

Wal-Mart Supercenter Rejected in Bend

by K_Guice

Wal-Mart has been denied, again. A city hearing officer's decision to turn down the retail giant's application was upheld on July 19 by the Oregon's Land Use Board of Appeals (LUBA).

The world's largest retailer had proposed a 200,000-square-foot Wal-Mart Supercenter for the north side of Bend.

In the original ruling, the city hearing officer said that traffic issues raised by opponents had not been fully addressed.

According to LUBA's 26-page opinion, an initial evidentiary hearing was held December 12, 2005. On January 30, 2006 a decision was handed down. The city hearings officer found that despite a supplemental traffic impact analysis and subsequent agreements among the city, Oregon Department of Transportation (ODOT) and Wal-Mart; the retailer failed to demonstrate that the proposed mitigation measures would be adequate to alleviate the impact on traffic that Juniper Crossing would generate.

Citing this failure on Wal-Mart's part, the hearings officer denied the requested land use approvals. After the Bend City Council declined to review the decision, Wal-Mart filed its appeal with LUBA.

However, July 21, LUBA upheld the hearing officer's ruling. "That decision was affirmed," said Fred Wilson, a staff attorney for LUBA.

According to the board, "Petitioner's substantial evidence challenge in this case must be rejected unless LUBA can say that petitioner sustained its burden of proof as a matter of law, the first assignment of error must be denied.

The document continues, "There is conflicting expert testimony and, among other things, the hearing officer identified unanswered questions about certain assumptions that petitioner's (Wal-Mart) experts relied on. Petitioner clearly did not carry its burden regarding traffic impacts as a matter of law."

"We are satisfied with the decision," said Pete Schannauer, an attorney for the city with Forbes & Schannauer.

On Our Community First's website NotAnotherWal-Mart.com, the group said, "We are pleased that Oregon's Land Use Board of Appeals has upheld the hearing officer decision and denied Wal-Mart's appeal."

Jennifer Holder, the public affairs manager for Washington, Oregon and Alaska for Wal-Mart says they are not. "Two of the pieces went our way, she said. "LUBA ruled with us and we are very encouraged by that."

However, it only required the board to side with the hearing officer on one of the issues to put a halt to the project, which came down to traffic. “Usually when a decision or application gets denied; as long as they are right on one of those reasons, that is good enough to get the decision affirmed,” Wilson said.

Holder said the company is looking more closely at LUBA’s ruling but said she didn’t completely understand it.

“They took our opponents research without comment,” she said. “We are still wondering why since nothing was said.”

“We work with the city, the state and county and independent agencies,” she added. “To take all of that work and set it aside is a very dangerous precedent to set.”

The board agreed that Wal-Mart offered more substantial evidence than that submitted by Our Community First. “We agree with petitioner that the evidence it presented to the hearings officer covers a great deal more ground and is weightier than the evidence that was submitted by the opponent’s expert,” according to LUBA documents.

“However, LUBA’s role on review is not to determine which sides evidence it finds to be the weightier. Our role is far more limited, the ruling stated.

“We are limited to determining whether the hearings officer’s decision to rely on the opponents’ experts’ testimony in the way that she did is reasonable, in view of all of the evidence. Our conclusion on that point is influenced significantly by our resolution of petitioner’s findings challenge below, and we conclude that the hearings officer’s decision is supported by substantial evidence, the ruling concluded.

“They can appeal it to the court of appeals if they want to,” Wilson said. Wal-Mart has three weeks from the day LUBA’s decision was handed down. It also has the option of withdrawing the application and starting over.

“We have no intention of resubmitting,” Holder said. “Right now we are focused on the application we have on file.” She says the retailer has no plans at considering any other locations.

“While the impact on traffic and the surrounding neighborhoods are the basis for decisions against Wal-Mart, growing community opposition to Wal-Mart stems from broader corporate policies-predatory business practices that kill local businesses, low wages, unaffordable health insurance, and an arrogant response to community concerns,” according to Our Community First.

Holder says this isn’t the first time the giant retailer has come across opposition. “Right now, it seems to be the trend of the day,” she said. “Some of it is fear of the unknown. There is a lot of information attacking our corporation’s reputation.”

She said the company went as far as building a website to address some of those rumors, questions and concerns. It's called Wal-MartFacts.com.

However, Holder says she does understand how people in the community could be apprehensive. "With Bend I can see why there are some concerns, she said. "There is a lot of development! It is growing a lot in a short period of time."

Ultimately, she says the Wal-Mart just wants to get through this to open the store and serve the community. Schannauer said that won't be happening. First they will have to sufficiently address the unanswered concerns and questions.

Our Community First would like to simply see Wal-Mart yield to what the organization feels is best for the area. "We realize that Wal-Mart is likely to appeal the LUBA decision, or submit a new application for a supercenter," the organization stated on its site. "But, again, we encourage them to withdraw their plans and instead focus their attention on being a better corporate citizen."

Bend Weekly Newslinks:

www.WalMart.com

www.NotAnotherWalmart.org

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