

**ROSEVILLE**  
**REQUEST FOR COUNCIL ACTION**

Date: June 18, 2012  
Item No.: 13.b

---

Department Approval

City Manager Approval

*WJ Malinen*

---

Item Description: Discussion of Attorney's Wal-Mart Opinion

---

1 **BACKGROUND**

2 The City Attorney's office has provided a letter following up on the discussion at the May 21,  
3 2012 City Council meeting concerning the Wal-Mart subdivision plat.

4 **STAFF RECOMMENDATION**

5 Discuss the City Attorney's letter on the Wal-Mart project.

6 **REQUESTED COUNCIL ACTION**

7 Discuss the City Attorney's letter on the Wal-Mart project.

8

**Prepared by:** William J. Malinen, City Manager  
**Attachments:** A: EBBQ June 14 letter

**E** RICKSON,  
**B** ELL,  
**B** ECKMAN &  
**Q** UINN, P.A.

1700 West Highway 36  
Suite 110  
Roseville, MN 55113  
(651) 223-4999  
(651) 223-4987 Fax  
www.ebbqlaw.com

Attachment A

James C. Erickson, Sr.  
Caroline Bell Beckman  
Charles R. Bartholdi  
Kari L. Quinn  
Mark F. Gaughan  
James C. Erickson, Jr.

Robert C. Bell – *of counsel*

June 14, 2012

Mr. William J. Malinen  
City of Roseville  
2660 Civic Center Drive  
Roseville, MN 55113

RE: City of Roseville re: Wal-Mart Project  
Our File No.: 1011-00196-7

Dear Mr. Malinen:

At the May 21, 2012, regular City Council meeting the issue of the above-referenced subdivision plat was addressed by the Council. You might recall that, after considerable public input and Council debate, formal action on the application was tabled for a later date. My recollection is that such formal action was tabled at least in part to some members of the Council choosing to disagree with portions our firm's legal advice. The item largely at issue was whether the Council may consider a proposed future use of the subdivided property when taking formal action on the application.

With this correspondence, our office again offers our advice to the City on this issue.<sup>1</sup>

Under state law, a municipality may enact regulations governing plat subdivision applications. Minn. Stat. section 462.358, subd. 1a. According to state law, the regulations may, among other things, address the size, location, grading, and improvements of the lots. Minn. Stat. section 462.358, subd. 2a. Also, municipalities may condition approval of a subdivision application upon the execution of development agreements embodying the terms and conditions of any such approval. Minn. Stat. section 462.358, subd. 2a.

However, a "municipality must approve a preliminary plat that meets the applicable standards and criteria contained in the municipality's zoning and subdivision regulations unless the municipality adopts written findings based on a record from the public proceedings why the application shall not be approved. Minn. Stat. section 462.358, subd. 3b. This statutory provision is relatively new, as it was enacted in 2006. Our office is not aware of any appellate caselaw that specifically interprets this provision, but the League of Minnesota Cities has advised as follows:

---

<sup>1</sup> Mayor Roe also requested at the May 21 meeting that our office seek concurring opinion from other city attorneys. We have done so, as well as consulted with the League of Minnesota Cities, throughout this matter. These outside sources all support our advice.

“..a city cannot generally deny an otherwise acceptable preliminary plat application for subdivision simply because the city council does not approve of the underlying proposed permitted use. **If the application adequately addresses all of the ordinance standards and requirements, then the preliminary plat generally should be approved.** If the application is denied, the municipality must adopt written findings based on a record from the public proceedings stating why the application was not be approved.”

LMC publication dated December 21, 2011. (Emphasis in original)

Further, the Senate Research Department’s bill summary described the intended effect of the provision this way: “The proposed legislation provides that if an applicant meets the objective standards set forth in a local government ordinance regarding preliminary plat approval the approval is presumed unless the local government can show that there is somehow a deficiency in the application.” Senate Bill Summary, S.F. 2934, dated March 15, 2006.

In our office’s view, this 2006 statutory amendment perhaps serves as a codification of at least one prior appellate court decision that reversed a denial of a subdivision application for reasons aside from the applicable local subdivision regulations. *See PTL, LLC v. Chisago Cty. Bd. Comms.*, 656 N.W.2d 567 (Minn.App.2003), (reversing denial of subdivision preliminary plat that “appeared to be perfectly legal, dimensionally speaking,” but deemed by the local government as incompatible with existing land uses due to neighbor concern for increased traffic, unsightly lawns, and lower property values).

The obvious question in the present case is whether the issue of a proposed future use of a subdivided property should be considered by the City Council.

Under City Code, subdivision plat applications are first reviewed by city staff, then submitted to the Planning Commission for review and recommendation. Ultimately, decision-making authority for the approval or denial of the subdivision plat is vested within the City Council. Section 1102.02 sets forth the necessary data that must be included in a subdivision plat application. None of the 15 listed items require a recitation of any proposed future land use on the subject property. Similarly, the requirements governing approval of the plat application, set forth in section 1102.03, do not provide for the consideration of a proposed future use of the property.

The city subdivision regulations do require, however, that, “[p]rior to the meeting of the Planning Commission at which the preliminary plat is to be considered, the Community Development Director and Public Works Director shall examine the plat for compliance with this and other ordinances of the City, and submit a written report to the Commission.” RV City Code section 1102.01.C.

This is important because, under section 1002.01, the Council has delegated the administration and enforcement of the City’s Zoning Ordinance to the Community Development Department. Our office is not aware of any provision that permits the Council to rescind the delegation of

such authority on its own initiative, absent an amendment to the Code. Therefore, under City Code, the appropriate point in the subdivision plat process for consideration of proper zoning for a proposed future use of the site is restricted to the initial staff review of the matter.

In the case of the present Wal-Mart subdivision application, the matter was reviewed by city staff, proceeded to review and recommendation by the Planning Commission, and ultimately reached the City Council for formal action. Throughout this process, our office consistently advised that the proposed future use of the subdivided property would not be a proper consideration after the initial review by the Community Development Department was completed. Within the subdivision approval/denial process, the authority to do so simply is not vested in the Planning Commission or the City Council under current City regulations.

Should members of the City Council continue to dispute this advice, which is their prerogative, recent developments may have made the disagreement moot. On June 8, 2012, the subdivision applicant requested an administrative zoning decision from the Community Development Department, seeking a formal declaration of whether the proposed future use of the subject property is permitted under the City Zoning Ordinance. This request may provide an opportunity for the Council to consider the issue of the proposed future use of the site.

Section 1009.08.A of the City Code provides a mechanism for Council review of such administrative decisions. The Code states:

An appeal pertaining to...an administrative ruling of the Community Development Department regarding any interpretation of the intent of [the City Zoning Ordinance...may be filed by any property owner or their agent.

1. The appeal shall be submitted to the City Manager within 10 calendar days after the making of the order or decision being appealed.
2. The appeal shall state the specific grounds upon which the appeal is made.
3. The appeal shall be accompanied by the fee set forth in Chapter 314 of this Code.

...When an appeal is filed, a public meeting regarding the matter shall be held before the City Council, acting as the Board of Adjustments and Appeals, at a regular meeting held within 30 days of the receipt of the appeal. The Board of Adjustments and Appeals will reconsider only the evidence that had previously been considered as part of the formal action that is the subject of the appeal. New or additional information from the appeals applicant(s) may be considered by the Board of Adjustments and Appeals at its sole discretion, if that information serves to clarify information previously considered by the Variance Board and/or staff.

...A mailed notice of the public meeting at which the appeal is to be considered will be sent to the appeals applicant(s) as well as the owner of the subject property.

Mr. William J. Malinen  
June 14, 2012  
Page 4

It is our office's understanding that the Community Development Department will render its response to Wal-Mart's request shortly. Should any property owner file an appeal of that response, the matter will be scheduled for public hearing by the Council in its quasi-judicial capacity as the Board of Adjustments and Appeals. Following the hearing, the Council will then rely on the public record to pass judgment on whether the proposed future use of the site is permitted under the Zoning Ordinance.

Very truly yours,

ERICKSON, BELL, BECKMAN & QUINN, P.A.



Mark F. Gaughan

MFG/amg