and Site Plan Rendering
3. October 11, 2011 – Cover Letter, Civil Plans, Building Elevations, and Stormwater Management Report
4. October 24, 2011 – Civil Plans at 20:1 scale and Building Elevations to Scale
5. October 28, 2011 – Park Dedication Letter and Site Plan

Attorneys & Advisors
main 612.492.7000
fax 612.492.7077
www.fredlaw.com

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota
55402-1425

Mr. Patrick Trudgeon
June 8, 2012
Page 2

6. December 2, 2011 – Preliminary Plat Application, ALTA Survey, Preliminary Plat, Site Plan and Building Elevations
7. December 2, 2011 – Right of Way Vacation Application, ALTA Survey, and R.O.W. Vacation Exhibit
8. December 5, 2011 – ALTA Survey, Preliminary Plat, Site Plan, Site Plan Rendering, and Building Elevations
9. December 28, 2011 – Stormwater Management Response Letter
10. January 6, 2012 – Preliminary Plat and Site Plan
11. January 9, 2012 – Sitting Areas Exhibit
12. January 20, 2012 – Cover Letter, Preliminary Plat, Civil Plans, Site Plan Rendering, Public Sitting Area Exhibits, and Offsite Improvements Exhibit
13. February 17, 2012 – Zoning Response Letter, Preliminary Plat, Civil Plans, Site Plan Rendering, Public Sitting Area Exhibits, and Building Elevations
14. February 22, 2012 – 60% Offsite Plans
15. Fredrikson & Byron, Letter dated February 23, 2012 to Patrick Trudgeon regarding Environmental Compliance with Phase I and Phase II reports.
16. Fredrikson & Byron, Letter dated February 24, 2012 to Patrick Trudgeon regarding compliance with Twin Lakes Overlay District.
17. February 28, 2012 – Preliminary Stormwater Report
18. March 27, 2012 – Twin Lakes Parkway Drainage Memo
19. April 11, 2012 – Cover Letter, Preliminary Plat, Civil Plans, Site Plan Rendering, Building Elevations, and Building Floor Plan
20. April 19, 2012 – Tree Preservation Plan
21. May 3, 2012 – Public Improvements Cost Estimate and Exhibits
22. May 10, 2012 – Public Improvements Cost Estimate and Exhibits
23. May 10, 2012 – Final Plat for Twin Lakes 2nd Addition
24. May 15, 2012 – Building Elevations, Perspectives, and Building Floor Plan
25. May 21, 2012 – Final Plat Application

Wal-Mart understands that the Community Development Department's decision that Wal-Mart's store is a permitted use is subject to an appeal by "any property owner" and that an appeal, if any, would be considered at a public meeting held before the City Council, acting as the Board of Adjustments and Appeals at a regular City Council meeting. City Code at § 1009.08.

The Site and the Proposal

The Site is bounded by County Road C, Cleveland Avenue (with Interstate 35W beyond to the west), Twin Lakes Parkway and Prior Avenue. Wal-Mart intends to redevelop land to be replatted as Lot 1, Block 1, Twin Lakes 2nd Addition. There are no current proposals for the redevelopment of Lots 2 and 3 of Block 1, but it is anticipated that they will be developed as

Mr. Patrick Trudgeon
June 8, 2012
Page 3

restaurants by third parties. Wal-Mart first met with City Staff on its preliminary redevelopment plans in December 2010. Wal-Mart local team members discussed preliminary plans with individual members of the City Council during the months of June and July, 2011.

Wal-Mart's plans call for constructing an approximately 160,000-square foot building, together with a parking lot capable of parking 491 vehicles. Parking will be shared with the restaurants that will be developed on Lots 2 and 3. Wal-Mart will dedicate additional right-of-way to the public at Prior Avenue, County Road C, and Cleveland. As part of the redevelopment, public sidewalks will be provided along the east side of Cleveland Avenue and sidewalks within the Site will be provided to connect Lot 1 with Lots 2 and 3. Bicycle racks will be provided.

Landscaped seating areas for pedestrians will be provided at the corner of Prior Avenue with County Road C and at the corner of Prior Avenue and Twin Lakes Parkway. Lot coverage will not exceed 85% of the Site. Landscaping and parking will comply with City requirements set forth in the City Code. Environmental remediation of the Site, which previously had been used by trucking companies and for other industrial and automotive purposes, will be pursuant to a Remedial Action Plan/Construction Contingency Plan that will be approved by the Minnesota Pollution Control Agency ("MPCA"). Wal-Mart will comply with all stormwater requirements of the City, the MPCA, and the Rice Creek Watershed District.

As part of the pending preliminary and final plat applications, Wal-Mart will enter into a Development Agreement, a draft of which has been provided to the City Council. The Development Agreement provides that Wal-Mart will reimburse the City's expenses in installing certain public improvements along County Road C and Twin Lakes Parkway at an estimated cost of \$637,461.68. In addition, Wal-Mart will provide the City with \$400,000.00 to be used by the City for future upgrades to the Interstate Highway 35W/Cleveland Avenue intersection. Wal-Mart will provide the City with a park dedication fee in the amount of \$411,115.00, which is the amount set by the City's Parks and Recreation Commission on January 3, 2012. These amounts total more than \$1.4 Million, which does not take into account possible cost overruns that may be incurred by the City in constructing the public improvements, the cost of acquiring a small parcel of excess land from the City, permitting, fees, or utility hook-up fees. The costs of the environmental remediation of the Site are not included in the foregoing estimate and will be borne by Wal-Mart without public assistance.

Wal-Mart will not receive any public subsidies, such as tax increment financing or grants to facilitate its redevelopment of the Site. Any tax increment generated from the Wal-Mart development will accrue to the benefit of the public.

Mr. Patrick Trudgeon
June 8, 2012
Page 4

Retail Sales are Permitted in the CMU Zoning District

The Site is located in the Twin Lakes area of the City, known as Planning District 10 in the 2030 Comprehensive Plan. In 2010, the City amended its Zoning Code to add Section 1005.07, Community Mixed Use (“CMU”), and rezoned the Site to CMU in 2010. On September 12, 2011, the City further amended the Code when it adopted the Regulating Plan for Twin Lakes Sub-Area 1, which includes the Site. City Code § 1005.07(E) (the “Regulating Plan”).

The purpose of the CMU District is to encourage the development or redevelopment of mixed-use centers, which may include housing, office, commercial, park, civic, institutional and open space uses. According to the Zoning Code, complementary uses are to be organized into cohesive districts in which mixed or single-use buildings are connected by streets, sidewalks and trails, or open space to create a pedestrian-oriented environment. The CMU District is intended to be applied to areas of the City guided for redevelopment or intensification. City Code at § 1005.07(A).

The CMU District requirements incorporate Table 1005-1, which is the list of permitted and conditional uses in all of the City’s commercial and mixed use districts. City Code at § 1005.07(B)6 (specifically referencing Table 1005-1 which is found at City Code § 1005.03). “Retail, general and personal service stores” and “grocery stores” are all listed as permitted uses in the CMU District, as well as the Regional Business and Community Business Districts. The City Code defines “Grocery Store” as “a retail establishment that offers for sale food products, beverages, household items and may include pharmacy, and prepared food items.” City Code at § 1001.10. The City Code defines “Retail, General and Personal Services” to include “the retail sale of products and/or consumer services to the general public and produces minimal off-site impacts.” City Code at § 1001.10. Examples of general retail that are provided in a sidebar to Table 1005-1 include auto parts, books and magazines, music, clothing, pharmacy, electronics sales, jewelry, hardware, office supplies, pet store, and photographic equipment and printing.¹

There is no limit on the size of buildings in the CMU District and the Zoning Code does not define the term “big box.” The size of the building is ultimately controlled by the size of the parcel. The CMU District does not require that buildings be multi-story or mixed-use. There is no requirement that structured parking be provided. Off-street parking requirements are set forth in Chapter 1019 of the Zoning Code and the CMU District requirements encourage shared parking.

¹ Sidebars in the Zoning Code, such as diagrams, charts, pictures, graphs and commentary are for illustrative purposes and have no legal effect. City Code at § 1001.08.

Mr. Patrick Trudgeon
June 8, 2012
Page 5

Wal-Mart's proposed redevelopment of the Site as a general retail and grocery store is a permitted use under the Zoning Code. The Roseville Wal-Mart will devote about a third of the sales floor to groceries, paper goods, the pharmacy, health and beauty aids, pet food and cleaning supplies. Clothing and home goods (such as bedding, bath and kitchen supplies) will account for about another one-third of the sales floor. The garden center will be about 7,700 square feet. The remaining areas of the sales floor will include the sales registers, and other merchandise including toys, sporting goods, hardware, automotive supplies, stationery and books, cameras and electronics, and seasonal goods. Tenant spaces will also be provided within the building and may be leased by a restaurant or a bank, for example. All of the foregoing products and services are permitted uses in the CMU District. The tenant spaces are also permitted and the mixture of goods and services are encouraged in the CMU District.

The Regulating Plan controls building orientation, setbacks, and the maximum lot coverage ratio. The Wal-Mart building will comply with the requirements of the Regulating Plan. The parking lot will comply with the City's parking requirements as set forth in Chapter 1019. Wal-Mart will share parking with Lots 2 and 3 and connecting sidewalks will be provided throughout the Site, thus complying with CMU District requirements.

The Regulating Plan states that the City will require additional public amenities or enhancements at Flexible Frontage Sites located at or near pedestrian corridors or roadway intersections where building placement is not within the "Build-to-Area," such as the Wal-Mart Site. City Code § 1005.07(E)3(a)i(C). To satisfy this requirement, Wal-Mart proposes to construct public sitting areas in two locations: at the intersections of Prior Avenue and Twin Lakes Parkway and at Prior Avenue and County Road C. These public areas will include benches and landscaping.

2030 Comprehensive Plan Allows Retail Development

Roseville's City Code acknowledges the importance of the Roseville Comprehensive Plan. "It is the policy of this City that the enforcement, amendment, and administration of this Code be accomplished with due consideration of the recommendations and policies contained in the Comprehensive Plan as developed and amended from time to time by the Planning Commission and City Council." City Code at § 1001.04. Roseville adopted its 2030 Comprehensive Plan on October 26, 2009. Roseville created the new CMU Zoning District in 2010-2011 and rezoned the Twin Lakes area, including the Site, to conform to the 2030 Comprehensive Plan.

The 2030 Comprehensive Plan created a Community Mixed Use designation. The Comprehensive Plan states that Community Mixed Use areas are intended to contain a mix of complementary uses that may include housing, office, civic, commercial, park, and open space uses. Community Mixed Use areas organize uses into a cohesive district, neighborhood or

Mr. Patrick Trudgeon
June 8, 2012
Page 6

corridor, connecting uses in common structures and with sidewalks and trails, and using density, structured parking, shared parking and other approaches to create green space and public places within the areas. The mix of land uses may include Medium and High Density Residential, Office, Community Business, Institutional and Parks and Open Space uses. The Comprehensive Plan defines Community Business areas to include shopping centers and freestanding businesses that promote community orientation and scale. Community Business areas should have a strong orientation to pedestrian and bicycle access to the area and movement within the area, according to the Comprehensive Plan.

The 2030 Comprehensive Plan states that Twin Lakes should be not developed with shopping as the primary focus of future land use, but the Comprehensive Plan does not prohibit retail uses. Comprehensive Plan at p. 4-23. The 2030 Comprehensive Plan acknowledges that future development of the entire Twin Lakes area will likely be a series of smaller projects, rather than a large master development. *Id.* The Wal-Mart project is among the first of the stand-alone smaller projects that the Comprehensive Plan foresaw for Twin Lakes. Development of Lots 2 and 3 of Twin Lakes 2nd Addition will follow.

According to the 2030 Comprehensive Plan, Community Mixed Use areas may include commercial uses such as Community Business. Comprehensive Plan at p. 4-8. The 2030 Comprehensive Plan states that Community Business may include shopping centers and freestanding buildings that “promote community orientation and scale.” *Id.* Although neither the Zoning Code nor the Comprehensive Plan provides an objective standard to distinguish a community business from other types of retail, Wal-Mart expects that most of the business at its Roseville store will be generated by shoppers who will travel two miles or less to buy everyday necessities such as groceries or to visit the pharmacy, for example. Other Wal-Mart stores in the metro area will continue to serve shoppers living or working elsewhere; some of these other stores are larger than the Roseville store. There are currently 5 Wal-Mart stores within a 10-mile radius of the Roseville store site; 23 stores are within 20 miles. These figures do not include new stores under construction in Brooklyn Center, Blaine, Burnsville, and Lakeville. Wal-Mart does not expect that shoppers will travel long distances to shop at the Roseville Wal-Mart by-passing other Wal-Marts in the metro area. Rather, Wal-Mart expects that the Roseville residents currently shopping at the Vadnais Heights, St. Paul Midway, Fridley, and Saint Anthony stores will instead choose to shop at the Roseville store.

At page 4-23, the 2030 Comprehensive Plan references certain additional documents that are to be consulted to guide land use and to evaluate specific development proposals: zoning regulations, 2001 Twin Lakes Business Park Master Plan (the “2001 Plan”), the Twin Lakes Business Park Alternative Urban Areawide Review (“AUAR”), and the Twin Lakes Redevelopment Area Design Principles. See page 4-23. Zoning regulations are discussed in the preceding section and the Design Principles, for example, together with elements of the AUAR have been incorporated into the Zoning Code and the Regulating Plan.

Mr. Patrick Trudgeon
June 8, 2012
Page 7

The AUAR studied various redevelopment scenarios for the Site, including a development of up to 240,000 square feet of service mix (including retail). The AUAR recommended certain measures to be implemented to mitigate environmental potential impacts. As set forth in the Development Agreement and elsewhere in this letter,² to mitigate impacts that the AUAR identified, Wal-Mart will pay for certain off-site traffic improvements, will implement a Remedial Action Plan approved by the MPCA, will provide approximately 25% of the costs of upgrading the intersection of Cleveland with 35W, will comply with all City ordinances, will obtain all required permits including without limitation, MPCA and Rice Creek watershed district permits, and will incorporate into the development sidewalks and pedestrian amenities.

The 2030 Comprehensive Plan also references the 2001 Plan,³ but unlike the City's previous Comprehensive Plan, the 2001 Plan is not incorporated into the 2030 Comprehensive Plan. Although the 2001 Plan states that that "Big Box Retail and Strip Centers" are not recommended, the 2001 Plan identifies the Site (i.e., the corner of County Road C and Cleveland) as the "best location" within Twin Lakes for commercial businesses to locate to serve the Twin Lakes and the general public. The 2001 Plan states that the Site offers ease of access from County Road C and Interstate Highway 35W; is transit-friendly, and is the farthest away from residential areas. The 2001 Plan, while recommending against undefined "big boxes," stops short of prohibiting retail and actually identifies the site as the best location within Twin Lakes for commercial redevelopment.

Neither the Zoning Code nor the 2030 Comprehensive Plan define the term "big box retail" or prohibit big box retail, however the term might be defined. Therefore, even though a planning document such as the 2001 Plan, may recommend against "big boxes," that recommendation is not a restriction that Minnesota courts could enforce. In 2006, the Minnesota Court of Appeals reviewed the same provision in the 2001 Plan and found that "although the

² See also, Fredrikson & Byron's correspondence dated February 23, 2011 and February 24, 2011, which discuss environmental compliance, including mitigation of issues identified in the AUAR.

³ The 2030 Comprehensive Plan states the City intends to rely on certain official controls and environmental studies to guide land use and to evaluate specific development proposals and lists zoning regulations, the 2001 Plan, the AUAR and the Twin Lakes Redevelopment Area Design Principles. See page 4-23. The Comprehensive Plan does not identify which of the foregoing are official controls. Minnesota Statutes define "official controls" at Minn. Stat. § 462.352, subd. 15: "'Official controls' or 'controls' means ordinances and regulations which control the physical development of a city, county or town or any part thereof or any detail thereof and implement the general objectives of the comprehensive plan. Official controls may include ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes and official maps." The 2001 Plan is not an official control because it is neither an ordinance nor a regulation implementing the comprehensive plan.

Mr. Patrick Trudgeon
June 8, 2012
Page 8

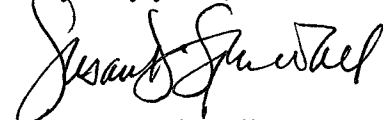
City's comprehensive plan does not recommend big-box retail, the comprehensive plan does not prohibit such retail stores. Generally, this court 'narrowly construe[s] any restrictions that a zoning ordinance imposes upon a property owner.' ... Therefore, any 'restrictions on land use must be clearly expressed.'" *Friends of Twin Lakes v. City of Roseville*, No. A05-1770 (Minn. Ct. App., filed Aug. 10, 2006); See Also, *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608-09 (Minn. 1980) ("We must give weight to the interpretation that, while still within the confines of the term, is least restrictive upon the rights of the property owner to use his land as he wishes."), and *Chanhassen Estates' Residents' Ass'n. v. City of Chanhassen*, 342 N.W.2d 335, 340 (Minn. 1984)("restriction[s] on land use must be clearly expressed").

In this case, given the controlling case law, the lengthy history of disputes concerning the Site, and the Court of Appeals' instructions to the City in the 2006 *Friends of Twin Lakes* case, if the City wanted to ban or restrict "big-box retail" (whatever that might be defined to mean) it had ample opportunity to adopt a "clearly expressed" restriction in its 2030 Comprehensive Plan that was adopted in 2009 and in the applicable zoning code amendments that were adopted in 2010-2011. The City certainly knew of Wal-Mart's pending applications prior to adopting the Regulating Plan. Both the Comprehensive Plan and the CMU District allow retail as permitted uses. Neither the Comprehensive Plan nor the Zoning Code limits the size of a building in the CMU District. Therefore, the City may not prohibit Wal-Mart from developing the Site based on the size of its building or the fact that Wal-Mart proposes to engage in permitted retail sales.

For all of the reasons set forth in this letter and based on the record, Wal-Mart's proposed development of the Site as a 160,000-square foot Wal-Mart Store offering both groceries and general retail goods is a permitted use in the CMU District, and retail development of the Site is consistent with the 2030 Comprehensive Plan. We ask that the Community Development Department provide Wal-Mart with its determination concurring with the foregoing as soon as possible.

Thanks very much for your consideration.

Very truly yours,



Susan D. Steinwall

Direct Dial: 612.492.7171

Email: ssteinwall@fredlaw.com

SDS/kjm

Mr. Patrick Trudgeon
June 8, 2012
Page 9

cc via email: Mayor Dan Roe and Members, Roseville City Council
Thomas Paschke
Mary Kendall
Will Matzek
TR Rose
Mike Sims
Beth Jensen
Jacki Cook-Haxby
Andy Berg
Paula Wagner

5152052_3.DOC



COMMUNITY DEVELOPMENT DEPARTMENT

June 21, 2012

Ms. Susan Steinwall
Fredrickson and Byron P.A.
200 South Sixth Street
Suite 4000
Minneapolis, MN 55402

Mr. Mark Rancone
Roseville Properties
2575 Fairview Avenue North
Suite 250
Roseville, MN 55113

RE: Request for Zoning Compliance of Retail Use in the Community Mixed-Use District

Dear Ms. Steinwall and Mr. Rancone:

The Roseville Community Development Department has received and reviewed your request dated June 8, 2012 for a zoning use determination for the proposed Wal-Mart store to be generally located at County Road C and Cleveland Avenue, and within the Twin Lakes Redevelopment Area.

As a point of reference, when the Community Development Department begins initial discussions with a prospective developer, we employ a professional understanding of the zoning ordinance (which was adopted to be consistent with the 2030 Comprehensive Plan) to determine whether a use is permitted, conditional or prohibited for a given zoning district. If necessary, the Department also reviews other important documents to determine whether additional information will need to be provided to City Staff to determine other necessary and/or required improvements.

As you know, when the potential Wal-Mart store was brought to City Staff's attention in 2011, staff followed its typical procedure and reviewed the proposed use with the zoning ordinance and verbally confirmed that the proposed Wal-Mart store was permitted in the Community Mixed Use Zoning District, subject to complying with zoning regulations.

However, there continues to be community concern regarding the use and size of the proposed Wal-Mart which has led us to provide you with a more detailed analysis of all documents that may have some authority over the Twin Lakes Redevelopment Area. These include: the 2030 Roseville Comprehensive Plan, Title 10 Zoning Ordinance, Twin Lakes Business Park Master Plan, Twin Lakes Urban Design Principles, Twin Lakes AUAR, and the Minnesota Court of Appeals decision of 2006, File # C3-05-44. This review and analysis however, is limited to the use and does not address site improvement or building design compliance with the zoning ordinance.

SUMMARY

The Community Development Department finds that a retail development of 160,000 sq. ft. within the Twin Lakes Redevelopment Area (the Wal-Mart project) is under the thresholds of the Twin Lakes AUAR, is not prohibited by the 2001 Twin Lakes Business Park Master Plan nor the 2030 Roseville Comprehensive Plan, and is permitted by the Roseville Zoning Ordinance.

The following is our detailed analysis of the proposed Wal-Mart project.

I. ZONING CODE

The Wal-Mart project is proposed to be located on property within the Community Mixed Use Zoning District (CMU). Regulations covering development within the CMU district are generally contained in Chapter 1005 (Commercial and Mixed Use Districts) and specifically within Chapter 1005.07 (Community Mixed Use District).

- 1.) The Community Development Department finds that the Statement of Purpose within Section 1005.01 of the zoning ordinance allows for the Wal-Mart project since it does not include any prohibitions or limitations regarding use or size, and that the purpose statement is merely a guide for future development. Words like “promote”, “provide”, “improve”, and “encourage”, individually or collectively, do not limit a specific use, nor do they require something. On the contrary, these words provide general direction and guidance for the requirements that follow later in the zoning ordinance.

ZONING ORDINANCE

COMMERCIAL AND MIXED-USE DISTRICTS

1005.01 Statement of Purpose

The commercial and mixed-use district is designed to:

- A. *Promote an appropriate mix of commercial development types within the community;*
- B. *Provide attractive, inviting, high-quality retail shopping and service areas that are conveniently and safely accessible by multiple travel modes including transit, walking, and bicycling;*
- C. *Improve the community’s mix of land uses by encouraging mixed medium- and high-density residential uses with high quality commercial and employment uses in designated areas;*
- D. *Encourage appropriate transitions between higher-intensity uses within commercial and mixed use centers and adjacent lower-density residential districts; and*
- E. *Encourage sustainable design practices that apply to buildings, private development sites, and the public realm in order to enhance the natural environment.*

- 2.) The Community Development Department finds that the proposed Wal-Mart is permitted since general retail, banks, personal service, and grocery stores are listed as permitted use within the (CMU) district without specific limitations, restrictions, or prohibitions on the size of such uses.

1005.03 - TABLE OF ALLOWED USES

Table 1005.01	NB	CB	RB	CMU	Standards
Office Uses					
Office	<i>p</i>	<i>p</i>	<i>p</i>	<i>p</i>	
Clinic, medical, dental, optical	<i>p</i>	<i>p</i>	<i>p</i>	<i>p</i>	
Office showroom	<i>np</i>	<i>p</i>	<i>p</i>	<i>p</i>	
Commercial Uses					
Retail, general and personal service*	<i>p</i>	<i>p</i>	<i>p</i>	<i>p</i>	
Animal boarding, kennel/day care (indoor)	<i>p</i>	<i>p</i>	<i>p</i>	<i>p</i>	Y
Animal boarding, kennel/day care (outdoor)	<i>np</i>	<i>c</i>	<i>c</i>	<i>np</i>	Y
Animal hospital, veterinary clinic	<i>p</i>	<i>p</i>	<i>p</i>	<i>p</i>	Y
Bank, financial institution	<i>p</i>	<i>p</i>	<i>p</i>	<i>p</i>	
Club or lodge, private	<i>p</i>	<i>p</i>	<i>p</i>	<i>p</i>	
Daycare center	<i>p</i>	<i>p</i>	<i>p</i>	<i>p</i>	Y
Grocery store	<i>p</i>	<i>p</i>	<i>p</i>	<i>p</i>	

np = not permitted, *c* = conditional use, *p* = permitted use, *y* = standards in procedures and/or property performance standards sections of the code.

(The asterisk refers to a sidebar in the code that references typical uses under the retail category. They include, but are not limited to Clothing and Accessories Sales, Pharmacy, Electronic Sales, Office Supplies).

- 3.) The Community Development Department finds that the statement of purpose for the Community Mixed Use (CMU) District does not preclude the Wal-Mart project since it does not limit, restrict and/or prohibit retail use or any size retail use use. The purpose statement is a guide emphasizing words like “designed to encourage” “should be organized”, and “intended” as a means for the Community Development Department to promote the standards or regulations that are found in the CMU District and/or the Regulating Plan of the Zoning Ordinance.

1005.07 COMMUNITY MIXED-USE (CMU) DISTRICT

A. STATEMENT OF PURPOSE

The Community Mixed-Use District is designed to encourage the development or redevelopment of mixed-use centers that may include housing, office, commercial, park, civic, institutional, and open space uses. Complementary uses should be organized into cohesive districts in which mixed- or single-use buildings are connected by streets, sidewalks and trails, and open space to create a pedestrian-oriented environment. The CMU District is intended to be applied to areas of the City guided for redevelopment or intensification.

- 4.) The Community Development Department finds that the Twin Lakes Sub-Area 1 Regulating Plan does not control use nor limit overall building size and therefore does not prohibit the Wal-Mart project. The Regulating Plan is a set of strict standards that apply to building design and placement and certain/specific site improvements, and which regulations do not take a use into account.

B. Regulating Plan

The CMU District must be guided by a regulating plan for each location where it is applied. A regulating plan uses graphics and text to establish requirements pertaining to the [site development] parameters. Where the requirements for an area governed by a regulating plan are in conflict with the design standards established in Section 1005.02 of this Title, the requirements of the regulating plan shall supersede, and where the requirements for an area governed by a regulating plan are silent, Section 1005.02 shall control.

II. 2006 TWIN LAKES COURT OF APPEALS DECISION

The Community Development Department finds that the 2006 Court of Appeals Twin Lakes decision supports the determination that the Wal-Mart project is a permitted use. The Court of Appeals decision regarding a “big box” use on the same piece of land as the proposed Wal-Mart project concluded that without stated limitations on size or use, or a prohibition on use, within either, the comprehensive plan or the zoning ordinance, a large retail use, is permitted. Although the 2006 decision was predicated on the B-6 zoning district, the Court of Appeals decision and its application to our current comprehensive plan and zoning ordinance is still very much relevant and applicable.

2006 COURT OF APPEALS DECISION

“The City code does not specify any maximum or minimum land-use ratio for the different types of permitted uses within the designated B-6 zone. And although the city’s comprehensive plan does not recommend big box retail, the comprehensive plan does not prohibit such a retail store. Generally, this court “narrowly construe[s] any restrictions that a zoning ordinance imposes upon a property owner.” See Mendota Golf, 708 N.W.2d at 172. Therefore, any “restrictions on land use must clearly be expressed.” Because the B-6 zoning designation does not prohibit retail, including big-box, or multi-family housing, or provide any restrictions on the amount of these land uses in proportion to other allowed land uses, we conclude that it was not reasonable for the city to determine that the Rottlund project, which includes retail, multi-family, and office land uses, is consistent with the B-6 zoning designation.”

III. 2030 ROSEVILLE COMPREHENSIVE PLAN

As part of the consideration of the proposed Twin Lakes 2nd Addition plat, the subdivision that will facilitate the Wal-Mart development, the City Council has heard extensive testimony from

the public that the proposed use is not consistent with the Comprehensive Plan. It has been suggested that the Comprehensive Plan limits “big box” and the proposed Wal-Mart store is inconsistent with the Comprehensive Plan and therefore the use is not permitted since the Zoning Code is not consistent with the Comprehensive Plan.

A Comprehensive Plan is a broad vision and general guide for cities to follow in achieving their desired goals, objectives, and policies. A comprehensive plan is not a document that is directly utilized to enforce the identified goals and objectives. Zoning Codes and other ordinances and City programs are utilized to implement the goals and objectives identified in the Comprehensive Plan. The overall Comprehensive Plan should not be construed as an enforcement mechanism for property development. In fact, Minnesota State Statutes recognizes this fact in Chapter 462.356 (2) and requires adoption of a zoning code to put the Comprehensive Plan into effect and the Comprehensive Plan includes a chapter on using the Plan to make progress towards achieving its goals. Therefore, it is clear that the Comprehensive Plan cannot be directly used to directly regulate development.

The City Attorney has advised staff that to the extent that a zoning code is inconsistent with the comprehensive plan, the zoning code should be amended to reflect the comprehensive plan. Therefore staff has prepared an analysis reviewing the Comprehensive Plan and the Zoning Code. Staff’s analysis finds that the Roseville Zoning Code is consistent with Comprehensive Plan and therefore the regulations within the Zoning Code are enforceable.

A. BUILDING SQUARE FOOT LIMITATIONS

Before we get into the analysis, it would be worthwhile to do a quick review of the discussion around “big box” in the context of the Comprehensive Plan. Starting in 2008, a steering committee comprised of citizens, commission members and elected officials spent over a year preparing and reviewing the 2030 Comprehensive Plan. One of the most discussed topics of the steering committee was whether to include size limitations of buildings within the “Community Business” and “Regional Business” land use designations. By a slim vote of the Steering Committee, the size limitations were retained in the draft Comprehensive Plan forwarded to the Planning Commission and City Council. (See September 11, 2008 Steering Committee notes). At the Planning Commission on October 1, 2008, the Planning Commission removed the square footage limitations contained in the draft Comprehensive Plan. The City Council, at both its October 13, 2008 and January 26, 2009 meetings, agreed with the Planning Commission’s changes and did not reinsert square footage limitations in the Community Business and Regional Business land use categories. This is important to note given the persistence of the notion that there are prohibitions on having “big box” developments. While there was much discussion about limiting these types of uses, in the end, nothing was included in the Comprehensive Plan that had size limitations. Therefore, the lack of a guideline for sizes of buildings within the zoning districts demonstrates that the Zoning Code is no inconsistent with the Comprehensive Plan.

The Community Development Department finds that due to the exclusion of any square footage limitations regarding building size in the Comprehensive Plan, the Roseville Zoning Code is consistent with the Comprehensive Plan and therefore the Wal-Mart project is permitted under the Comprehensive Plan.

B. COMPREHENSIVE PLAN LAND USE DESIGNATIONS

The Community Development Department finds that the land use categories in the Comprehensive Plan contain general vision statements of the sorts of things that are desired within a specific land use designation including a range of uses, but do not have specific guidance for individual parcels or developments. These thoughts, visions, and ideas are further expounded upon in the Goals and Policies sections of the Comprehensive Plan and are to be implemented over a long timeframe.

The Twin Lakes Redevelopment Area is guided Community Mixed Use in the Comprehensive Plan and the uses for this land use designation include many different types, including those within the broadly defined community business land use area, or others not specifically defined here, but rather those regulated under the zoning ordinance. The Comprehensive Plan is not expected to list every potential use; that is for the zoning code to do. Instead, the Comprehensive Plan provides a general range of uses as a guide. It is as part of the zoning code adoption that more specificity is created for the actual uses allowed.

The Wal-Mart project is located in the Twin Lakes Redevelopment Area and is guided as Community Mixed Use (CMU) in the Comprehensive Plan. Below is the description of the CMU district from the Comprehensive Plan.

Community Mixed Use (CMU)

Community Mixed Use areas are intended to contain a mix of complementary uses that may include housing, office, civic, commercial, park, and open space uses. Community Mixed Use areas organize uses into a cohesive district, neighborhood, or corridor, connecting uses in common structures and with sidewalks and trails, and using density, structured parking, shared parking, and other approaches to create green space and public places within the areas. The mix of land uses may include Medium- and High-Density Residential, Office, Community Business, Institutional, and Parks and Open Space uses. Residential land uses should generally represent between 25% and 50% of the overall mixed use area. The mix of uses may be in a common site, development area, or building. Individual developments may consist of a mix of two or more complementary uses that are compatible and connected to surrounding land-use patterns. To ensure that the desired mix of uses and connections are achieved, a more detailed small-area plan, master plan, and/or area-specific design principles is required to guide individual developments within the overall mixed-use area.

The Community Development Department finds that the Wal-Mart project is allowed since CMU description neither restricts nor limits specific uses or sizes and further finds that the zoning code has incorporated a small-area plan and design principles to ensure the mix of uses and connections through the Twin Lake Regulating Plan contained in Chapter 1005.07 (E) of City Code in compliance with the Comprehensive Plan

The description of the CMU land use district mentions Community Business uses as part of the mix of land use that could occur on the CMU guided properties. Below is the description of the Community Business land use category from the Comprehensive Plan.

Community Business (CB)

Community Business uses are commercial areas oriented toward businesses involved with the sale of goods and services to a local market area. Community business areas include shopping centers and freestanding businesses that promote community orientation and scale. To provide access and manage traffic, community business areas are located on streets designated as A Minor Augmentor or A Minor Reliever in the Transportation Plan. Community Business areas should have a strong orientation to pedestrian and bicycle access to the area and movement within the area. Residential uses, generally with a density greater than 12 units per acre, may be located in Community Business areas only as part of mixed-use buildings with allowable business uses on the ground floor.

The Community Development Department finds that the Wal-Mart project is allowed since the Community Business description neither restricts nor limits specific uses or sizes and further finds that the zoning code has incorporated design standards that promote community orientation and scale through the Twin Lake Regulating Plan contained in Chapter 1005.07 (E) of City Code in compliance with the Comprehensive Plan.

It should be noted that the Wal-Mart project Area has frontage on Cleveland Ave. and County Road C, both classified as A Minor Reliever, consistent with the Comprehensive Plan for Community Business uses.

C. COMPREHENSIVE PLAN GOALS AND POLICIES

The next area analyzed by the Community Development Department is the Goals and Policies sections of the Comprehensive Plan. These sections include words such as “facilitate”, “encourage”, “promote”, “seek”, “emphasize”, “ensure”, “maintain”, and “establish”, which do not provide strict limits, thresholds, or prohibitions and are not by themselves regulations. They are, in fact, part of a broader paragraph or statement that directs the creation of the Zoning Ordinance and other requirements and programs.

The Community Development Department would like to stress that projects that walk in the door are not to be reviewed against each goal and/or policy stated in the Comprehensive Plan, since the goals and policies are a collection of broad based desires of the community and no one project can meet or achieve each and every general goal or policy statement.

The Community Development Department has however prepared a concise analysis of all goals and policies contained in the Land Use, Economic Development and Redevelopment, and Environmental Protection chapters of the 2030 Comprehensive Plan. The analysis focuses on how or whether the goal and/or policy is advanced via the use or size of the proposed Wal-Mart and whether the goal or policy has been addressed in the zoning ordinance to achieve consistency between the two documents as required by law.

Based on that analysis, the Community Development Department finds that the Roseville Zoning Ordinance is consistent with and has incorporated the goals and policies identified in the 2030 Comprehensive Plan.

The detailed analysis is included as Attachment A.

IV. TWIN LAKES BUSINESS PARK MASTER PLAN

The Community Development Department finds that the Twin Lakes Business Park Master Plan, approved by the City Council on June 26, 2001, is a guiding document and not a regulatory document. The Twin Lakes Business Park Master Plan (or any master plan for that matter) does not have regulatory authority under Minnesota State Statutes. The Twin Lakes Master Plan is not included as a integral part of the Roseville Comprehensive Plan. In addition, the master plan's goals and policies and renewal strategies sections include words that merely advocate and not require certain things to occur,.

Even though the master plan is not a regulatory document, staff has reviewed the master plan and has found consistency between the master plan and the zoning code.

Specifically, the Community Development Department finds that the zoning ordinance has embraced the Twin Lakes Business Park Master Plan by including specific regulations into the Chapter 1005.07 (CMU district and the Twin Lakes Regulating Plan). The master plan relied on a set of design guidelines that was later (2007) approved by the City Council in a resolution as the Urban Design Principles. This document, a collection of checks and balances based upon the desires of the plan, were to be reviewed against projects within Twin Lakes. In 2010, numerous references within the Urban Design Principles were incorporated as zoning requirements into Chapter 1005.07 of the City Code.

The Community Development Department further finds that the issue of lot coverage, open space, and/or impervious area, is consistent between the master plan and the zoning ordinance where by both advocate a 15% minimum green area. The master plan states (#24.b; pg. 8) that development retain a minimum of 15% of each site in green space and/or ponding; and in the zoning ordinance it states: lot coverage shall not exceed 85%.

The Community Development also finds that references regarding big-box retail development as not recommended or not encouraged do not embody a limitation or prohibition on such a use, and therefore retail of any size as a use within Twin Lakes is permissible under the Master Plan. As the master plan is not regulatory document, this point is somewhat moot, but the statement that "big box" is not recommended isn't the same as a "big box" use being prohibited. It is surmised the creators wanted to maintain flexibility in uses, including the possibility of a big box. Otherwise, the plan would directly state that "big box" uses should not be allowed.

V. THE ALTERNATIVE URBAN AREAWIDE REVIEW (AUAR)

The Twin Lakes Alternative Urban Areawide Review (AUAR) is not a land use or zoning document, it does not regulate use or size of buildings, and it is not a regulatory document *per se*. The AUAR is however, an environmental review document that is used by the City to determine a proposed project's impact thresholds and the required mitigations to make that project consistent with the AUAR.

Specifically, the Twin Lakes AUAR analyzed three different redevelopment scenarios for possible environmental impacts. Scenario "A" is identified as the "worst case," or the scenario that would lead to the greatest potential for environmental impact. As explained in Item 7 of the

AUAR, Scenario A was developed by reviewing the four different future land use maps depicted in the 2001 Twin Lakes Business Park Master Plan and assuming that each of the redevelopment Blocks was developed with the most intensive of those possible future land uses in order to identify strategies for effectively mitigating the potential impacts of such a “worst case” development. The proposed Wal-Mart development is situated within Block 4 for the purposes of the AUAR’s analysis.

In addition to high levels of development throughout the Twin Lakes Redevelopment Area, Scenario A evaluated Block 4, the location of the proposed Wal-Mart development, for 240,000 square feet of a land use referred to as “service mix.” The AUAR defines “service mix” as consisting of “retail, a hotel, a day care facility, a health club facility and restaurant uses that would be complementary to the other uses in the Twin Lakes Business Park,” and notes that “Service Mix [was] analyzed from a retail perspective as retail generates greater impacts than the other potential uses described within service mix, thus providing the ‘worst case’ development scenario.” Since the proposed development comprises a 160,000-square-foot retail store, Block 4 could still accommodate another 80,000 square feet of retail, hotel, day care, health club, restaurant, or other uses without exceeding the capacity assumed in the AUAR analysis.

The Community Development Department finds that the proposed Wal-Mart project is not inconsistent with the Twin Lakes AUAR and can proceed forward under the terms and/or mitigations addressed within the AUAR document. In addition, on May 21, 2012, the City Council determined that the Wal-Mart project was within the thresholds of the existing Twin Lakes AUAR and no further environmental review is needed.

CONCLUSION

In summary, the Community Development Department finds that Wal-Mart project is a permitted use under Chapter 10 (Zoning) of the Roseville City Code and that Chapter 10 (Zoning) of the Roseville City Code is consistent with the 2030 Roseville Comprehensive Plan. Additionally, the Wal-Mart project adheres to and is consistent with the 2001 Twin Lakes Business Park Master Plan and Twin Lakes AUAR.

Should there be any questions or comments regarding this review, please do not hesitate to contact Community Development staff.

Respectfully

CITY OF ROSEVILLE



Thomas R. Paschke
City Planner



Patrick Trudgeon
Community Development Director

Attachment: Analysis of 2030 Comprehensive Plan Goals and Policies

**ANALYSIS OF GOALS AND POLICIES IN 2030 ROSEVILLE COMPREHENSIVE PLAN
PREPARED BY ROSEVILLE COMMUNITY DEVELOPMENT STAFF**

MIXED-USE AREA GOALS AND POLICIES

Goal 13: Improve the community's mix of land uses by encouraging mixed medium- and high-density residential uses with high-quality commercial and employment uses in designated areas.

The Community Development Department finds that the generalized goal has been applied to the zoning ordinance and is enforced through the table of uses and the specific standards throughout each commercial zoning district, specifically the Community Mixed Use District. The Community Development Department further finds that Twin Lakes is a designated area for retail development that is supported by this goal and the zoning ordinance.

Policy 13.1: Facilitate the improvement, environmental remediation, and redevelopment of underutilized, heavy industrial land and trucking facilities in designated locations into a compatible mixture of residential and employment uses.

The Community Development Department finds that any development within Twin Lakes will be required via the Alternative Urban Areawide Review to improve the property, remediate the contaminated soil, and reuse underutilized former trucking facilities, and that the area is planned for a mixture of uses. The Community Development Department further finds that a retail establishment of any type of size is not restricted, limited, or prohibited, by this policy.

Policy 13.2: Develop and utilize master plans, as official controls, for redevelopment areas in order to achieve an appropriate mixture of uses in the mixed-use areas designated on the 2030 Future Land Use Map.

The Twin Lakes Redevelopment Area does have a master plan that provides further guidance regarding redevelopment desires. Unfortunately, master plans do not have regulatory standing or authority, much like a comprehensive plan does not. The City Code, and specifically the Zoning Ordinance, is the only regulatory document that applies to the Twin Lakes Area.

Specific to the Twin Lakes, the Twin Lakes Business Park Master Plan renewal strategy that was approved on June 26, 2001, provides more detailed guidance regarding mixed-use development as a vision for the Twin Lakes Redevelopment Area. The document discusses big-box in one area and that is on Page 11 where big-box (and strip centers) are not recommended.

The Community Development Department finds that the Twin Lakes Business Park Master Plan does not prohibit big-box use, it only recommends against it, and while a Walmart qualifies as a big-box, there have been no restrictions, limitations, or prohibitions established in the 2030 Comprehensive Plan or the Zoning Ordinance denying such a development from constructing in Twin Lakes.

Goal 14: Promote and support the development of mixed-use areas that have a rich mix of related and mutually reinforcing uses within walking distance of each other.

The Community Development Department finds that the CMU District supports a broad mix of related and mutually reinforcing uses and promotes walkability especially through the Regulating Plan. It is anticipated that the proposed Walmart will have a small collection of uses, including pharmacy, banking, grocery, photo lab, garden store, and two restaurants on outlots, all of which uses are walkable from near-by businesses.

Policy 14.1: Encourage a mix of two or more uses within each development project either within the same building or horizontally on the site.

The CMU design standards and the uses permitted address the mix and the regulating plan for Twin Lakes Sub-Area 1 address vertical and/or horizontal design, placement of buildings on parcels. It is anticipated that the proposed Walmart will have a small collection of uses, including pharmacy, banking, grocery, photo lab, garden store, and two restaurants on outlots, all of which uses are walkable from near-by businesses.

Twin Lakes is planned and zoned to allow for a mix of uses, with retail being only one of these allowable uses.

Policy 14.2: Use official controls to ensure all mixed use development is cohesive, compact, and pedestrian oriented, consisting of high-quality design, efficient parking strategies, and appropriate site landscaping.

The zoning ordinance has been developed to ensure organized development consistent with policy, especially in the CMU district where emphasis has been placed on pedestrian friendly design/orientation, high quality design (including four sided architecture, horizontal/vertical articulation, and a top, bottom and middle design to name a few), new parking standards that reduce parking minimums and maximums, and new landscaping requirements. Any development within Twin Lakes will be required to meet or exceed all requirements of the zoning ordinance specifically the CMU design standards and the regulating plan requirements.

Policy 14.3: Promote and support the provision of a robust system of public spaces within mixed-use areas such as parks, plazas, pathways, streets, and civic uses to encourage community gathering and connections.

The Zoning Code [1005.07(E) – Twin Lakes Regulating Plan] seeks the creation of pedestrian corridors to connect to the existing public amenity in the area and seeks the provision of additional open space to save/protect mature oak trees. The Regulating Plan also requires an additional buffer to further protect Langton Lake Park from development. Sub-Area 1 of the Twin Lakes Redevelopment Area includes a robust system of sidewalks and paths that the City installed over the past two years. Through the review of the Twin Lakes Business Park Master Plan, the CMU District, and the Regulating Plan, each development will be required to provide additional public spaces and/or amenities.

The location of the proposed Walmart is surrounded by existing sidewalk and/or pathways. The site will be required to provide a pedestrian connection through the parking lot and will be required to extend sidewalk to existing public facilities. The Walmart project will also have

public seating areas at the corner of County Road C and Prior and Twin Lakes Parkway and Prior.

Policy 14.4: Discourage piecemeal development that does not achieve the goals and policies for mixed-use areas.

It is true that policy 14.4 states we should “discourage piecemeal development”, however it is not stating to prohibit such development. In the case of Twin Lakes absent a master developer, piecemeal development will occur.

COMMERCIAL AREA GOALS AND POLICIES

Goal 9: Provide attractive, inviting, high-quality retail shopping and service areas that are conveniently and safely accessible by multiple travel modes including transit, walking, and bicycling.

The Community Development Department finds that the Zoning Code provides for attractive and inviting shopping through the regulations and design standards contained Chapter 1005 of the code.

Policy 9.1: Encourage commercial areas to make efficient use of land, provide for safe vehicular and pedestrian movements, provide adequate parking areas, provide appropriate site landscaping, and create quality and enduring aesthetic character.

The CMU district and the regulating plan establish requirements which advance these items. The proposed Walmart development will need to meet all requirements pertaining to this policy. These include placement of buildings, provision of pedestrian connections through parking lots and to existing public sidewalks/trails, minimum/maximum parking stalls, landscaping meeting all code requirements, and numerous architectural features.

Policy 9.2: Promote commercial development that is accessible by transit, automobile, walking, and bicycle.

Twin Lakes is currently accessible to all modes and so too will be the Walmart development, where the CMU district or the regulating plan requires such improvements.

Policy 9.3: Seek to make on-site transit stops part of commercial development and redevelopment.

Unfortunately we as a city have limited ability to “make” such things occur. Met Council controls transit and transit stops and although such an item could be beneficial to the employees and patrons, the likelihood is limited.

However, Twin Lakes has an existing park and ride facility that could offer reverse service, or be expanded or transit added to the area, should the numbers of employees be high enough for Met Council to add to their capital program.

Goal 10: Promote an appropriate mix of commercial development types within the community.

Specific to the Walmart proposal, the Community Development Department finds that the 2007 updated AUAR has analyzed mixes of uses and their potential impacts and identified specific

and detailed mitigations that would need to be implemented should a specific use trigger such infrastructure improvements. Since there is not a limitation, restriction, or prohibition on the size of a retail use explicitly stated in the 2030 Comprehensive Plan for the CMU designation, such a use is then permitted as part of the mix. It scale is further regulated by the CMU district and the Regulating Plan.

Policy 10.1: Use the Comprehensive Plan to guide new commercial development to locations appropriate for its scale and use.

The Community Development Department finds that the Zoning Code's Commercial and Mixed Use Zoning District provide for effective regulations regarding scale and use within each district. More specifically, the CMU zoning district creates strict standards regarding scale and design.

Policy 10.2: Emphasize the development of commercial uses that meet the needs of existing and future Roseville residents.

The Community Development Department has emphasized through discussions and implementation of the Zoning Ordinance that such new uses attempt as best as possible to meet the needs of the community. However, "emphasize" is not a requirement to support one type of use over another, and since we as a City do not own or control the land, the "market" will come forward to address what it believes meets the needs of Roseville residents.

The Community Development Department finds that the Zoning Ordinance allows for uses consistent with meeting the needs of the community, now and in the future.

In the case of the Walmart proposal, without specific limitations, restrictions and/or prohibitions regarding use and size of building, the use and its large size is permitted.

Policy 10.3: Support neighborhood-scale commercial areas that provide convenient access to goods and services at appropriate locations within the community.

The Twin Lakes Redevelopment Area is not a neighborhood scale development. The Master Plan indicates that Twin Lakes is intended to serve a larger geographical area with uses such as a corporate office campus, high-tech flex and laboratory space, and hospitality uses such as hotels and restaurants.

GENERAL LAND USE GOALS AND POLICIES

Goal 1: Maintain and improve Roseville as an attractive place to live, work, and play by promoting sustainable land-use patterns, land-use changes, and new developments that contribute to the preservation and enhancement of the community's vitality and sense of identity.

The Community Development Department finds that this generalized goal for Roseville is addressed by establishing requirements of a similar nature throughout each zoning district, property performance standards, sign regulations, and parking and loading standards.

Policy 1.1: Promote and provide for informed and meaningful citizen participation in planning and review processes.

The Community Development Department promotes and provides for such participation in accordance with the City Code. In the past and specifically regarding the proposed Walmart development, the Community Development Department has been criticized for not providing more notice or hearings or public meetings. The Community Development Department has provided the required notice under city ordinances and state statutes.

Policy 1.2: Ensure that the City's official controls are maintained to be consistent with the 2030 Land Use Plan.

The Community Development Department finds that the zoning ordinance (City's official control) was amended and adopted to be consistent with the 2030 Comprehensive Plan.

Policy 1.3: Ensure high-quality design, innovation, sustainability, and aesthetic appeal in private and public development and redevelopment, with emphasis on efficient site access, appropriately sized parking areas, and overall beautification through the adoption and utilization of year-round landscaping and site design standards, guidelines, principles, and other criteria.

All specific zoning districts of the zoning ordinance have some form of heightened design elements added that were not present in the previous ordinance. The CMU district and the regulating plan specific to the Twin Lakes Redevelopment Area includes numerous heightened elements.

The proposed Walmart building and site will be required to meet all requirements of the zoning ordinance and regulating plan.

Policy 1.4: Maintain orderly transitions between different land uses in accord with the general land-use guidance of the Comprehensive Plan by establishing or strengthening development design standards.

Section 1011 of City Code specifically regulates transitional needs between uses such as from commercial to residential.

Policy 1.5: Promote well-planned and coordinated development.

Since Roseville can't compel coordinated development among Twin Lakes land owners, the Twin Lakes Regulating Plan was adopted into Section 1005 of City Code as a way to enforce certain planning and development principles to cause the piecemeal development to appear more coordinated. The Walmart development will need to meet these requirements.

Policy 1.6: Encourage improvements to the connectivity and walkability between and within the community's neighborhoods, gathering places and commercial areas through new development, redevelopment, and infrastructure projects.

The zoning ordinance in general addresses this throughout the city, and Walmart will have to comply with all such applicable requirements. The CMU design standards and the regulating

plan specifically address this policy for the Twin Lakes Redevelopment Area by requiring pedestrian friendly design and the provision of connections.

Policy 1.7: Create a higher aesthetic level for the community through use of redevelopment and infrastructure improvements to reduce or eliminate visual pollutants such as overhead power, cable, and telephone lines, traffic controllers, junction boxes, and inappropriate signage.

The zoning ordinance attempts to create standards that achieve higher levels of aesthetic architecture appeal. However, the zoning ordinance does not control what occurs within the public right-of-way.

In the case of the Walmart proposal and all development projects within Twin Lakes, the type of visual clutter addressed in the policy will be eliminated and/or screened properly on the site.

Policy 1.8: Reduce land consumption for surface parking by encouraging construction of multilevel and underground parking facilities, shared parking facilities, and other strategies that minimize surface parking areas while providing adequate off-street parking.

The zoning ordinance reduced parking requirements and in certain instances established the minimum parking number as the maximum allowed. In the CMU Zoning District, the amount of required parking stalls is more limited than in any other zoning district as a means to have less impervious surface and to encourage shared parking.

Policy 1.9: Encourage and support new development, redevelopment, and infrastructure improvements that incorporate and protect alternative energy sources, such as solar access, geothermal, wind, and biomass.

The zoning ordinance supports these types of improvements, however does not require them. Nevertheless, the proposed Walmart will be incorporating skylights and numerous indoor sustainable practices to reduce energy consumption.

Goal 2: Maintain and improve the mix of residential, commercial, employment, parks, and civic land uses throughout the community to promote a balanced tax base and to anticipate long-term economic and social changes.

The Community Development Department finds that there are numerous offerings in the zoning code that promote maintenance or better improve and grow existing property in Roseville.

The Community Development Department finds that the construction of retail within Twin Lakes is not impacted by this generalized goal or the subsequent policies and therefore a compliance consistence is not appropriate or applicable.

Policy 2.1: Review the Land Use Plan regularly to ensure its usefulness as a practical guide to current and future development. Whenever practicable, coordinate the Plan with the plans of neighboring communities, the county, school districts, and the most current Metropolitan Council system plans.

Although the 2030 Comprehensive Plan is only in its third year, the Community Development Department regularly reviews its content to determine whether certain decisions have been made in the best interest of the community.

Policy 2.2: Promote and support transit-oriented development and redevelopment near existing and future transit corridors.

The Community Development Department finds that the zoning ordinance supports this policy within the Section 1018, Parking and Loading Requirements and specifically under the subsection related to reduction of minimum parking requirements, which allows fewer spaces where transit service is available.

Policy 2.3: Encourage a broad mix of commercial businesses within the community to diversify and strengthen the tax base and employment opportunities.

The Community Development Department finds that the zoning ordinance supports this policy statement by the broad allowance of permitted uses.

Goal 3: Identify underutilized, deteriorated, or blighted properties and guide them toward revitalization, reinvestment, or redevelopment consistent with community goals and good planning and development principles.

The Community Development Department finds the Twin Lakes Redevelopment Area includes a number of these properties; that the Comprehensive Plan and Twin Lakes Business Park Master Plan support redevelopment of such properties; and that the zoning ordinance contains numerous regulations and requirements to assist in completing such changes in the best interest of the community.

Policy 3.1: Support the use of master plans for small redevelopment areas.

The Community Development Department finds that Twin Lakes is not a small redevelopment area and it already has a master plan and therefore is not applicable to the Walmart development.

Policy 3.2: Promote redevelopment that reduces blight, expands the tax base, enhances the mix of land uses in the community, and achieves other community objectives.

The Community Development Department finds that the Walmart proposal achieves this policy statement and that the zoning ordinance includes specific regulations within the CMU district and regulating plan to achieve the needs, desires and objectives of the community as well as increasing the taxable value of the property.

Policy 3.3: Apply strategies to effectively enforce City codes related to the maintenance of buildings and property.

The Community Development Department finds that the zoning ordinance is not the mechanism for implementing this policy statement and that the City does have requirements regarding property maintenance located within Title 4, Health and Sanitation of the City Code.

Goal 4: Protect, improve, and expand the community's natural amenities and environmental quality.

The Community Development Department finds that the zoning ordinance where applicable and appropriate has created standards and/or regulations that address such a goal, and when

applicable, the proposed Walmart will be required to meet such applicable regulations and/or standards.

Policy 4.1: Promote the use of energy-saving and sustainable design practices during all phases of development including land uses, site design, technologies, buildings, and construction techniques.

The Community Development Department finds that the City does promote such sustainable practices. As an example, the Zoning Code permits the use solar energy on homes and businesses and encourages innovative stormwater techniques and for less impervious surface.

Policy 4.2: Seek to use environmental best practices for further protection, maintenance, and enhancement of natural ecological systems including lakes, lakeshore, wetlands, natural and man-made storm water ponding areas, aquifers, and drainage areas.

The Community Development Department finds that the Shoreland, Wetland, and Storm Water Management section of the zoning ordinance address this policy statement. The Department further concludes that the Public Works and Engineering Department is responsible for the issuance of erosion control permits and review of storm water management plans consistent with city code requirements and that a given project has received the approval of the watershed organization it is located within.

The proposed Walmart will be required to meet these standards and regulations as a component of their building permit approval.

Policy 4.3: Promote preservation, replacement, and addition of trees within the community.

The Community Development Department finds that the zoning ordinance contains a tree preservation ordinance that specifically addresses this policy statement.

The proposed Wal-Mart project will need to meet the standards contained in section 1011.04 of the zoning ordinance like all development proposals.

Policy 4.4: Existing and future development of business and industry, shopping, transportation, housing, entertainment, leisure, and recreation opportunities shall be in harmony with the commitment Roseville has made to its environment and quality of life, without compromising the ability of future generations to meet their own needs.

The Community Development Department finds that the zoning ordinance has established numerous standards to address this policy statement.

The construction of a Walmart within the Twin Lakes Redevelopment Area will be required to meet all requirements of the zoning ordinance, including those associated with the commitment to environment, walkability, and other quality of life considerations.

Goal 5: Create meaningful opportunities for community and neighborhood engagement in land-use decisions.

The Community Development Department finds that the Community Development Department has implemented or created many meaningful ways to engage, educate, and inform the citizenry

of Roseville on most all projects that occur. However, all projects have their limitation, no matter how important a certain project might be to the community.

The Walmart project has been discussed in some form for over a year. Permitted uses do not require public engagement and staff feels it would be inappropriate to offer such meetings, open houses, or create hearings on select projects due to due process concerns.

Policy 5.1: Utilize traditional and innovative ways to notify the public, the community, and neighborhoods about upcoming land-use decisions as early as possible in the review process.

The Community Development Department finds that it has either adopted into the City Code or as practice has utilized innovative and traditional ways to notify the public about specific developments in Roseville. These include an extended distance of notification greater than State Statutes requires (500 feet versus 350 feet) and open house meetings between applicant and residents for comp plan amendments, rezoning, and interim use, as well as using the Internet to provide notice and information. The Walmart project has followed the requirements of notification and/or the policies of the Community Development Department for notifying the public of this development possibility.

Policy 5.2: Require meetings between the land-use applicant and affected persons and/or neighborhoods for changes in land-use designations and projects that have significant impacts, prior to submittal of the request to the City.

The Community Development Department finds that the zoning ordinance has implemented a public meeting process for specific land use applications with the potential for significant impacts. Since the Community Development Department finds that the retail use is permitted within the CMU district without restrictions, limitations, and/or prohibitions, the code did not require such a meeting between residents and the developer.

Policy 5.3: Provide for and promote opportunities for informed citizen participation at all levels in the planning and review processes at both the neighborhood and community level.

The Community Development Department finds that similar to policy statement 5.1 there are limits that can be required of developments. Once the Department receives formal building plans for review and approval of a building permit such documents can be made available to the public. However, the Department does not feel that public interaction into this administrative process is beneficial to the overall development of the City.

Similar to the above sections, the chapter on economic development and redevelopment and specifically the goals and policies section, includes words such as foster, encourage, promote, ensure, work with, support, improve, and integrate, which words do not provide strict limits, thresholds, or prohibitions and are not by themselves regulations.

The zoning ordinance has taken these broad or generalized terms and developed specific regulations to address them. However, the Community Development Department finds that none of the economic development and redevelopment goals or policies would preclude a Walmart from being constructed within Twin Lakes.

The Community Development Department has also reviewed the discussion of the District 10 area within the Comprehensive Plan and finds that although the forth bullet point under “future

land use” states that Twin Lakes should not be developed with shopping being the primary focus, there is nothing limiting, restricting, or prohibiting shopping from becoming a use within Twin Lakes, especially a 14 acre development within the greater 275 acre redevelopment area. The Community Development Department further finds no mention of big-box or large-format retail within the discussion points and general information within District 10 and concludes that such a use would be permitted.

ECONOMIC DEVELOPMENT AND REDEVELOPMENT GOALS AND POLICIES

Goal 1: Foster economic development and redevelopment in order to achieve Roseville’s vision, create sustainable development, and anticipate long-term economic and social changes.

The Community Development Department finds that as this goal is more of a vision for the whole City and the wording is describing more of an approach, that this is not applicable to the zoning code *per se*. However, the Community Development Department finds that the zoning ordinance and regulating plan for Sub-Area 1 in Twin Lakes has incorporated many of the nuances indicated in the City’s vision.

Policy 1.1: Use planning studies to evaluate options and to establish plans for reinvestment, revitalization, and redevelopment of key areas and corridors.

The Community Development Department finds that this policy is a planning exercise and not applicable to the development of a Walmart within Twin Lakes.

Policy 1.2: Ensure that local controls allow for contemporary retail, office, and industrial uses that are part of the community vision.

The zoning ordinance adopted in December of 2010 incorporated a number of design elements to address many of the nuances discussed in the community’s vision both generally for the whole City and specifically for the Twin Lakes Redevelopment Area.

Policy 1.3: Encourage an open dialogue between project proposers, the surrounding neighborhood, and the broader community through individual and neighborhood meetings and use of technology.

When projects are permitted under the zoning ordinance, it is difficult for the Community Development Department to pick and choose which projects should or should not be encouraged to offer such a meeting. Since the Community Development Department finds that the retail use is not limited, restricted, or prohibited under the CMU district, the Department has no regulation to utilize to require such a meeting, even if for educational purposes. The Community Development Department has modified the zoning ordinance to require such meetings for certain application processed and/or land use requests. However, permitted uses are not required to conduct such meetings.

Policy 1.4: Enhance communication of the community’s objectives for promoting business development to enhance the quality of life in Roseville.

The Community Development Department finds that while more can be always be done to support this policy, lack of resources have limited the City’s ability to undertake this task.

Policy 1.5: Where appropriate, use public-private partnerships to achieve the community's economic development and redevelopment goals.

The proposed Walmart development is not a public-private partnership. All costs for the development will be borne by the private sector.

Goal 2: Enhance opportunities for business expansion and development that maintains a diverse revenue base in Roseville.

The Community Development Department finds that the zoning ordinance has encouraged business opportunities in new and existing facilities and that a Walmart will add to the diversity of the tax base in Roseville.

Policy 2.1: Foster strong relationships with existing and prospective businesses to understand their needs and to maximize opportunities for business retention, growth, and development.

The Community Development Department finds that the policy is for those existing business that for some reason cannot realize their desires without some form of City assistance. The proposed Walmart is a new permitted project that is not seeking any such assistance.

Policy 2.2: Support existing businesses and welcome new businesses to serve Roseville's diverse population and/or provide attractive employment options that encourage people to live within the community.

The Community Development Department finds that a Walmart will be a new business in Roseville to serve its diverse population and one that may allow for residents in Roseville to work and live in their community.

Policy 2.3: Improve the awareness of community assets and opportunities that Roseville offers prospective businesses through ongoing participation in regional economic development organizations and coordination with county and regional agencies.

The Community Development Department finds that this policy is not applicable to Walmart.

Policy 2.4: Encourage locally owned and/or small businesses to locate or expand in Roseville.

The Community Development Department finds that although a Walmart is not locally owned or a small business, the Department has not strayed away from its encouragement of such businesses in Roseville.

Goal 3: Establish an infrastructure system to meet the needs of current businesses and facilitate future growth.

The city has constructed much of the public infrastructure to make Twin Lakes development-ready.

Policy 3.1: Work with local businesses and the Metropolitan Council to improve transit service to, from, and within Roseville.

The Community Development finds that in order to compel a conversation with Met Council on improved transit anywhere in Roseville, there needs to be the density to support such

Metropolitan Systems. The proposed Wal-Mart development, although vehicle oriented (like most of Roseville and many other suburbs) is but one piece of the puzzle known as Twin Lakes, and that after more density and development comes to fruition, the City will have those conversations to determine whether existing service can be modified in such a manner fulfill this broad policy statement.

Policy 3.2: Work with Ramsey County, MnDOT, and the Metropolitan Council to promote, coordinate, and facilitate regional improvements to the roadway system, as well as to communicate planned roadway improvements to the general public in advance of construction.

The City will continue to work with the above governmental agencies to address future transportation needs not solely caused by Twin Lakes as a redevelopment project that is anticipated to add traffic back into the system.

Policy 3.3: Ensure that adequate public utilities (e.g., sewer and water) will be available to serve future commercial and industrial development.

Adequate public infrastructural services have been established for a large portion of the Sub-Area 1, Twin Lakes Redevelopment Area. However, more infrastructure improvements are anticipated to accommodate additional future developments, as identified in the Twin Lakes AUAR.

Policy 3.4 Encourage and promote the development of advanced, state-of-the-art telecommunication and information technology infrastructure to and within Roseville.

The Community Development Department finds that this policy only applies to individual developers to the extent that infrastructure is a component of their specific development.

Policy 3.5: Work with service providers to ensure adequate supplies and reliable distribution systems for electricity and natural gas.

The Community Development finds that this policy only applies to suppliers of natural gas and electricity.

Goal 4: Encourage reinvestment, revitalization, and redevelopment of retail, office, and industrial properties to maintain a stable tax base, provide new living wage job opportunities, and increase the aesthetic appeal of the city.

The Community Development Department finds that the Walmart project contributes to achieving this general or broad based goal.

Policy 4.1: Encourage and facilitate infill commercial, industrial, and office development on vacant commercial parcels to ensure maximum efficiency of land use.

The Community Development Department finds that Twin Lakes is, to some extent, a rather large infill development area, and that the proposed development of a Walmart at the corner of Cleveland Avenue and County Road C, will be designed and constructed utilizing the efficiencies regulated within the zoning ordinance.

Policy 4.2: Encourage and facilitate redevelopment of or distressed commercial, industrial, and retail properties into viable developments by working with property owners and interested developers.

The Community Development Department finds that the Walmart project contributes to the redevelopment of distressed property.

Policy 4.3: Foster environmental remediation of polluted property through partnerships with property owners and funding agencies.

The Community Development Department finds that the city will participate where applicable and appropriate in the remediation of pollution on the Walmart site. However, at the very least the City will review and approve certain remediation plans consistent with the city's regulations, policies and ordinances.

Policy 4.4: Use inspections and code enforcement to promote the maintenance of property, identify ongoing issues, and prevent the spread of potential blighting factors.

The Community Development Department finds that this policy is not applicable to the development of a property, but is rather to ensure on-going maintenance.

Policy 4.5: Continue to give attention to creating and maintaining aesthetic quality in all neighborhoods and business districts.

The Community Development Department finds that the requirements of the CMU district and its design standards, the regulating plan, and the property performance standards, the updated zoning ordinance contributes to achieving this policy.

Goal 5: Make effective use of available financial resources to facilitate community economic development and redevelopment objectives.

The Community Development Department finds that such financial support is discretionary and existing policies regarding such financial support traditionally do not support retail projects. The Community Development Department further finds that the proposed Walmart development seeks no financial support and as such, allows any existing and/or future funds to be considered for other economic development or redevelopment projects in Twin Lakes or elsewhere in Roseville.

Policy 5.1: Establish a strong working knowledge of the type and purpose of available municipal, regional, state, and federal development incentive programs.

The Community Development finds that this policy offers instruction for the City in support of effective use of financial and other development tools; this policy does not apply to developers.

Policy 5.2: Review new and innovative economic development incentives for application in Roseville.

The Community Development finds that this policy applies to City Staff and their continued efforts to promote business in Roseville; Incentives are to be offered from the City to a

prospective development/applicant, but not held against a development that desires to enter the community without seeking such incentives.

Policy 5.3: Establish guidelines for the use of financial incentives to promote the most effective use of limited resources, including tax revenues.

The Community Development finds that it is continuing to discuss such policies and that since the proposed Walmart development does not seek any funds or incentives, this policy does not apply.

Goal 6: Integrate environmental stewardship practices into commercial development.

The Community Development Department finds that there are certain state requirements for environmental stewardship including environmental remediation of soils, as well as those contained in the City Code including storm water management, landscaping, buffering, and preservation, to name a few, that apply to all development in Roseville.

Policy 6.1: Foster transit-supportive development along existing and planned transit corridors.

The Community Development Department finds that Twin Lakes can support transit and that this “fostering” is a broader topic than just one development within Sub-Area 1.

Policy 6.2: Support official controls and programs that incorporate state-of-the-art technology for new construction or rehabilitation of existing commercial buildings that promotes innovative and sustainable building methods.

The Community Development Department finds that the zoning ordinance offers several methods to incorporate newer methods to promote innovative and sustainable building methods, including the ability to use solar panels, innovative stormwater techniques and building density credit for structured parking.

Policy 6.3: Encourage the use of high-quality, durable, and energy-efficient building materials and construction products in renovations of existing buildings and construction of new buildings to promote decreased energy and land consumption, resource efficiency, indoor environmental quality, and water conservation, and to lessen site and community impacts.

The Community Development Department finds that the zoning ordinance goes a step further than encouraging, where, within the design standards, there are specific required elements related to vertical and horizontal articulation, window and door openings, four sided design, and building materials, that compel one to design buildings consistent with this policy.

Policy 6.4: Encourage third-party certification (e.g., LEED) of “green” building practices for new and renovated commercial structures.

The Community Development Department finds that it has encouraged in both meetings and discussions with potential developments, as well as has incorporated certain requirements that provide for greener building. It is the Community Development’s understanding that the proposed Walmart continues to add greener technologies to the building and site.

Policy 6.5: Create ongoing resources to educate the development community about “green” renovation and “healthy building” construction techniques.

This item is not applicable to the Walmart project. However, the Living Smarter Fair held each February provides a number of education materials on being greener, including some construction methods and/or techniques.

Policy 6.6: Encourage the use of low-impact and low-maintenance landscaping within commercial development to decrease natural resources consumed by landscape maintenance.

The Community Development Department finds that the zoning ordinance includes a landscape section listing requirements for incorporating low-maintenance materials or zero-scape into their development project.

Policy 6.7: Encourage the reduction of impervious surfaces, including consideration of decreasing parking requirements in return for additional landscaping and pervious surfaces

The Community Development Department finds that the zoning ordinance within the parking and loading chapter has reduced on-site parking requirements, which has resulted in smaller parking fields than previously required.

ENVIRONMENTAL PROTECTION GOALS AND POLICIES

Goal 1: Protect, preserve, and enhance Roseville’s water, land, air, and wildlife resources for current and future generations.

The Community Development Department finds that the zoning ordinance and other ordinances and policies of the City address the preservation and enhancement of the above items and more. Specific to Twin Lakes there is the CMU district, the regulating plan, the AUAR, and the master plan for Langton Lake Park, that address these items in their own way.

Policy 1.1: Enforce all local, regional, and federal codes, ordinances, and laws that protect the environment.

The Community Development Department finds that all applicable laws regarding the protection of the environment will be enforced regarding the Walmart project.

Policy 1.2: Ensure that the natural environment is an integral part of the Roseville urban landscape.

The Community Development Department finds that this policy is applicable to Walmart insofar as it lies within the Twin Lakes Redevelopment area for which standards and regulations apply. The Community Development Department further finds that the natural environment of Twin Lakes is Langton Lake Park which has a specific plan found in the Park’s Master Plan and which park is to be surrounded by a buffer as required by Chapter 1005.07(E) of the City Code.

Policy 1.3: Protect and enhance terrestrial and aquatic wildlife habitat, including grasslands, wooded areas, wetlands, ponds, shorelands, and lakes.

The Community Development finds that there are no grasslands, wooded areas, wetlands, ponds, shoreline or lakes being directly impacted by the proposed development site.

Policy 1.4: Preserve and enhance natural resources within public open space by implementing best- management practices systems, including invasive-plant removal, rain gardens, bio filtration, and native-plant selection.

The Community Development Department finds that all development sited in Roseville are required to implement best management practices. However, this policy is applicable to public open space areas and not a private development.

Goal 2: Maintain the functions and values of the City’s drainage features (e.g. lakes, ponds, and wetlands).

The Community Development finds that this goal, to the extent feasible, is being enforced through specific policies and Code requirements. That said, the proposed Walmart development is not altering any existing drainage features, and will provide storm water management that regulates the rate of run-off and holds back run-off as a means to clean the water prior to entering the City’s ponds, wetlands, and lakes.

Policy 2.1: Protect and improve surface water quality in the City’s lakes, ponds, and wetlands to meet established standards.

The Community Development Department finds that the Walmart project will be required to meet the latest standards that address surface water quality and control. However, this policy is more tied to the development of regulations than it is to the implementation of those adopted regulations.

Policy 2.2: Identify and plan means to effectively protect and improve surface and groundwater quality through good “housekeeping” methods, such as street sweeping sensitive areas and monitoring water quality.

The Community Development Department finds that this policy applies to the City Staff and their wherewithal to identify and address such items.

Policy 2.3: Protect, preserve, and utilize surface- and ground-water storage and retention systems.

The Community Development finds that all new development in Roseville is required to design storm water management systems that address this policy.

Policy 2.4: Work with the watershed districts to collect water-quality data on lakes within the city.

The Community Development finds that this policy applies to the City as an active participant in a relationship with a given watershed management organization in the collection of specific data and does not apply to a developer.

Policy 2.5: Promote groundwater recharge by reducing stormwater runoff.

The Community Development Department finds that to the extent feasible, developments will be allowed and possibly required to recharge the area’s groundwater, but only as such storm water management plans are approved by the applicable water management organization.

Goal 3: Prevent erosion into the City's lakes, ponds, and wetlands.

The Community Development finds that to the extent feasible, the City attempts to address erosion through enforcement and regulations. All developments are required to install erosion control fabric around the site perimeter so that should erosion occur, it is contained on-site and not impact adjacent public systems and/or ponds, wetlands, or lakes.

Policy 3.1: Require storm-water management and erosion-control plans for urban development and redevelopment projects.

The Community Development Department finds that all projects in Roseville are required to receive approval of a storm water management plan (by the city and water management organization) and is required to receive an erosion control permit.

Policy 3.2: Enforce development controls to reduce non-point-source pollutant load in surface water runoff using best management practices, such as rain gardens, bio filtration, and ponding.

The Community Development Department finds that the City's storm water regulations address this policy, which requirements will apply to the Walmart development.

Policy 3.3: Continue to cooperate with the Minnesota Pollution Control Agency (MPCA) in enforcing nonpoint source discharge standards.

The Community Development finds that the City has adopted regulations consistent with or in support of nonpoint source pollution that are reviewed through a developments storm water management plan.

.