

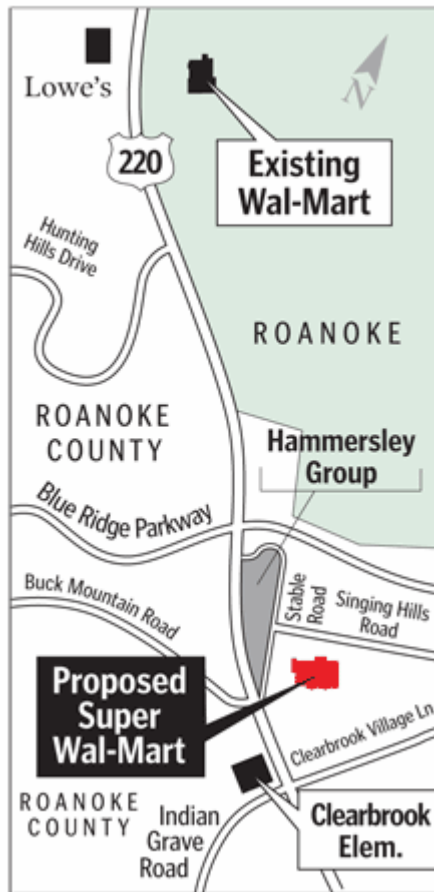
## Group files appeal of ruling on Wal-Mart

Residents opposed to a Wal-Mart in Clearbrook want the court to hear their side of the case.

By Cody Lowe

The Roanoke Times, Aug 11 2007

### Clearbrook Wal-Mart



The group that earlier this year lost its initial lawsuit seeking to block construction of a Wal-Mart Supercenter in the Clearbrook area of Roanoke County has filed an appeal.

Citizens for Smart Growth Roanoke, made up of both Clearbrook residents and others interested in development issues in the county, just made the deadline for filing the appeal Wednesday, said Pam Berberich, one of the plaintiffs in the case.

The group's attorney, Richmond-based Philip Strother, said Friday that "what happened was that because of a procedural maneuver, my clients' litigation was short-circuited. My clients were denied due process and the right to be heard in court, to challenge evidence, present their own evidence and testimony, and prove the elements of the lawsuit they filed."

He is asking the Virginia Supreme Court to send the case back to Roanoke County Circuit Court for a complete airing.

Judge Robert Doherty held a hearing in March on a request by Roanoke County and Knoxville-based developer Holrob Investments, which is planning to

build the Wal-Mart, to dismiss the lawsuit.

The county and Holrob insisted that Doherty should consider the complete record of the county planning commission's and board of supervisors' deliberations on the rezoning and special-use permit for the store. He agreed and issued his ruling a month later.

Doherty found that the supervisors' decision to allow the construction met the legal standard of being "fairly debatable," meaning that even if "objective and reasonable persons" have differing opinions about it, the board of supervisors' conclusion was reasonable and legal.

Strother argues in the appeal that the judge should not have allowed the inclusion of the full record without allowing his clients the opportunity to challenge the accuracy and veracity of the contents of that record.

"Following the lower court's logic, as long as a local governing body can create an administrative record that shows they paid lip service to the requirements of the zoning ordinance and as long as the record reflects some degree of reasonableness, then no citizen has any chance of challenging their action regardless of how arbitrary, irrational or improper it is," the appeal says.

Both Paul Mahoney, who is the Roanoke County attorney, and Bud Cullom of Holrob said Friday they had just been notified of the appeal and had not had an opportunity to read it.

"I think it's unfortunate," Cullom said. "We're doing a very good project there." The appeal "certainly will not diminish our commitment to the project. I think we will prevail."

Cullom said his company has closed on one piece of property at the site, just south of the Blue Ridge Parkway on U.S. 220. It is waiting for final approval of site plans by the county before buying more property and beginning construction, he said.

The company has been revising its entrance and exit plans since the board gave its approval to the plan in October. The latest proposal would allow entrance to the Wal-Mart parking lot from Stable Road, a small, winding lane beside the proposed project, but would not allow shoppers to return to Stable to exit. All traffic would have to leave the shopping center on Clearbrook Village Lane, which will also provide a southern entrance to the property, Cullom said.

For Berberich, the fact that the developer has submitted a series of different access proposals is evidence that the county did not thoroughly consider the development plan and violated its own rules for approving it.

"We're trying to uphold a design standard for the valley," Berberich said, while acknowledging that the effort "is going to be a pricey endeavor." Her group has already spent between \$20,000 and \$25,000 on legal fees, she said, and will have to raise about \$20,000 more for the appeal.

It is planning a music and barbecue fundraiser in the fall.

Strother said that "a general rule of thumb is that it takes a year from start to finish" for such an appeal, if the court decides to hear the case.