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\$19.95/month**[Nationwide Bail Directory](#)**AboutBail.com bail directory-search any city
or state in the USA.**Waiting on Wal-Mart decision: both sides make case in court**

By Gene Marrano

On Tuesday in Roanoke County Circuit Court, it was the latest chapter in the matter of Citizen's for Smart Growth v. the Roanoke County Board of Supervisors and Hol-Rob Investments, which seeks to build a Super Wal-Mart in the Clearbrook area alongside U.S. 220.

Roanoke County attorney Paul Mahoney called it "an attack on the legislative process," while Richmond lawyer Phillip Strother simply said there was enough wrong with the Board of Supervisor's decision that the case should go to trial.



Photo by Gene Marrano Attorney Phillip Strother with Pam Berberich (left) and Judy Hawks of Citizens for Smart Growth, after the hearing.??

Supervisors rezoned four acres and issued a special use permit for all 41 acres, clearing the way for Wal-Mart, last October. Opponents said traffic impact studies were incomplete, plans for additional "out lots" were not defined and should have been under Roanoke County ordinances, and in general believed that a 240,000-sq.-ft. "big box" violated the spirit of the Clearbrook Village guidelines and the design overlay for the area.

Tuesday's court procedure was initiated by the county and by Hol-Rob, which wants the lawsuit thrown out. Circuit Court Judge Robert Doherty Jr. listened to arguments from Mahoney and Hol-Rob attorney Greg Haley that stretched to an hour and a half, occasionally reminding them that some of their presentation would be a better fit at the trial stage.

Several Roanoke County planning department personnel were on hand - no supervisors - along with Hol-Rob principals and a half dozen members of the group challenging the special use permit. Their hope is to send the whole matter back through the approval process, spending the time beforehand to garner citizen and financial support in the fight against Wal-Mart.

Mahoney and Haley presented several binders of exhibits to Doherty, claiming in part that the plaintiffs had "cherry picked" county ordinances and traffic study documents to make their case that the Wal-Mart approval was done in haste.

"The county has nothing to hide," said Mahoney, who portrayed Citizens for Smart Growth members as being unhappy with a decision that was legal and proper, further calling it "a broad-based attack on the board of supervisors and their ability to legislate." A staff report filed as evidence claimed Mahoney "rebutts and contradicts allegations made by plaintiffs."

Haley cited the many proffers put in place by the board of supervisors to mitigate the mega-store's impact: lighting reductions, extensive landscaping, muted color schemes, etc. and said Wal-Mart would bring jobs and shopping options to southwest county.

Both sides alluded to court cases elsewhere - including one decided by Doherty himself - to bolster their arguments. Mahoney called it "nonsense" that the county didn't follow its own guidelines by making Hol-Rob show all phases of development, including a fourth out

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parcel that recently came to light.

Only Catawba supervisor Joe "Butch" Church voted against Wal-Mart last Oct. 26, citing lack of detailed traffic impact information as a major issue. Clearbrook Elementary School sits directly across U.S. 220 from the Wal-Mart site and would share the same traffic light.

Meanwhile Strother, a Richmond attorney retained by Citizens for Smart Growth, spent only 20 minutes telling Doherty that the case had merit and should not be thrown out. "These inconsistencies should be brought to the courts ... in a trial or evidentiary hearing," he argued.

The position of the defendants "would prevent [the plaintiffs] from offering evidence," Strother added. He said the use of other land use case history by Mahoney and Haley "is misplaced ... no case law cited is directly on point."

The special use permit granted "made vague references to out parcels," and was a violation of county ordinances, according to Strother. Traffic studies that he termed incomplete did not include trips "on the day of completion [of construction]" or take in to account the four out parcels he contended. "The facts support the plaintiff's course of action," Strother concluded, "the special use permit was defective."

Strother told Citizens for Smart Growth president Pam Berberich afterwards that it could be four to six weeks in his estimation before Doherty issues a written ruling. Strother has a track record in beating back Wal-Mart elsewhere in the state; Berberich said her group is still "in the hole" in attempting to raise money for his legal fees.

"It went as I expected. [Now] we sit and wait," she noted afterwards.

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