

# THOMPSON RAMSDELL & QUALSETH, P.A.

Law Offices

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in the District of Columbia

October 10, 2006

## HAND DELIVERED

RECEIVED

OCT 11 2006

CITY MANAGERS OFFICE  
LAWRENCE, KS

Mayor Mike Amyx and  
City Commissioners  
City Hall  
6 East 6<sup>th</sup> Street  
Lawrence, KS 66044

Re: *Wal-Mart Project*  
6<sup>th</sup> and Wakarusa

Dear Mayor Amyx and Commissioners:

This letter addresses three related matters that are scheduled to be before you on the night of Tuesday, October 17, concerning the property on the northwest corner of the intersection of Sixth Street and Wakarusa Drive. Wal-Mart and the owner of that property will appear at your meeting to discuss two proposed amendments to the existing zoning for the subject property, as well as a Development Plan that includes many enhancements over a previously approved Plan. The two zoning amendments were recommended for approval by the Planning Commission and by staff. Staff also recommended approval of the Plan. Half of the Planning Commissioners were also in favor of the Plan, but the other five recommended denial of the Plan. It is not entirely clear precisely what changes to the Plan would have garnered a majority of the Planning Commission's votes.

A brief history of the subject property is in order. First, we note that the land in question is shown in the Northwest Plan (adopted in 1996) as intended for future commercial development (see the Plan's Use Map). In 2002 the City did rezone the property for commercial development. The 2002 rezoning (from Ag zoning) provided for the largest store at the site to be a building of 132,100 square feet, and for several smaller buildings to be built on outlots. There was a total of 154,100 square feet of commercial space approved for the corner.

Wal-Mart entered the picture in 2003. It wanted a store larger than the approved 132,100 square feet, and applied to rezone the property to increase the size of the main building. Ultimately it scaled back its request, and sought to have the largest store on the site be 151,588 square feet, plus 6,378 square feet under canopy in the garden center. The Planning Staff

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recommended approval of Wal-Mart's rezoning request, and of the proposed Plan. The Planning Commission also recommended approval of both the rezoning and the Plan.

However, the City Commission denied the rezoning request. As a result, Wal-Mart proceeded under the existing zoning and Plan and applied for a building permit for the 132,100 square foot building in the approved Plan. The owner also applied for a building permit for a restaurant on one of the outlots in the approved Plan. The City did not issue the permits, and litigation followed.

Subsequently, the City Commission (four of you, but with Commissioner Dunfield instead of Mayor Amyx as the fifth member) initiated a rezoning that is also the subject of a lawsuit. That rezoning effort provided for a reduced size for the largest single building on the site, but still permitted up to 154,000 square feet of commercial development on the northwest corner. Also as part of that rezoning effort, the City Commission **added** "department store" as a permitted use on the property.

The preceding background information is provided in an effort to place in context the Applications that are before you. The actual issues for your consideration include the following requests:

1. To **revise downward** the amount of retail development allowed on the site. The reduction is from roughly 154,000 square feet, to 128,000 square feet.

2002 original rezoning by the owner:	154,100	Ordinance 7491
2004 rezoning by City subject to court challenge:	154,000	Ordinance 7755

2. To provide an **enhanced** physical appearance of **the buildings**, and an **enhanced** appearance and layout of **the site**. The proposed Plan includes design and construction standards that are not currently applicable to the site, but are being included in conformance with the Agreement reached in connection with the lawsuits. Some of the enhancements include the following:

- a. Retaining walls and revised grading to greatly reduce visibility of the parking lot and the buildings;
- b. Use of a variety of materials on the exterior of the building, including brick, wood beams, synthetic stone columns, ornate molding, etc.;
- c. Extra berming;

- d. Use of more mature trees, and more trees than required;
- e. Larger than usual landscape islands;
- f. Far more greenspace than is required;
- g. Extraordinary screening of the loading dock area;
- h. Moving the entry drive on Congressional so that traffic does not immediately go across the front of the store;
- i. Increased walkability – more pedestrian friendly;
- j. Moving buildings on the outlots to street setback lines;
- k. Pedestrian lighting at walkways in oversized islands;
- l. Parking on three sides of the feature building;
- m. Pervious pavement in the seasonal parking area on the south side;
- n. Stamped concrete pedestrian walkways near drive aisles;
- o. Seating areas near the store and in oversized island;
- p. Single access to loading dock and truck area;
- q. Loading dock and truck area away from customer entrances; and
- r. Loading dock and truck area fully screened.

We will have sample materials, color boards and site plans with us on Tuesday. We will also provide you with recently updated elevations and perspectives from several locations surrounding the site. We will compare the internal and external traffic patterns of the revised Plan with those of the previously approved Plan.

As mentioned, Staff recommended approval of the rezoning amendments and of the revised Plan. Those recommendations for approval came despite the fact that Staff has, in many ways, treated the amendments more as an initial zoning and a new Plan, rather than as proposed revisions to existing commercial zoning of a previously planned commercial area. We believe that Staff has made requirements that are not actually applicable to the proposed amendments, but in our pursuit of a final resolution of this matter we have been able to reach agreements with Staff on virtually every issue and every recommended Condition. I am pleased to report that the revised Plan before you incorporates virtually all of the Conditions previously suggested by Staff. As a compromise on Condition (r) [which relates to pervious surfacing for parking in excess of the minimum parking requirements] Wal-Mart has agreed to provide as a test, 35 pervious spaces at the south edge of the property. These spaces, coupled with the significant excess of pervious green space being provided by the new Plan, more than meets the intent of the Code.

I am also pleased to report that Wal-Mart has been successful in obtaining the option to purchase the land to the northwest of the site (Lot 2A, Block 2 Wakarusa Place Addition). Although the rezoning of Lot 2A, Block 2 will not be before you on October 17<sup>th</sup>, Wal-Mart filed an application on September 27, to rezone that Lot to "Open Space". This will result in there

being substantially more green space and more pervious surface in the development. It will also reduce traffic in the area in that the previously approved Plan for Lot 2A called for a 24-unit building and a parking lot with 59 spaces.

The acquisition of Lot 2A will allow Wal-Mart to add an exceptional environmental element to the project by constructing a bioretention area on Lot 2A. Ray Frankenberg of Buescher Frankenberg Associates, Inc., the engineering firm working on the project, describes the bioretention facility as: "a landscaped depression designed to receive storm water runoff. The facility detains runoff and filters it through vegetation and soil. Pollutants are removed by a number of processes including adsorption, filtration, volatilization, ion exchange and decomposition. Bioretention is a treatment practice that utilizes the chemical, biological and physical properties of plants, microbes and soils for capturing/reducing storm water runoff and removing pollutants from runoff."

According to Ray the bioretention basin would benefit the project by:

1. Providing detention of storm water, thus reducing the rate of runoff.
2. Improving the quality of storm water runoff thru various treatment processes.
3. Providing infiltration and recharge of the ground water.
4. Creating a habitat for birds and other animals.
5. Providing a buffer between a commercial use and the environment."

The type of vegetation is still being determined. We anticipate that the vegetation will consist of native plants ranging from wetland plants to upland flowers and grasses. We will also be providing a variety of trees within the basin area. The exact varieties are also undetermined at this time.

In addition to the bioretention facility, Wal-Mart wants you to know that it is taking many steps to make the proposed store environmentally friendly. The architects and engineers working on the project have provided the following list of "green" elements that will be incorporated in the proposed store at 6<sup>th</sup> and Wakarusa:

1. The proposed facility will include a daylight harvesting system including skylights, electronic dimming ballasts, computer controlled daylight sensors, etc. These items help reduce the energy load.

2. The store will be equipped with a state of the art Energy Management System which dims sales floor lighting to about 75% illumination during the evening and night hours resulting in a reduction in demand for electricity and reduction in green house gas generation.
3. The store will be equipped with T-8 fluorescent lamps and ballasts, which is the most energy efficient lighting system on the market.
4. The store will utilize "low mercury" lamps, which are not considered to be hazardous for landfill disposal, but will be recycled out of concern for the environment.
5. The store will be connected to a Centralized Energy Management system which will monitor and control heating, air conditioning, refrigeration, and lighting systems from Wal-Mart's home office in Bentonville 24 hours per day. The energy management system enables Wal-Mart to monitor energy usage, analyze refrigeration temperatures, and observe HVAC and lighting performance. This will help Wal-Mart provide efficient, reliable, and well maintained equipment in their store.
6. The store will utilize LED lighting in internally-illuminated building signage and in all refrigerated cases. LED illumination can be as much as 70% more energy efficient than fluorescent illumination and last as long as 20 years. Resulting in less energy demand and significantly reducing the need to manufacture and disposed of fluorescent lamps.
7. The store will have occupancy sensors in the non-sales areas and some sales areas that actively detect activity in a room or area and automatically turn off lights when the space is unoccupied.
8. The industry standard Energy Efficiency Ratio of heating, ventilation, and air-conditioning units is 9.0. The proposed store will be utilizing "super" high efficiency units which are rated at 11.25, 25% more efficient than industry standards and 6% more energy efficient than the most stringent U.S. energy code.
9. This store will utilize a "white" membrane roof system which should reduce the cooling load of the store by approximately 8%.

10. Approximately 70% of the hot water needs for the store will be generated by the reclaimed waste heat from the refrigeration system.
11. The store will be actively dehumidified which will allow it to operate at a higher temperature and use less energy and allow the refrigeration systems to operate more efficiently.
12. Instead of using heating elements to reduce the condensation on freezer doors, a film will be installed, which requires no energy.
13. The energy efficiency of the above items mentioned exceeds baseline minimums of ASHRAE and other U.S. Energy codes.
14. Wal-Mart's site specifications now include provisions to replace up to 25% of the cement with fly ash in exterior concrete mixes. Additionally up to 40% of the cement can be a combination of fly ash and ground granulated blast furnace slag. By incorporating both we are reducing the amount of natural resource material we use (cement) and replacing it with waste material that would otherwise populate landfills.
15. The sinks in the restrooms will utilize sensor activated, low-flow faucets. The low flow faucets are expected to reduce water usage by 84% while the sensors, which regulate the amount of time the faucets flow should save another 20% in water usage over similar, manually operated systems.

Attached is a letter from Jeff Ginn of API (Exhibit A) that describes features of the buildings that have been designed for the project, and some of his thoughts in creating the design. Also attached is a letter from Chris Clark of SC&A (Exhibit B) that sets forth a number of the enhanced features incorporated into the landscape plan. As these letters make clear, the proposed development has many unique and enhanced features. It is far from being standard or ordinary.

We ask that you accept the Planning Commission's recommendation as to the two rezoning requests, and that you approve those two items at your meeting on October 17<sup>th</sup>. We also ask that you vote to return the Development Plan to the Planning Commission with a statement specifying the basis for your support of the Development Plan. We ask that such a statement reference the many positive aspects of the Plan set out in this letter and its attached exhibits.

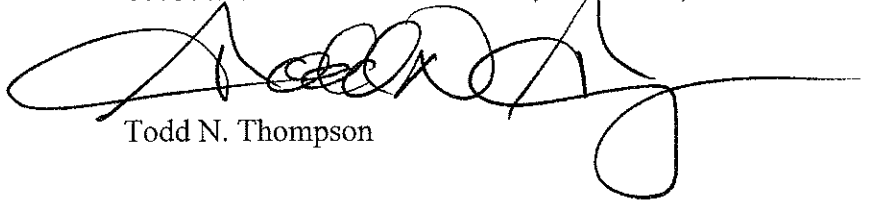
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We will then ask the Planning Commission to reconsider the Preliminary Development Plan at its "next regular meeting", which is on October 25<sup>th</sup>. With all of the information outlined in this letter, the Plan is deserving of coming back to you with a favorable recommendation.

We look forward to discussing these issues with you next Tuesday, the 17<sup>th</sup>.

Sincerely,

THOMPSON RAMSDELL & QUALSETH, P.A.

A handwritten signature in black ink, appearing to read 'Todd N. Thompson', written over a horizontal line.

Todd N. Thompson

TNT:lg

Attachments

cc: Kathy Griffith  
Michael Phillips  
Ray Frankenberg  
Owen Buckley  
Jim Bowers  
R. Scott Beeler

# **EXHIBIT A**



Wal-Mart - Lawrence, Kansas  
**api(+)** Design Intent Description

October 10, 2006

In an effort to design a store of a unique and lasting quality for the community of Lawrence, our design team researched local, regional and State-wide historical references, existing surrounding retail, both present-day and historical, local residential vernacular, and Kansas and Lawrence native materials and usage. Our efforts were focused on creating a store of aesthetic character and solidity of design that enhances and compliments the surrounding neighborhood.

As head designer for this project, I toured Lawrence and conducted extensive research with an eye toward incorporating references to the area and to the state into this design. Although I am a long-time member of our firm, this is my first Wal-Mart effort. It is my goal to seamlessly blend neighborhood requirements with Wal-Mart's need for efficient operations.

Brick retains a strong presence in Lawrence as evidenced by its heavy usage in the downtown area and is therefore used generously in this building's exterior. The Lawrence Vitrified Brick & Tile Co. operated a plant at the north end of Mississippi Street in Lawrence and manufactured much of the brick in use on the buildings and streets today.

Stone suitable for building purposes is found in nearly all parts of the state. The varieties include limestone, blue and gray limestone and great quantities of sand, and flagging stone. Stone from the Kansas quarries is used in some of the finest buildings in the country. Stone application for this building provides texture, color and respect for Kansas history.

**api(+)**

Wood bracketry supporting shingled canopies reflects an impressive natural asset of the area. Wood inevitably complements all materials used in conjunction with it while it suggests warmth, substance and longevity. Additionally, because wood is not an inexpensive material, it speaks to the designers' and owners' intent to respect the Lawrence community's desire to maintain an established caliber of architecture.

Simulated Slate Shingles have been selected for their visual impact in keeping with the desired appearance and detail of this big box design. The specified shingles are made by Kansas-based DaVinci Roofscapes, founded by John Humphreys in 1999. Working in this family-owned asphalt shingle business allowed Humphreys to use his shingle manufacturing experience to create a high-end synthetic shingle that is often used as a replacement for traditional roofing materials. In addition to providing a superior appearance, a shingle of this quality will retain its fresh appearance for many years with minimal concern for ongoing maintenance issues.

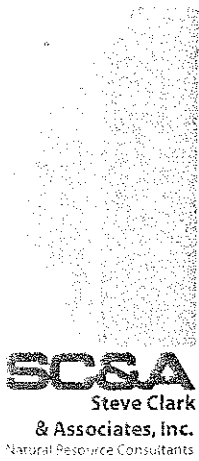
Coloration for this building is derived from nature's perfection in the browns and greens of earth, plants, trees, and animals. All colors and materials have been specifically researched and selected in an effort to establish respect for Lawrence and the surrounding area.

Sincerely,

**api(+)**

Jeff Ginn

## **EXHIBIT B**



September 11, 2006

Mayor Mike Amyx and  
City Commissioners  
City Hall  
PO Box 708  
Lawrence, KS 66044

Urban Forestry

Natural Resource &  
Land Planning

Project Management

Landscape Architecture

Stream Restoration

Construction  
Administration

Graphic Design

**Subject: Wal-Mart at 6<sup>th</sup> and Wakarusa, Lawrence, KS**

**Dear Mayor Amyx and Commissioners:**

Thank you for taking time to review our landscape concept for the proposed Wal-Mart SuperCenter in Lawrence, Kansas. Our approach is to design in concert with nature; to take what our site gives us and transform it into a natural resource friendly development. Through the use of native plants and materials, low volume irrigation, larger parking lot islands, and berming (which we believe create several focal points throughout the site) we plan to develop the site at 6<sup>th</sup> and Wakarusa in this manner.

The use of drought tolerant native plant material is one of the key elements of the plan. By avoiding typical ornamental plants which require more water, reducing the amount of maintained turf, and utilizing other Xeriscape principles, we are able to achieve a better water-efficient landscape. Native grass planting along perimeter areas is a key component. In addition, the irrigation system will be designed using drip zones for shrub and tree plantings and a computerized control system to further reduce water use on site.

Islands in the parking lot were combined to create larger planting areas and more root space for trees. These larger islands will make for a more successful planting within the parking lot. Shaded seating areas were designed in the two largest islands to encourage pedestrian movement. Raised and planted berms will be used on these islands to further screen parking from the street and to help scale down the building. We have created 14,000 square feet more island space than is required per the ordinance.

One approach that makes this project unique is that we have located very large trees for the site at area nurseries and designed them into the plan to give a mature look to the site at the time of installation. Trees will range from 4" to 10" in caliper. City regulations require a minimum caliper of 2½", so we are going well beyond the minimum requirements. One benefit in our using these larger trees is that we make use of stock which the nursery can no longer sell readily due to their size. By using a large tree spade we are able to transplant these trees and get immediate screening and shade on the project site. A 10" caliper River Birch, for example, would have a height of approximately 30 feet and a spread of 15-18 feet.

To the east of the proposed Wal-Mart building, a sidewalk leads to an interpretive area adjacent to the Overland Drive entry. There will be a display of native grasses and plants at that location. Interpretive signage, if permissible, will educate the Lawrence citizens about the advantages of using native grasses and plants.

CORPORATE OFFICE  
1211 Dry Fork Creek Lane  
Bethpage, TN 37022  
Tel 615.841.3080  
Fax 615.841.3316  
Web [www.sca-nr.com](http://www.sca-nr.com)

TEXAS OFFICE  
Fischer, TX  
Tel 214.722.4108

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City Commissioners  
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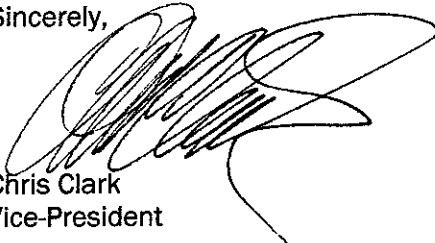
Focal points at key entries will be heavily landscaped to create a special area as you enter the project. We will use boulders and rocks from a local source to give a natural feel, and we will arrange the planting and walks to give the entry area a "gateway" appeal.

The view behind a store is always a concern. To address that, we have designed a large berm that is 20 feet high, and that will be planted with large trees and shrubs for a total screen effect.

In conclusion, we have designed this development in concert with nature. We believe that this development will add value to Lawrence and its citizens, and can assure you that the level of landscape planning that has gone into this store site is extraordinary.

If you have any questions, please do not hesitate to call. Again, thank you for taking a detailed look at the plan we have created for the Wal-Mart site.

Sincerely,



Chris Clark  
Vice-President

Cc: Ray Frankenberg  
John Murphy  
Todd Thompson  
Kent Vedder  
Scott Wolfe