


Memo

To: Randy Fife, City Attorney
From: Joel D. Plaskon, Community Development Director 
Date: January 23, 2006
CC: Nancy Chaney, Mayor
Gary J. Riedner, City Supervisor
Re: Wal Mart C.U.P. Application

On November 10, 2005 Wal Mart submitted applications for rezoning, preliminary plat and Conditional Use Permit (C.U.P.). I had told them that I would review the rezoning and preliminary plat applications and schedule them for hearing (after they had a chance to respond to my initial review comments), but that I would not review or schedule the C.U.P. application because it was premature, i.e. it was dependent upon the rezone. The preliminary plat application is also dependent upon the rezone, however rezones and plats have historically been considered simultaneously in Moscow, when filed simultaneously.

Although I have not yet had the opportunity to formally reject the C.U.P. application, I am considering doing just that at this time. I would like your legal opinion as to the ability or inability to accept and retain Wal Mart's November 10, 2005 C.U.P. application for future hearing scheduling, based upon Moscow City Code and legal precedent. The key consideration of the matter seems to be the fact that the current zoning of the land does not list retail business as a conditional use. Additionally, MCC 4-8-4 (A) (2) calls for hearings on C.U.P. applications to be scheduled within sixty days of application receipt. Said sixty days has elapsed without a hearing having been scheduled (due to the aforementioned reason). It is my belief that the mere submittal of the application does not vest their rights to have the application under the codes in place at the time of the submittal and that the application must be accepted by the City.