



CITIZENS AGAINST WAL-MART IN MARINA!

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An Open Letter to the City of Marina and the Community from Steve and Tina Zmak, Citizens Against Wal-Mart in Marina March 21, 2006

On March 3, Marina city officials were surprised to hear that Wal-Mart would open a new store in Marina's old Kmart building after securing a long-term lease from Tallen & Keshen Holdings.

Having watched the Oct. 13, 2005 Marina Planning Commission Meeting on DVD, we can understand their surprise. **Watching the meeting, it appears to us that Tallen & Keshen may have misled or negligently given false information to the Planning Commission and the City of Marina at that meeting.**

Below are several examples of statements made at the Oct. 13, 2005 Marina Planning Commission Meeting* that have led us to form this opinion:

- "...Once we close on the property we will immediately come in and start spending money. We will spend several hundred thousand dollars. We will improve the parking lot. We will replace the damaged light standards. ... The parking lot needs repair. We're going to repave, reseal, do the parking lot. ... We will clean up the physical plant in all manners. ..." — Terrence Tallen [approx. 53 minutes into the meeting]
- "...Once we get it cleaned up, then we're going to go out to the marketplace and put our best foot forward. A lot of developers when they reposition properties will wait until they have a tenant to start spending money. Our process and our strategy and you'll see the Gateway retail center in Marin City, Calif, which is a very, very similar project to this one, that we've recently turned around over the last two years, we went in, we repaved the parking lot, we painted the buildings ..." — Terrence Tallen [approx. 54 minutes into the meeting]
- "...Then when everything's looking good, we'll go out to the retail real estate community. We hope to have our work completed by the first of April. At that point in time, there's ... a very large International Council of Shopping Centers conference here in Monterey every year, and we plan to have a special event at that conference at that time. We'll invite the retailers out and have a little event on-site and say here's your next big opportunity. What we're doing that's different than everybody else that's come to buy this property, everyone else said I'm not going to close unless I know I have a use, unless I know I have a tenant, we're stepping up now without a tenant to buy the property, spend the money, and then get it done. And that's how you reposition retail real estate..." — Terrence Tallen [approx. 55 minutes into the meeting]

In a March 8, 2006 Monterey County Herald article titled, "Wal-Mart May Open This Year: Old Kmart store to undergo only minor renovations," Larry Parsons reported:

Mettee-McCutchon had hoped that the old Kmart store, which closed in 2000, would be remodeled to house a handful of retail outlets.

That's what Tallen & Keshen originally planned for the 91,266-square-foot building.

"They didn't get the response they anticipated," Mettee-McCutchon said. "I would have preferred multiple retail, but it is what it is. I can't change it. I want to make the best of it."

How could Tallen & Keshen get the response they anticipated when they did NOT do all that they said they would do to generate that response?

We went by the former Kmart building at the Marina Landing Shopping Center yesterday. The building and surrounding area are still an eyesore. The building has not been painted. The parking lot has not been repaved or resealed. Everything is not “looking good.”

At the Oct. 13, 2005 Planning Commission meeting, Terrence Tallen said he hoped to have their work completed by the first of April and that they planned to have a special event at the Marina Landing Shopping Center during the International Council of Shopping Centers conference in Monterey to attract retailers. [The International Council of Shopping Centers conference in Monterey will take place April 4-6, 2006 at the Portola Plaza Hotel.]

If Tallen & Keshen haven't yet done the work they said they'd do to clean up the building, and haven't yet brought retailers out since the conference has not yet happened, how could they have put their “best foot forward”? How could they say they didn't get the response they anticipated, when they haven't yet done the work they told the Planning Commission they would do during the Oct. 13, 2005 meeting when they requested and later received modifications to the use permit?

- “...Our plan is we will probably cut up the box. We will probably put in 2 or 3 retailers in that space and it would be something that would be synergistic...” — Terrence Tallen [approx. 57 minutes into the meeting]
- “...I think we can put together a tenant mix and I would love to meet with you and the commission to talk about tenant mix but what we need to do now is be able to get the approvals in place...” — Terrence Tallen [approx. 1 hour into the meeting]
- “... We have looked at some things in the apparel sector, the sporting good sector, there are some sectors that I think would be beneficial to the community. It appears to me the community could use a more modern and probably larger grocery store ... But those are 3 categories that I think would be terrific out there...” — Terrence Tallen [approx. 1 hour 2 minutes into the meeting]
- “...What would be ideal would be to have no limitations on how much we split up the box. There are very few 90,000 square foot tenants out there. ... We can then develop out the garden center and do smaller shops there ...” — Terrence Tallen [approx. 1 hour 3 minutes into the meeting]
- “...But before we would talk to a Whole Foods or a Safeway or someone like that, we want to make the place look right or they're not going to have much of an interest or they're not going to pay much rent. ...” — Terrence Tallen [approx. 1 hour 9 minutes into the meeting]
- The following exchange took place approx. 1 hour 10 minutes into the meeting:

Planning Commissioner Nancy Amadeo: “... We would all like some reassurance that whatever comes in, whatever businesses, retailers you try to draw to the Marina Landing site will be businesses that we don't find when we go to Seaside or Monterey or Salinas. That it will not only serve the needs of our community but will draw members of surrounding communities to our town to shop.”

Terrence Tallen: “Oh, exactly.”

Nancy Amadeo: “I hope that that's the kind of thing that you're looking at. ... Are you looking beyond our borders?”

Terrence Tallen: “Yes we are and that's one of the reasons we like SportsMart. ...”

- The following exchange took place approx. 1 hour 12 minutes into the meeting as Planning Commissioner Niraj Dangoria addressed Terrence Tallen and Anne Keshen:

Planning Commissioner Niraj Dangoria: “... And the second thing I just want to say is thank you. As much as it pains you to get into the specifics I think it's really important for us and the people in this room to hear some of that because it gives us a sense, it gives us a little bit of insight into your thinking and I think that's really important for us as we make this decision. So thank you to both of you.”

Bob Drake: “Thank you Commissioner Dangoria. We're definitely hearing we don't want to sell to Wal-Mart and take the whole building...”

Later, after the vote to approve the use permit modifications [about 1 hour 45 minutes into the meeting], Planning Commissioner Bob Drake said to Terrence Tallen and Anne Keshen :

- “Go forth and do good things in our community. Leave your name and address with Ms. Hartick [note: not sure of name/spelling] If you fail [laughter] we have ways.”

YES, we the City of Marina do have ways.

We respectfully ask the Marina City Council to direct the City Manager and Planning staff to put the use permit on the agenda before the Planning Commission for revocation or modification, pursuant to City Code 17.48.060A.

17.48.060 Revocation.

A. Where one or more of the conditions of the granting of a use permit have not been, or are not being complied with, or when a use permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant, the appropriate authority may revoke or modify such use permit following a hearing thereon. Notice of such hearing shall be given in writing to the permittee at least ten days prior to said hearing. Notice of such hearing shall be given as described in Section 17.48.030. Following the hearing, the appropriate authority may revoke or modify the use permit. [Please see attached for full text of 17.48.060 Revocation]

Pursuant to City Code 2.08.100:

The city manager may, and upon request of the city council shall, attend meetings of the planning commission and other commissions, boards and committees created by the council. At these meetings which the city manager attends, boards or committees shall hear the city manager upon matters which he wishes to address the members, and he shall inform the members as to the status of matters being considered by the council. He shall cooperate to the fullest extent with the members of each commission, board and committee appointed by the council.

Attached for your reference, please find “Marina Municipal Code - February 2005.” This is the law that governs Marina and no one is above it.

Attached please find additional segments from the Marina Planning Commission Meeting Oct. 13, 2005.*

We highly encourage the media and the public to review the 10/13/05 Planning Commission Meeting and to draw their own conclusions. You can see the full video, viewable with Windows Media Player, of the Oct. 13, 2005 Planning Commission hearing on this subject at <http://www.amppmedia.org/asx/8318.asx>. Or you can purchase a DVD of the meeting for \$50 from Access Monterey Peninsula.

Following is an excerpt from a March 17, 2006 staff report for the Agenda for Meeting of Tuesday, March 21, 2006 from Rob Wellington, City Attorney and Christine Di Iorio, Interim Community Development Director to Honorable Mayor and Members of the Marina City Council:

Q4: Was the City, i.e., the Planning Commission and Council, misled by the applicants or others during the Fall 2005 amendment process?

A: Staff has reviewed the application, meeting minutes, and other materials submitted and considered, and the City Manager, Assistant City Manager and City Attorney have all reviewed the DVD of the October 13, 2005 City Planning Commission meeting. Staff members report that nowhere in any of that is there an indication of the applicants or others having submitted false materials or made false statements, or having misled any decision makers or other interested parties. It appears to have been a straightforward application, a simple request, all resulting in a simple change.

We strongly disagree with that statement for the reasons we stated above in our letter.

Also attached is an excerpt (“Sneaky Way #2: Use a Front Man”) from a book that you may find interesting as it details ways Wal-Mart sneaks into communities. We are not stating that this is what happened in Marina. We are simply providing the information to illustrate techniques that apparently have been used in other areas.

Thank you for your consideration of this matter. We sincerely hope the City of Marina will take action on behalf of Marina residents and businesses, and revoke or modify the use permit granted to Tallen & Keshen.

Sincerely,

Handwritten signatures of Tina Zmak and Steve Zmak.

Tina and Steve Zmak,

Attachments:

- Marina Municipal Code - February 2005
- Transcript of segments from the Marina Planning Commission Meeting Oct. 13, 2005*
- Excerpt from How Wal-Mart Is Destroying America (and the World) And What You Can Do About It. Bill Quinn (2005). Berkeley, CA: Ten Speed Press. Pp. 34, 36-37.

* Note: We viewed the October 13, 2005 Planning Commission meeting on DVD. Please note that the times may vary slightly from one DVD to another, or on the online stream. Also, please note that we took these notes by typing while watching the DVD. We did our very best to ensure accuracy, however, there may or may not be minor typos/mistakes.

**Segments from the
Marina Planning Commission Meeting Oct. 13, 2005**

NOTE: The following is a transcript we created of excerpts from the Marina Planning Commission Meeting on Oct. 13, 2005.

As you will see below, the number listed at the beginning refers to the approximate number of minutes into the meeting (e.g. 0:53 would be approximately 53 minutes into the meeting; 1:09 would be approximately 1 hour 9 minutes into the meeting.) We viewed this meeting on DVD. Please note that the times may vary slightly from one DVD to another, or on the online stream. Also, please note that we took these notes by typing while watching the DVD. We did our very best to ensure accuracy, however, there may or may not be minor typos/mistakes.

We highly encourage you to watch the meeting in its entirety to see for yourself. *The meeting (which precedes the study session) is approximately 1 hour 45 minutes long. You can see the full video, viewable with Windows Media Player, of the Oct. 13, 2005 Planning Commission hearing on this subject at <http://www.ampmedia.org/asx/8318.asx>. Or you can purchase a DVD of the meeting for \$50 from Access Monterey Peninsula, which is what we did.*

The transcript below is organized in the following format:

Approx. # of minutes/hours into the meeting — Name of person speaking — Quote

0:53 — Terrence Tallen — ... Once we close on the property we will immediately come in and start spending money. We will spend several hundred thousand dollars. We will improve the parking lot. We will replace the damaged light standards. ... The parking lot needs repair. We're going to repave, reseal, do the parking lot. ... We will clean up the physical plant in all manners...

[NOTE: In an Oct. 26, 2005 Monterey County Herald article by Larry Parsons, "Old Marina Kmart Building Sold," it was reported that escrow closed on the sale of the vacant Kmart building in the Marina Landing Shopping Center to Tallen & Keshen Holdings on Oct. 25, 2005.]

0:54 — Terrence Tallen — ... This city is the gateway to Monterey County and I think we can do some really neat things out there and certainly improve on what is there today. There's no doubt about it. Once we get it cleaned up, then we're going to go out to the marketplace and put our best foot forward. A lot of developers when they reposition properties will wait until they have a tenant to start spending money. Our process and our strategy and you'll see the Gateway retail center in Marin City, Calif, which is a very, very similar project to this one, that we've recently turned around over the last two years, we went in, we repaved the parking lot, we painted the buildings ... We bought out tenants that were not of the right caliber. We made our vacancy higher in order to go out and attract the right tenants...

0:55 — Terrence Tallen — ...Then when everything's looking good, we'll go out to the retail real estate community. We hope to have our work completed by the first of April. At that point in time, there's ... a very large International Council of Shopping Centers conference here in Monterey every year, and we plan to have a special event at that conference at that time. We'll invite the retailers out and have a little event on-site and say here's your next big opportunity. What we're doing that's different than everybody else that's come to buy this property, everyone else said I'm not going to close unless I know I have a use, unless I know I have a tenant, we're stepping up now without a tenant to buy the property, spend the money, and then get it done. And that's how you reposition retail real estate...

[NOTE: The ICSC "Monterey Idea Exchange" will take place April 4-6, 2006 at the Portola Plaza Hotel in Monterey, CA]

0:56 — Terrence Tallen — ... you asked why we're here. We're here because we submitted the application to request a simple use modification so that you can take a building that is of no value at this point, has not been able to be sold in five years, and that we can start spending money, turning it around and making it something that the community can be proud of, that we can be proud of, in a very short period of time...

0:57 — Terrence Tallen — ...Our plan is we will probably cut up the box. We will probably put in 2 or 3 retailers in that space and it would be something that would be synergistic...

1:00 — Terrence Tallen — ... I think we can put together a tenant mix and I would love to meet with you and the commission to talk about tenant mix but what we need to do now is be able to get the approvals in place...

1:02 — Terrence Tallen — ... We have looked at some things in the apparel sector, the sporting good sector, there are some sectors that I think would be beneficial to the community. It appears to me the community could use a more modern and probably larger grocery store ... But those are 3 categories that I think would be terrific out there...

1:03 — Terrence Tallen — ...What would be ideal would be to have no limitations on how much we split up the box. There are very few 90,000 square foot tenants out there. ... We can then develop out the garden center and do smaller shops there...

1:04 — Terrence Tallen — ...Once that's done and once we lease the spot to at least 2 or 3 retailers in the space and it's going to certainly create tremendous opportunities whether it's mixed use or retail for the rest of the center...

1:09 — Terrence Tallen — ... We'd like to try to get a grocery store and some soft goods out there or sporting goods. I think that would be great. ... But before we would talk to a Whole Foods or a Safeway or someone like that, we want to make the place look right or they're not going to have much of an interest or they're not going to pay much rent...

1:10 — Planning Commissioner Nancy Amadeo — ... We would all like some reassurance that whatever comes in, whatever businesses, retailers you try to draw to the Marina Landing site will be businesses that we don't find when we go to Seaside or Monterey or Salinas. That it will not only serve the needs of our community but will draw members of surrounding communities to our town to shop.

Terrence Tallen — Oh, exactly.

Nancy Amadeo — I hope that that's the kind of thing that you're looking at. ... Are you looking beyond our borders?

Terrence Tallen — Yes we are and that's one of the reasons we like SportsMart...

1:12 — Planning Commissioner Niraj Dangoria addressing Terrence Tallen and Anne Keshen — ... And the second thing I just want to say is thank you. As much as it pains you to get into the specifics I think it's really important for us and the people in this room to hear some of that because it gives us a sense, it gives us a little bit of insight into your thinking and I think that's really important for us as we make this decision. So thank you to both of you.

Planning Commissioner Bob Drake — Thank you Commissioner Dangoria. We're definitely hearing we don't want to sell to Wal-Mart and take the whole building because if you guys are driving a hard bargain with Wachovia, Wal-Mart would walk over you. That's the way they operate. That's very, very tough business people. They know what they're doing. They're good business people but they don't leave any pennies on the table for anyone else, let alone dollars. So they're tough to negotiate. You would certainly get far better rent cutting the property up into 3 or 4 healthy size stores. Your rent per foot would be far better than if you could rent it to anybody and take the whole space. And the city will probably benefit by having multiple stores with a variety of services and then throw in your restaurant on the end or whatever you might want to do there. It certainly would be better for the city...

[Responding to question whether or not a single tenant could occupy the entire building]

1:21 — Bob Drake — It might be legally okay. But as was decided, it wouldn't be okay if it turns out to be a major discounter...

1:43 — Bob Drake addressing Planning Commissioner Colin Gallagher — ...I think that Costco and Wal-Mart have both had ample opportunity to consider this site. Had they wanted to pursue it they would have done so already, so I think that as much as I share your concern, I think it's a legitimate concern today, I don't think it's a risk today. They've had years to look at that site. So nobody can absolutely guarantee you everything but if they'd wanted it, they'd have bought it a long time ago...

[After the Planning Commission voted to modify the use permit (with 6 votes in favor, 0 against and 1 abstaining):]

1:45 — Bob Drake addressing Terrence Tallen and Anne Keshen — Go forth and do good things in our community. Leave your name and address with Ms. Hartick *[not sure of name/spelling?]* If you fail *[laughter in room]* we have ways."

MARINA MUNICIPAL CODE - February 2005

Chapter 2.08 CITY MANAGER

2.08.100 Attendance at commission meetings.

The city manager may, and upon request of the city council shall, attend meetings of the planning commission and other commissions, boards and committees created by the council. At these meetings which the city manager attends, boards or committees shall hear the city manager upon matters which he wishes to address the members, and he shall inform the members as to the status of matters being considered by the council. **He shall cooperate to the fullest extent with the members of each commission, board and committee appointed by the council.** (Ord. 75-8 § 10, 1975)

Chapter 17.26 PC OR PLANNED COMMERCIAL DISTRICT*

17.26.130 Zoning permit--Revocation.

- A. Where the conditions of the granting of a zoning permit have not been or are not being complied with, the planning commission may, following a hearing thereon, revoke or modify such zoning permit. Ten days written notice of such hearing shall be given to the permittee prior to the hearing.
 - B. Appeals from such revocation or modification may be taken in the same manner as provided in Section 17.26.120. (Zoning ordinance dated 7/94 (part), 1994)
- ### 17.26.140 Zoning permit--Effect.

Chapter 17.48 USE PERMITS*

Sections:

17.48.010 Generally.

- 17.48.020 Application and fees.
- 17.48.030 Public hearing.
- 17.48.040 Action by appropriate authority.
- 17.48.050 Appeal.

17.48.060 Revocation.

- 17.48.070 Effect.
- Prior ordinance history: Ords. 77-10 and 82-14.

17.48.010 Generally.

- A. Use permits, revocable, conditional, or valid for a term period may be issued for any of the uses or purposes for which such permits are required or permitted by the terms of this title.
- B. The planning commission shall have the power to hear and decide applications for, and issue use permits, for all uses for which a use permit is required or permitted.
- C. As used in this chapter, the words "appropriate authority" means the planning commission when the application for a use permit is one which is within its power to issue.** (Zoning ordinance dated 7/94 (part), 1994)

17.48.020 Application and fees.

- A. Application for a use permit shall be made to the appropriate authority in writing on a form prescribed by it, and shall be accompanied by statement, plans and elevations necessary to show the detail of the proposed use or building.
- B. Such application shall be accompanied by a fee to be established by resolution of the city council from time to time hereinafter enacted, no part of which shall be returnable to the applicant. (Zoning ordinance dated 7/94 (part), 1994)

17.48.030 Public hearing.

A public hearing shall be held after filing of application, and after the determination of the planning commission that the information submitted by the applicant is sufficient to consider the matter, and not less than ten calendar days prior thereto the appropriate authority shall give notice of hearing thereon by one publication in a newspaper of general circulation. In addition, the appropriate authority may also give notice of such hearing by mailing postage prepaid notice of the time and place of such hearing to all persons owning property adjacent to the exterior boundaries of the area actually occupied or to be occupied by the use for which the use permit was applied. Addresses shall be used from the last equalized assessment roll, or alternatively, from such other records of the assessor or the tax collector as contain more recent addresses in the opinion of the appropriate authority. (Zoning ordinance dated 7/94 (part), 1994)

17.48.040 Action by appropriate authority.

- A. In order to grant any use permit, the findings of the appropriate authority shall be that the establishment, maintenance or operation of the use or building applied for will not under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the city; and in the Coastal Zone the use is consistent with all applicable local coastal land use plan recommendations and requirements.
- B. The appropriate authority may designate such conditions in connection with the use permit as it deems necessary to secure the purposes of this title. Such conditions may include, but are not limited to, architectural and site approval, time limitations, street dedication, and street and drainage improvements. The appropriate authority may also require such bonds and guarantees as it deems appropriate to assure the compliance of the conditions. (Zoning ordinance dated 7/94 (part), 1994)

17.48.050 Appeal.

- A. An appeal to the city council may be filed by any person aggrieved by a decision of the appropriate authority. Such appeal shall be in writing and shall be filed with the city clerk within ten days after written notice of the decision has been mailed to the applicant. At the time of the filing of the appeal, the appellant shall pay a filing fee to be established by resolution of the city council from time to time hereinafter enacted. An appeal shall set forth specifically the points at issue, the reasons for the appeal, and wherein the appellant believes there was an error or abuse of discretion by the appropriate authority.
- B. Upon receipt of the notice of appeal, the city council shall set a date for public hearing thereon, giving notice thereof pursuant to Section 17.48.030. The city council may reverse or affirm, wholly or partly, or may modify the order, make such order, requirements, decision, or determination as should be made, and such action shall be final. (Zoning ordinance dated 7/94 (part), 1994)

17.48.060 Revocation.

- A. Where one or more of the conditions of the granting of a use permit have not been, or are not being complied with, **or when a use permit was granted on the basis of false material information, written or oral, given wilfully or negligently by the applicant, the appropriate authority may revoke or modify such use permit following a hearing thereon. Notice of such hearing shall be given in writing to the permittee at least ten days prior to said hearing. Notice of such hearing shall be given as described in Section 17.48.030. Following the hearing, the appropriate authority may revoke or modify the use permit.**
- B. An appeal may be taken from such revocation or modification in the same manner as described in Section 17.48.050.

C. All use permits issued by the appropriate authority shall be valid until the date of expiration stated on the permit, or if no date of expiration is stated, or unless otherwise specified by the appropriate authority, all such permits shall expire one year from the date of granting said permit unless construction on, or use of the subject property has started within this period. (Zoning ordinance dated 7/94 (part), 1994)

17.48.070 Effect.

No building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the use permit granted, nor until ten days after the mailing of notice of granting of such use permit by the appropriate authority, or, after granting of such use permit by the city council, inappeal. (Zoning ordinance dated 7/94 (part), 1994)

Chapter 18.12 ENFORCEMENT AND PENALTIES

Sections:

18.12.020 Violations.

18.12.030 Enforcement.

18.12.040 Fines.

18.12.020 Violations.

A. The following actions are considered violations of this title:

1. Failure to submit the trip reduction checklist, for an applicable development, or implement provisions of an approved checklist as set forth in the permit conditions;
2. Falsifying information on project plans;
3. Failure to implement items on the checklist or approved project plans;
4. Failure to provide surveys and trip logs to the city TRO program manager or TAMC.

B. Failure to achieve the 1.35 AVR, sixty percent drive-alone rate or the 1.6 percent trip reduction goals of this title does not constitute a violation of this title and no developer, property owner or tenant shall be subject to any fines based on lack of attainment. (Ord. 93-5 § 1 (part), 1993)

18.12.030 Enforcement.

For purposes of ensuring that the provisions of this title are fully adhered to, **the city shall, following written notice, initiate enforcement action(s) against the appropriate parties which may include, but not be limited to, the following:**

A. Withhold approval of development permits;

B. Issue stop work order;

C. Initiate proceedings to revoke the development and land use permits;

D. Withhold issuance of a certificate of occupancy;

E. Prosecute the violation. (Ord. 93-5 § 1 (part), 1993)

18.12.040 Fines.

Violation(s) of this title shall be prosecuted as infractions. Revenues received from fines shall be used to support alternative transportation programs. Each and every day that a provision(s) of this title or the terms and conditions or any approved worksite trip reduction plan is violated, shall constitute a separate offense. (Ord. 93-5 § 1 (part), 1993)

Following are excerpts from the book:

How Wal-Mart Is Destroying America (and the World) And What You Can Do About It. Bill Quinn (2005). Berkeley, CA: Ten Speed Press. Pp. 34, 36-37.

Prior to explaining the two items below, the author says, “We’ve pinpointed three sleazy ways Wal-Mart weasels its way into your town—all just as sneaky as can be.”

SNEAKY WAY #2: Use a Front Man

This is a damned effective technique. From what we can see, it’s one of Wal-Mart’s favorites. Check it out.

Some aware citizens in Evergreen, Colorado, suspected that Wal-Mart was scoping out their town for a possible location. They called Wal-Mart headquarters several times and asked them what its development plans were for Evergreen. Each time the reply was the same: “We are not looking at real estate in Evergreen.”

Meanwhile, a real estate development company from Denver appeared before the county zoning board, asking for rezoning on a couple of parcels. They don’t own the parcels, but are interested in getting them rezoned, then acquiring them for later sale or lease to Wal-Mart. In this way, the path will be paved for Wal-Mart to come in, and local citizens who would wish to keep it out have lost one of their most powerful weapons in the fight: strict zoning restrictions.

We heard that the city council of Ithaca, New York, unanimously voted to spend \$3,600 in outside lawyer fees to keep Wal-Mart from building a store just inside the city limits. Seems a development company from South Carolina, working on Wal-Mart’s behalf, had secured a conditional zoning variance from the city to build “an unidentified store.” When the city found out the store was to be a Wal-Mart, they said “No.” And the citizens’ group Stop Wal-Mart managed to hold off the company even when Wal-Mart sued through the courts.

Let this be a warning to would-be Wal-Mart busters: Keep an eye on rezoning requests that would make a parcel Wal-Mart-ready no matter who has submitted the request. You never know who’s really behind it.

Please note that we are NOT stating that this is what has happened in Marina. We have no evidence to make such a claim. We are simply sharing this information with you to let you know that somewhat similar situations have apparently occurred in other areas — situations where a real estate development company asks for rezoning from the city to then bring in as-yet-unidentified store(s). This rezoning then paves the way for a Wal-Mart to sneak in.

Although it has not been stated that Wal-Mart is planning to bring a supercenter to Marina, this could be the next surprise around the corner...

SNEAKY WAY #1: Manipulate Existing Zoning

In Virginia, Wal-Mart was able to come up with an absolutely ingenious way to get around not one, but two sets of municipal codes at once. Here’s what happened. In the town of Warrenton, the city code said that any retail outlet over fifty thousand square feet had to have special permission to be built. When the Wal came to Warrenton, it had to ask for such permission to put in its proposed monster: a 120,000-square-foot box. Properly alarmed at the thought, the city said “No,” that’s just too big for us. On the face of it, Wal-Mart was beat: they asked and got turned down.

Now, Fauquier County which surrounds the town of Warrenton, has a similar code on its books, stating that retail outlets exceeding seventy-five thousand square feet have to be approved.

But voila! Wal-Mart found an appropriately zoned parcel that straddled the line between Warrenton and unincorporated Fauquier County, and the discounter was able to get around both sets of restrictions by putting less than fifty thousand square feet of its box inside Warrenton land, and less than seventy-five thousand square feet on Fauquier County land! Local courts found that the use was permitted—or at least was not excluded—by the available laws.

Thirteen neighbors of the proposed Wal-Mart development appealed the ruling. One of them, Deborah Gortenhuis, said in an interview with the *Washington Post*, “I think it’s sort of sneaky that they want to do this thing. Wal-Mart tries to depict itself as this very honest, family-oriented, small-town kind of store. But with all this sneaking around, you wonder about that. It seems ruthless.” We couldn’t have said it better ourselves.