

Memorandum in Support of Appeal

The Inspector of Buildings (“Inspector”) erred by granting Missouri Avenue Development Partners, LLC (“Developer”) building permit No. B1302395. This building permit is intended to allow for revisions to a previous building permit that the Inspector issued, building permit No. B1202925, and which Appellants also appealed.¹ The Developer obtained this building permit in order to build a proposed Wal-Mart at 5929 Georgia Avenue, NW in Ward 4 (proposed Wal-Mart), which is planned as a 106,244 square foot retail building located within a C-3-A Zone. Accordingly, this proposed development was subject to the District of Columbia’s Large Tract Review (“LTR”) process prior to the issuance of the building permit.

However, the requirements of LTR were not satisfied in this case. Thus, the Inspector erred in issuing the building permit because the Inspector should not have issued this permit until all of the requirements of LTR were met. LTR was inadequate for four principal reasons: (1) the proposed Wal-Mart violates the goals of the Comprehensive Plan for the site of this proposal; (2) LTR fails to address all of the goals of the Comprehensive Plan for this site; (3) the proposed Wal-Mart fails to minimize traffic impacts; and (4) the proposed Wal-Mart fails to minimize neighborhood impacts. In support of these arguments, Appellants adopt by reference the documents they submitted for their appeal of building permit No. 1202925, including their Memorandum in Support of Appeal of Building Permit No. B1202925, attached herein as Exhibit A; Appellants’ Opposition to Missouri’s and DCRA’s Motion to Dismiss, attached herein as Exhibit B; Traffic Impact Study by F. Tavani and Associates, Inc., attached herein as Exhibit C; and Potential Impact of Proposed Walmart Stores in the District of Columbia by Michael Siegel, attached herein as Exhibit D.

Conclusion

For the foregoing reasons, Appellants respectfully request that the BZA reverse the Inspector’s issuance of building permit No. B1302395.

¹ The Board of Zoning Adjustment (“BZA”) dismissed Appellants’ appeal of building permit No. B1202925 on the basis that it lacked jurisdiction to hear the appeal. Appellants’ appealed the BZA’s decision to the District of Columbia Court of Appeals, where it is currently pending.

Respectfully Submitted,



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Memorandum in Support of Appeal

The Inspector of Buildings (“Inspector”) erred by granting Missouri Avenue Development Partners, LLC (“Developer”) building permit No. B1202925. The Developer obtained this building permit in order to build a proposed Walmart at 5929 Georgia Avenue, NW in Ward 4 (“proposed Walmart”). This development is planned as a 106,244 square foot retail building. The entire building would be located within the C-3-A zone. Residents of Ward 4, including William Washington, Ginia Avery, Willie Baker Jr., Michael Wilson, Edna Dogget, and Baruti Jahi (“Residents”), have filed an appeal with the Board of Zoning Adjustment (“BZA”) opposing the proposed Walmart because the Inspector issued the building permit illegally.

This Memorandum outlines the reasons in support of the Residents’ appeal. In particular, the Inspector’s issuance of the building permit is illegal because it violates the District Elements of D.C.’s Comprehensive Plan (“Comprehensive Plan”).¹ Before outlining the bases for these violations, this Memorandum outlines the basis for BZA’s jurisdiction over this matter.

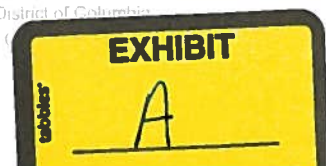
I. BZA has jurisdiction to consider this appeal.

The BZA has jurisdiction to consider whether a building permit authorizing the construction of a particular development violates the goals of the Comprehensive Plan based on its statutory authority under Title 6, Chapter 6, Subchapter 4 of the DC Code. As a preliminary matter, the BZA has jurisdiction to hear appeals concerning the issuance of a building permit. Section 6-641.07(f) of the DC Code provides:

Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any office or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter.

The Inspector’s issuance of a building permit to an applicant (i.e., a developer) is illegal “unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of this subchapter and of the

¹ The Residents may provide a supplemental Memorandum to this Memorandum (up until 14 days prior to the hearing in this appeal) outlining additional violations of the Comprehensive Plan and the large tract review, and the bases for these violations, after reviewing more documents pertaining to approval of the proposed Walmart.



regulations adopted under said sections.” § 6-641.09 of the DC Code. Among the provisions of this subchapter to which a building permit must conform is Section 6-641.02. This section requires that “Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital.” § 6-641.02 of the DC Code. Accordingly, the issuance of a building permit must conform to the regulations that are designed to implement the comprehensive plan.

Two of those regulations implicated in this case are Sections 2300.1 and 2300.2 of Chapter 10-B of DC’s Municipal Regulations. Section 2300.1 of these regulations requires that any commercial or mixed-use development which exceeds 50,000 square feet be subject to large tract review by the DC Office of Planning prior to applying, and then securing, a building permit. 10 DCMR 2300.1(a). The proposed Walmart was required to undergo this process because it is a commercial development that exceeds 50,000 square feet and is not located in a zone exempted from this process (i.e., C-3-C zone). Section 2300.2 outlines the goals of large tract review. These goals include: (a) minimizing adverse environmental, traffic and neighborhood impacts; (b) avoiding unnecessary public costs in terms of new services or facilities required of city agencies; and (c) carrying out the policies of the District Elements of the Comprehensive Plan for the National Capital. 10 DCMR 2300.2.

As discussed below, the proposed Walmart does not satisfy Section 2300.2 because it fails to carry out the policies of the District Elements of the Comprehensive plan. Because the proposed Walmart violates this regulation, the Inspector illegally issued the building permit: the Inspector should have ensured that the building permit conformed to all applicable regulations before the Developer was granted this permit.

II. The proposed Walmart violates the policies of the East of Rock Creek Park Element of the Comprehensive Plan, and the Upper Georgia Avenue Great Streets Redevelopment Plan.

The development of a Walmart at 5929 Georgia Avenue violates the goals of both the district elements of the Comprehensive Plan for this site and the Upper Georgia Avenue Great Streets Redevelopment Plan. The Comprehensive Plan includes various District Elements that apply specifically to the proposed site, including the East of Rock Creek Park Element (“East of Rock Creek Park Element”) and Economic Development Element (“Economic Development Element”). In addition to the Comprehensive Plan, the development goals of this site are informed by the Upper Georgia Avenue Great Streets Redevelopment Plan (“Upper Georgia Avenue Plan”). The proposed Walmart fails to comport to the policies of each of these plans.

First, this Walmart would violate the East of Rock Creek Park Element’s policy for new grocery stores. This policy only supports adding grocery stores “in

neighborhoods where residents currently travel long distances for food and other shopping services.” Economic Development Element at 7-19, Policy ED-2.2.6. Similarly, the Upper Georgia Avenue Plan promotes an additional grocery store only “[i]f a store is not possible further north in Zone 1.” Upper Georgia Avenue Plan at 34-35, Policy 4.2.3. However, the residents of this district are already served by nearby grocery stores that do not require them to travel long distances. In relation to the site of the proposed Walmart, there is a Safeway hardly half a mile north at 6500 Piney Branch Road, and a second Safeway 1.6 miles south at 3830 Georgia Avenue. Within a 1.5 mile radius of the proposed site is a Yes! Organic Market at 4100 Georgia Avenue; the PanAm Market at Michigan and Easter Avenues; and a Giant Supermarket at Easter Avenue and Riggs Road.

Second, this Walmart would violate the East of Rock Creek Park Element’s policy for pedestrian-oriented development in this district. This policy seeks to promote “pedestrian-oriented ‘centers’” rather than “auto-oriented ‘strips.’” East of Rock Creek Park Element at 22-9. “Much of the area continues to be underserved by basic consumer services like banks, hardware stores, and sit-down restaurants.” *Id.* Thus, the community “expressed a strong preference for neighborhood-serving, rather than regional commercial uses. Such uses should be complementary to the low scale of existing development. . . .” *Id.* The vision for this portion of Georgia Avenue is as “a walkable shopping street.” *Id.* at 22-25, Policy RCE-2.3.1.

Yet the proposed Walmart would defeat all of these goals. This type of development is not “pedestrian-oriented” or made to facilitate “a walkable shopping street,” but instead “auto-oriented” given the developer’s own admission that this Walmart is designed to “attract commuters for ‘pass-by’ trips.” Developer’s Statement of Support, <http://anc4b.info/walmartLTR.pdf>, at 1. Moreover, by definition Walmart constitutes regional (if not national) commercial uses contrary to the community’s “strong preference for neighborhood-serving uses.” East of Rock Creek Park Element at 22-9. Inclusion of this Walmart will undermine promoting the very types of businesses the community seeks, including “banks, hardware stores, and sit-down restaurants.” *Id.*

This proposed Walmart also violates the vision of the Upper Georgia Avenue Plan. Like the East of Rock Creek Park Element, this plan seeks to promote “a mix of uses that achieve the pedestrian oriented, neighborhood serving vision,” such as “basic consumer services like banks, hardware stores, and sit-down restaurants.” And specifically at the site of the proposed Walmart, this plan seeks such businesses as “a movie theater, bookstore, hardware store, child care facility, gym, and sit-down restaurants.” Upper Georgia Avenue Plan at 5.4. None of these uses are part of the proposed Wal-Mart store.²

² Further, the Developer’s statement that the Upper Georgia Avenue Plan calls the site of the proposed Walmart “the most viable opportunity in the entire study area for a large-

III. The proposed Walmart violates the economic policies for this site.

The proposed Walmart is in violation to D.C.'s economic policies for this site. The Economic Development Element of the Comprehensive Plan states that the goal of promoting neighborhood shopping means "the creation of locally-owned, non-chain establishments because of their role in creating unique shopping experiences." Economic Development Element at 7-19, Policy ED-2.2.3. It goes without saying that Walmart is as much of an opposite as possible of a locally-owned, non-chain establishment. At the same time, the East of Rock Creek Park Element of the Comprehensive Plan directs that land use decisions "Assist small and minority businesses along Kennedy Street, Georgia Avenue and other Rock Creek East commercial districts in providing neighborhood services and creating job opportunities for area residents. East of Rock Creek Park Element at 22-16, Policy RCE 1.2.6. Building a Walmart will make many of these businesses, which are already struggling, go out of business. They are simply not in a position to compete with Walmart given that Walmart can sell similar products at lower prices and hire employees at lower wages.

Nor is there any support for the Developer's assertion that Walmart will increase tax revenues and jobs for D.C. by generating increased consumers and sales in the City. The attached economic impact study by Michael Siegel corroborates this finding. With respect to sales, his study notes, for example, that in Richmond, non-chain grocery store sales fell by 19 percent following the opening of Walmart superstores in the area and total taxable sales of Richmond's chain grocery stores fell by 22 percent. Siegel Report at 5. More generally, "Inflation-adjustable taxable grocery sales have declined from 22 percent to as much as 80 percent in some Virginia host countries in the years following the opening of a new Walmart supercenter." *Id.* at 4. Regarding jobs, the Siegel Report found that after a Walmart opened in Henrico County, Virginia, total food and beverage jobs in Richmond fell by 28 percent between 1998 and 2008 and the number of grocery only (chain and non-chain) jobs in Richmond fell by 33 percent. Siegel Report at Table 1. Meanwhile, a new Walmart in the city of Chicago generated zero net gain in employment, income, sales and taxes to the City as a result of the diversion of jobs and revenue from existing businesses in the vicinity of the new Walmart. *Id.* at 7. The impact of the proposed Walmart will have a particularly devastating effect on small and


scale redevelopment in one location" is especially misleading. Developer's Statement of Support, <http://anc4b.info/walmartLTR.pdf>, at 9. In fact, this statement appears in Section 4.3.2 of the Upper Georgia Avenue Plan pertaining to the "Housing Development Potentials by Zone." Likewise, the Upper Georgia Avenue Plan also calls for "mixed used development" at the site of the proposed Walmart with "between 5-6 stories with ground floor retail, and residential above." Upper Georgia Avenue Plan at 62. The Developer's proposal, however, fails to include any housing at this site and is limited Walmart.

minority-owned businesses who serve the same customer base that the proposed Walmart intends to serve.

Conclusion

For the foregoing reasons, Appellants respectfully request that the BZA reverse the Inspector's issuance of building permit No. B1202925.

Respectfully Submitted,



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**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Appeal of Ginia Avery, et al.

Appeal No. 18460

* * * * *

Appellants' Opposition to Missouri's and DCRA's Motion to Dismiss

Appellants submit this Opposition to Missouri Avenue Development Partners', LLC ("Missouri") and the District of Columbia Department of Consumer and Regulatory Affairs' ("DCRA") Motion to Dismiss, and state the following in support thereof:

ARGUMENT

I. The BZA has jurisdiction over this matter.

Whether the Board of Zoning Adjustment ("BZA") has jurisdiction to consider the legal adequacy of Large Tract Review ("LTR") for the proposed Walmart at 5929 Georgia Avenue, NW in Ward 4 ("proposed Walmart") is a question of first impression. Neither the BZA nor the DC Court of Appeals has considered this issue. However, the most logical interpretation of the DC Code and the BZA's authority is that jurisdiction resides with the BZA to consider this appeal. The BZA has jurisdiction to hear appeals concerning the issuance of a building permit, and the issuance of a building permit is illegal unless the Inspector of Buildings determines that this permit complies with all of the zoning regulations. LTR is best understood as a zoning regulation. Therefore, the legal sufficiency of LTR is an issue that the Inspector of Buildings must determine prior to issuing a building permit, and the BZA has appellate jurisdiction over decisions by the



Inspector of Buildings. Appellants more fully discuss the rationale for the BZA's jurisdiction over this matter in their Memorandum in Support of Appeal and incorporate by reference Section I of their Memorandum. *See* Memorandum in Support of Appeal at pp. 1-2.

Nevertheless, Missouri and DCRA ("Appellees") argue that jurisdiction resides with the Zoning Commission because Appellants argue in part that the proposed Walmart violates the policies of the District Elements of the Comprehensive Plan for the National Capital as applied to this site. Appellees' reliance on *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 341 (D.C. 1988) and *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1034 (D.C. 1995) to support their argument is misplaced. These cases stand for the proposition that the Zoning Commission is the proper forum to address a conflict with a zoning regulation and the Comprehensive Plan where the appellant seeks "a zoning change." *Tenley & Cleveland Park Emergency Committee*, 550 A.2d at 341 (emphasis added). Unlike the appellants in those cases, the Appellants here do not seek a zoning change. Nor do they dispute that the zoning assigned to the site of the proposed Walmart is in conflict with the policies of the Comprehensive Plan for this site.¹

¹ Appellants mistakenly stated in their September 10, 2012 letter to the BZA that "Appellants are not challenging any zoning regulations in this appeal." Appellants meant to state that they are not challenging any zoning (i.e., the type of permitted uses on this site, such as residential or commercial development) assigned to the site of the proposed Walmart. Appellants have of course challenged the LTR for this development as a zoning regulation to which the proposed Walmart is subject. *See* Memorandum in Support of Appeal at pp. 1-2. The Appellants apologize to the BZA for any confusion this may have caused.

On the other hand, Appellants do argue that the LTR for the proposed Walmart was not legally sufficient. To support their position, Appellants argue in part that the proposed Walmart -- unlike the zoning assigned to this site -- violates the policies of the Comprehensive Plan for this site. *See* Memorandum in Support of Appeal at pp. 2-5. But Appellants do not limit their argument to these violations of the Comprehensive Plan since they also argue that LTR fails because Missouri did not adequately minimize traffic and neighborhood impacts that will result from the proposed Walmart. And rather than seeking to change the zoning assigned to this site, the only relief that the Appellants seek is that the building permit is rescinded until the Inspector of Buildings determines that the goals of LTR are met for the proposed Walmart.

The proper forum for the Appellant's grievances is the BZA.

II. The Appellants have standing to file their appeal before the BZA.

Appellants have standing to file their appeal of the building permit with the BZA because they have alleged a grievance against the Inspector of Buildings for issuing building permit B1202925. "Appeals to the Board of Adjustment may be taken by any person aggrieved . . . by any decision of the Inspector of Buildings granting or refusing a building permit." § 6-641.07(f) of the DC Code. As Missouri correctly notes, "Neither the statutes nor the implementing regulations articulate a standard for an 'aggrieved' appellant." Missouri's Motion to Dismiss at p. 4. As a result, any individual who alleges a grievance, such as the Appellants, may file an appeal with the BZA.

Still, Missouri urges the BZA to follow the rule that Appellants demonstrate "damage greater than that suffered by the general public." Appellants also meet this

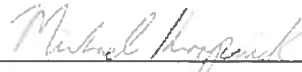
standard. In contrast to the general public, Appellants William Washington, Ginia Avery, Willie Baker, and Edna Thomas all live in Ward 4 and shop near the proposed Walmart, which will adversely affect their commuting and shopping options. Among these Appellants, William Washington is especially adversely affected because he lives within 200 feet of the proposed Walmart, thereby impacting not only his parking and commuting options, but also his preference for the Safeway a few blocks away at 6500 Piney Branch Road.

Missouri's argument that Appellants lack standing is without merit.

CONCLUSION

For the reasons stated above, Appellants respectfully request that the BZA reject Missouri's and DCRA's Motion to Dismiss.

Respectfully Submitted,



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Certificate of Service

I hereby certify that on this 16th day of October, the foregoing Opposition was hand-delivered to the following:

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1 July 2011

Harriet Tregoning
Office of Planning
1100 4th Street, SW, Suite E650
Washington, DC 20024

VIA FAX (202) 442-7638

RE: Large Tract Review No. 2011-03,
Curtis Chevrolet Site
5929 Georgia Ave, Lot 38, Parcel 101/46
FTA Job No. 211-006

Dear Ms. Tregoning:

F. Tavani and Associates, Inc. (FTA) has conducted a number of investigations relative to the proposed Wal*Mart situated on the former Curtis Chevrolet site. These investigations have included conduct of a traffic impact study, review of Applicant materials, and a review of DDOT's memorandum dated 24 June 2011. Though updated, some fundamental elements of the Large Tract application remain and appear to be very challenging to remedy. These include:

- 1) **Fundamental conflicts between Wal*Mart activity and Paul Charter School.** The proposed Wal*Mart is immediately adjacent to a charter junior high school with over 600 students. These students walk along 9th Street NW and Missouri Avenue NW several times per day during most weekdays. The proposed truck loading area along Missouri Avenue NW will result in activity which is in direct conflict with these pedestrian activities. This is a particular concern given that it appears the truck deliveries will need to be accomplished by having trucks back into the delivery driveway. The truck driver will find the reversing movement challenging alone, but when combined with Missouri Avenue traffic and young pedestrian activity, a clear safety concern is raised.
- 2) **Bus shelter impacts.** The proposed displacement of the Georgia Avenue bus shelter at Missouri Avenue will affect hundreds of mass transit patrons per day and could possibly result in disruption to pedestrian activity and pathways.
- 3) **Through lane alignment and driver expectancy.** The proposed left-turn lanes along Georgia Avenue at Peabody Street and at Missouri Avenue will be created by eliminating on street parking. This will result in a shift of through traffic along Georgia Avenue. Georgia Avenue features relatively high-volume and high-speed traffic and shifting through lanes along the corridor (to accommodate the proposed left-turn lanes) may surprise some motorists and could result in through motorists unknowingly driving through newly-

Board of Zoning Adjustment

EXHIBIT

tabular

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Harriet Tregoning
1 July 2011
Page 2 of 2

designated left-turn lanes. Nowhere else along Georgia Avenue in the vicinity of the site are exclusive left-turn lanes provided.

- 4) **Loss of on-street parking.** As mentioned earlier, the Applicant proposes the elimination of several on-street parking spaces to accommodate the proposed left-turn lanes at Peabody Street and at Missouri Avenue. The elimination of on-street parking will affect the business viability of other retailers and businesses along the Georgia Avenue corridor. In addition, the elimination of on-street parking will result in moving lanes of traffic being shifted to the former parking lane, or immediately adjacent to sidewalk. Pedestrian activity along this corridor is significant and the on-street parking provides a buffer between pedestrians and moving traffic. Nowhere else along Georgia Avenue in the vicinity of the site is on-street parking *not* provided.

As mentioned at the beginning of this letter, these fundamental shortcomings of the Application appear to be very challenging to remedy and are indicative of an inconsistency between the proposed land use and the surrounding environs which no road improvements or measure(s) will be able to address. Thank you for your time.

Very truly yours,

F. TAVANI AND ASSOCIATES, INC.



FRANK TAVANI, P.E., PTOE
Principal

DC PE #906195

Potential Impact of Proposed Walmart Stores in the District of Columbia

by:

Michael Siegel,
Public and Environmental Finance Associates,

April 25, 2011

Overview

Four new Walmart stores have recently been proposed to be located in Washington, DC. The two that are proposed to be located at the intersection of New York Avenue and Bladensburg Road NE, and at Georgia and Missouri Avenue NW are subject to the District of Columbia's large tract review (LTR) process. The other two stores, one proposed at New Jersey Avenue and 1st St. NW, the other at East Capitol and 58th St. NE, are not subject to this process.

The two proposed Walmarts subject to the District's LTR process would be "supercenter"-format stores. Supercenter stores offer a full in-store grocery in addition to a range of general merchandise items, and in-store services.

Unfortunately, there is very little in the submissions of the two LTR-stores that quantifies or assesses their likely impact on the District, their host and surrounding neighborhoods, and on the District's existing businesses. The two non-LTR Walmarts will reportedly be somewhat smaller than the two LTR-stores, but are likely to offer a similar selection of in-store grocery items in addition to other general merchandise.

Although the four proposed Walmarts have different developers, they represent an integrated strategy by Walmart to enter the District's grocery and general merchandise market. Altogether, the four stores would add about 400,000 square feet (or more) of grocery and general merchandise retail space to the District. Were their grocery departments to average the same as that of the proposed Georgia Avenue Walmart, they would include about 160,000 square feet of grocery space.

It is anticipated the four Walmarts would open within a short time span of each other, perhaps within 12 to 18 months. Their prospective opening occurs at a time when many District grocers and retailers have been under sustained pressure from loss of revenue and margin compression due to the economic downturn. Were all four stores to be approved, about half of the District's land area, primarily east-of-the-Park, would be located within the immediate market area of one or more of the proposed Walmarts.

The opening of even a single Walmart supercenter can be highly consequential for a community and its existing businesses. Yet, neither of the LTR submissions contain an analysis of their impact on



existing businesses in the District. A comprehensive assessment of the impact of the cumulative impact of the four Walmarts on the District's neighborhoods and existing business establishments has yet to be accomplished, by either Walmart, the developers of the four stores, or the District. Nor do the LTR submissions contain a market study that would identify the market shares of grocery and general merchandise items they expect to draw from the District's neighborhoods.

The two LTR-subject Walmarts individually, collectively, and cumulatively with the two other proposed Walmarts, pose serious issues for the District's neighborhood and community development policies. These are either not addressed in their official submissions, or are dealt with only superficially.

These deficiencies are of particular concern as the average impact of the four proposed Walmarts on the District could well-exceed that of one or two. Were all four stores to open, only a few areas of the District would fall outside their market areas. Many areas of the District and existing businesses would fall within the primary market area of at least one, and as many as two or three of the proposed stores.

Only the LTR for the proposed Georgia Avenue Walmart provides some limited sales and tax estimates for that location. These limited projections leave the impression that Georgia Avenue Walmart would be fully additive to the District's sales and tax collections.

The impact of each of the four proposed stores can also be expected to differ to a greater or lesser degree based on their unique factors. These include location, traffic volume on nearby streets, store size, other on-site and nearby development, and their proximity to each other and to existing grocers, retailers, and wholesalers. An assessment of the impact of these stores on the District would consider their net impact on income, jobs, wages and taxes, and upon existing District businesses, cumulatively, and individually based on their expected market shares from District neighborhoods and residents.

Nationally, and to date, Walmart appears to have opened three supercenter-format stores within the corporate limits of a highly-urbanized city (one in Chicago and two in Los Angeles). There is no known instance in the U.S. where four Walmart supercenters opened within a year or so of each other and within a 30-square mile area.

Were all four stores to open in quick succession the District would be the first urbanized U.S. city to experience a concentrated exposure of its grocery and general merchandise markets to Walmart's supercenters. The lack of precedent for this level of market saturation in such a small land area underscores the need for a thorough market- and neighborhood-based assessment of the impact of the two LTR-subject Walmarts on the District, individually, collectively, and cumulatively with the two other non LTR-subject Walmarts.

This Report attempts to initially identify and quantify some of the prospective impact of these stores on the District of Columbia. It is hampered somewhat due to the above-noted lack of precedent,

from the paucity of information in the submissions for the two LTR-subject stores, the lack of information on the two proposed stores not subject to the District's LTR process, and the lack of precedent for four Walmarts opening in such close proximity to each other in rapid succession.

Nevertheless, the proposed Walmarts, and in particular the two that are subject to the District's LTR process, will – to a greater or lesser degree – divert a sizable share of their sales, jobs, income, wages from existing District businesses.

Before turning to the issue of diversion, it is necessary to first address two related questions: 1) is there a net leakage of grocery dollars from the District to surrounding jurisdictions; and, 2) is the District under-retailed?

Is There Net Leakage of Grocery Dollars from the District?

A study entitled “When Healthy Food is Out of Reach” commissioned by D.C. Hunger Solutions (Social Compact, 2010) estimates the District loses a net of \$112 million annually of grocery purchases by District residents to neighboring jurisdictions.

The study obtained this estimate by subtracting expected food purchases by District residents from the estimated sales of the District's grocery stores. The balance is taken to represent external purchases of food for home consumption by District residents. The methodology, however, subtracts apples (food expenditures) from oranges (sales by grocery stores inclusive of food and non-food items). However, about 10 to 20 percent of grocery store sales are for non-food items.

When corrected for non-food purchases at grocery stores, the methodology would show no net leakage. Indeed, it may show a net gain. In either even, there does not appear to be a basis for the study to have concluded the District has a net leakage of food sales to other jurisdictions.

Is the District Under-Retailed?

The District does have substantially lower per capita retail sales than neighboring jurisdictions. Neighboring jurisdictions, however, have substantially higher median household incomes (MHI) than the District. The lower MHI of District households causes its per capita retail sales to be lower.

The District's lower level of per capita retail sales relative to its neighbors reflects differences in MHI. It is not reflective of under-investment in, or an insufficient supply, of retail space.

The number of retail jobs can be used as a proxy for retail sales to illustrate this point. The District has .0363 retail jobs per capita. Arlington and Alexandria, Virginia have .051 and .061 retail jobs per capita, respectively. However, it would be incorrect to infer from this that there is an insufficient amount of retail space in the District.

Arlington and Alexandria's MHI is 67 and 40 percent greater, respectively, than the District's which explains why they have more per capita retail sales than the District.

Accordingly, and at the aggregate level, there does not appear to be a significant shortfall, leakage, or gap in grocery or retail space in the District. While some District neighborhoods are under-retailed relative to others, income, density, and geography likely explain much of these differences.

As to access to grocery stores, both of the proposed Walmarts subject to the District's LTR process are located well within the market area of existing District chain and independently-owned grocery stores. As will be shown, the continued viability of some of these stores would be at risk were either of the LTR-subject stores be approved, more so were all four proposed Walmarts to open as planned.

Post-Walmart Diversion and Jobs in Richmond, Virginia

Walmart's "supercenter"-format stores have been shown to divert substantial sales from existing grocers and other retailers within their market areas (Stone, 2003)¹. Inflation-adjusted taxable grocery sales have declined from 22 percent to as much as 80 percent in some Virginia host counties in the years following the opening of a new Walmart supercenter (Siegel, 2010).

Richmond, Virginia's experience provides some insight into the exposure of a relatively compact urbanized city at the center of a large MSA to the successive opening of multiple Walmarts.

Although Richmond's population and density (2010 population of 205,000; 3,300 persons per square mile) is lower than the District's (2010 population of 600,000; 9,770 persons per square mile). Its land area is about the same as the District's (60 and 61.4 square miles, respectively).

Although the City of Richmond was not subject to near-simultaneous openings of multiple Walmarts within its corporate limits, about ten to a dozen Walmart openings and conversions have occurred within its MSA (one within its corporate limits), in addition to three Sam's Clubs, over about a twenty year period.

By the end of 1997, during which a Walmart supercenter opened in Henrico County about two miles north of Richmond's corporate limits, about a half-dozen Walmart supercenters were operating in Richmond's suburban counties. In 2000, a Walmart supercenter opened immediately on the City's west-side border with Chesterfield County. At the end of 2003, by which time there were about nine Walmarts located in the Richmond MSA, much of the City was within the primary market area of

¹Note, Stone's Mississippi study may have included conversions of existing Walmart discount-format stores to supercenters in addition to new supercenters. Accordingly, the level of diversion he observed (expressed as a change in pull factors) by Walmarts in Mississippi may under-states the level of diversion of a new supercenter (non-conversion or re-location).

two of these stores.

From 1996 to 2003, total inflation-adjusted taxable sales among Richmond's chain grocery stores were off 22 percent (Virginia Department of Taxation). Sales by non-chain grocery stores were off by 19 percent.

The impact of the Richmond-area Walmarts on the City's food and beverage sector is also reflected in this sector's employment data. These data are presented along with that of Washington, DC, in Table 1.

Table 1, Food and Beverage and Grocery Employment, Richmond, VA, and Washington, DC

Food and Beverage Jobs (NAICS 445)	1998	2000	2002	2004	2006	2008	1998 to 2008
Richmond, Virginia	2,943	2,595	2,400	2,340	2,503	2,119	(824)
Percent change		-11.8%	-7.5%	-2.5%	7.0%	-15.3%	-28.0%
Washington, DC	5,506	5,259	4,889	5,568	5,285	5,581	75
Percent change		-4.5%	-7.0%	13.9%	-5.1%	5.6%	1.4%
Grocery, excluding convenience (NAICS 44511)	1998	2000	2002	2004	2006	2008	1998 to 2008
Richmond, VA	2,477	2,305	1,582	1,784	1,946	1,669	(808)
Percent change		-6.9%	-31.4%	12.8%	9.1%	-14.2%	-32.6%
Washington, DC	3,860	3,539	3,200	3,938	3,546	3,940	80
Percent change		-8.3%	-9.6%	23.1%	-10.0%	11.1%	2.0%

Note: food and beverage (NAICS 445) jobs include grocery, convenience, specialty food, meat, fish seafood, and fruit and vegetable markets, baked and confectionary goods stores, other speciality food stores, and beer and wine stores. Between 1997 and 2008 about a dozen Walmart supercenters (some having been converted from pre-existing discount-format stores), along with as many as three Sam's Club stores, opened in the Richmond MSA.

Source: U.S. Census, County Business Patterns.

As shown in Table 1, from 1998 to 2008 total food and beverage jobs in Richmond fell by 28 percent and the number of grocery-only (chain and non-chain) jobs in Richmond fell by 33 percent. Three years following the opening of the Henrico Walmart in 1997, the number of grocery jobs in Richmond fell 7 percent. Two years after a Walmart opened just inside the City's corporate limits in 2000, the number of grocery jobs fell by 31 percent. Thereafter and through 2006, there was some recovery, only to fall back again in 2008.

The District's overall experience during this time was markedly different. Although choppy, its food

and beverage and grocery employment exhibits an overall stable trend from 1998 to 2008.

Compared to Richmond, the District has remained relatively unexposed to large supercenter-format stores. To date, there are two Walmarts located in closer-in Maryland locations (Clinton and Laurel). Two others are located on Route 1 (south) in Alexandria, Virginia. There is also a Target in Wheaton that recently added an in-store grocery department, and another Target opened in the District's Columbia Heights neighborhood in March 2008.

As shown in Table 1, the total number of food and beverage jobs in the District fluctuated somewhat during 1998 to 2008, but remained relatively unchanged overall. The number of grocery jobs was somewhat more volatile, declining initially from 1998, followed by a strong resurgence between 2002 and 2004.

Despite the year-to-year choppiness, the overall trend in food and beverage jobs in the District has been one of relative stability, while the overall trend in Richmond has been one of substantial decline.

Mid-size Independent Grocers

There are about sixteen mid-size independent neighborhood grocery stores in the District. Most are minority-owned and range in size from about 2,800 square feet to about 10,000 square feet for a total of about 105,000 square feet of space.

Among the independent grocers (non-convenience), those located closest to the proposed Walmarts, and those along common arterial routes, are most susceptible to diversion of sales.

The District's independent neighborhood grocers offer a vital service to the neighborhoods they serve. These stores provide critical non-auto dependent access to food and other household items in their market areas. Elderly, disabled and those with limited mobility, in addition to lower income households who depend upon these stores could be impacted in event of closure or curtailed hours.

The District's independent grocers enhance the 'walkability' of their neighborhoods. Relatedly, the foot-traffic they generate also helps to support other businesses in the area. Among the District's independent groceries are seven "Yes" Organic Markets throughout the District totaling 40,000 square feet.

Diversion of sales from the District's mid-size independent grocers would cause a loss of proprietor income, wages, and jobs, that could result in reduced operating hours, poorer selection, and even closure for some, should diversion be sufficiently severe.

The Impact of Walmart in Chicago (Austin), Illinois

Chicago's Austin Walmart is apparently one of only three currently located within the corporate limits of a major urbanized City.

A recent study (Davis, 2009) examined the before and after impact of an approximately 140,000 square foot free-standing Walmart "discount"-format store that opened in September 2006 in Chicago's west-side Austin neighborhood. [Note, Walmart's "discount" format stores typically offer only limited grocery items. The Chicago store was initially announced by Walmart as a "discount" store, though it may carry more grocery items than typical of discount-format stores].

Using three indicators (sales, employment, and business closures) Loyola University's Center for Urban Research and Learning found that virtually all of the sales generated by this store, as well as its approximately 300 permanent full- and part-time jobs, were diverted from existing businesses in the immediate and adjacent Chicago neighborhoods.

Accordingly, the Chicago store would have generated zero net gain in employment, income, sales, and taxes to the City.

The likely reasons for this Walmart's near-100 percent level of diversion are helpful in understanding the potential level of impact of the proposed District Walmarts.

The Chicago (Austin) store is located approximately four miles east of the Chicago/Oak Park municipal border and about five miles north of the Chicago/Cicero municipal border. It is also about four miles from the nearest interstate highway. The store is accessed primarily by often-congested local and arterial streets that traverse a neighborhood that is twice the average density of the District. Racial factors are likely to have also played a role; Chicago's Austin neighborhood is majority black, Cicero is majority Hispanic, and Oak Park is majority white.

These factors likely place an effective constraint on this store's ability to capture external sales from other incorporated municipalities.

The Austin Walmart's experience suggests that an urban Walmart's ability to capture external sales from neighboring municipalities (and therefore to limit diversion from existing businesses) to be negatively correlated with density and congestion, and the level of racial stratification.

Potential Impact on the District of Columbia.

The experience of the Walmart in Chicago's Austin neighborhood, and Richmond's experience, indicate the level of diversion by the proposed District Walmarts is likely to be less than occurred in Chicago's Austin neighborhood, and equal or greater than Richmond's experience.

However, there are a number of factors that suggest the level of diversion in the District could significantly exceed that which occurred in Richmond.

The LTR for the proposed Georgia Avenue Walmart indicates that it is expected to generate substantially higher average sales per square foot than the average Virginia Walmart. Sales for the proposed New York Avenue location are likely to be greater still. Moreover, four successive openings in a short amount of time, and the inclusion of much of the District within their primary market areas (particularly east-of-the-Park neighborhoods) would tend to increase and accelerate the level of diversion.

A 30 percent decline in jobs in the District's food and beverage sector, as occurred in Richmond, would represent a loss of 1,674 of the 5,581 jobs at existing food and beverage establishments in the District (based on 2008 data). These job losses would be distributed among the District's food and beverage businesses, although the bulk of the losses would likely be concentrated among chain and non-chain (independent) grocers, other stores selling beer and wine, and specialty food stores.

At this level of job loss some existing food and beverage establishments in the District are likely to face closure sometime after the opening of the proposed District Walmarts. Others could curtail their hours of operation, reduce the number of items they offer, or otherwise provide a lower level of service. Independent grocers who also own their stores could layoff hourly or salaried employees, with owners or family members making up the hours without additional recompense.

Although these effects will be felt throughout the District's existing food and beverage sector, closures and/or curtailed services are more likely among existing grocery stores serving areas east-of-the-Park. The primary market areas for both of the LTR-subject Walmarts are located mostly east-of-the-Park.

Most Vulnerable District Grocery Stores

The four proposed Walmarts form a large triangle defined by the Georgia Avenue, East Capital Street, and New Jersey Avenue locations with the New York Avenue store located just within the hypotenuse.

The most vulnerable existing grocery and general merchandise stores are those located within this triangle, or within up to an approximately ten minute drive from one of the four proposed Walmarts.

This would include the following grocery stores:

- Safeway at 40th St., NE,
- Safeway at Georgia and Piney Branch, NW,
- Safeway at Hechinger Mall, NE,
- Safeway at Rhode Island Center, NE,
- Giant at the Rhode Island Metro, NE; and,
- Giant at 8th St. NW

The two non-LTR Walmarts cause the Safeways at 40th St. NE, at Georgia and at Piney Branch, and one or the other of the Safeway or Giant groceries on Rhode Island Avenue NE to be significantly more vulnerable to closure.

Both of the LTR-subject Walmarts are at somewhat interior locations in the District along heavily-trafficked roads commuter arterials. The Georgia Avenue location is about five blocks south of the Safeway at Georgia Avenue and Piney Branch Road. A recent parking lot survey of this store (April 2011) indicates that about 32 percent of its traffic (inclusive of foot, bicycle, and vehicle) is from Maryland. Existing Maryland shoppers diverted to the Georgia Avenue (or another in-District) Walmart do not represent a net increase in sales to the District. They do, however, represent a net loss to existing businesses.

Walmart's generate a significant amount of their sales from tax-exempt purchasers that include resellers, restaurateurs, and public and private institutions. Much of this demand is currently met by existing wholesalers and distributors at the Florida Avenue market and elsewhere in the vicinity of the New York Avenue site.

Accordingly, the New York Avenue site is also likely to divert sales from the Florida Avenue wholesale market (and other wholesalers located in the New York Avenue and Bladensburg Road corridors) as some resellers, restaurants, and institutional buyers can be expected to shift their purchases to the nearby Walmart.

Wholesalers and distributors work on very low margins. A loss of only a few percent of their sales could be critical to their businesses.

Conclusion

Based on the foregoing, there is every reason to anticipate that both Walmarts subject to the District's LTR process will cause substantial diversion of sales from existing businesses in their immediate and nearby neighborhoods, and from elsewhere in the District. Assuming the two non-LTR stores open, they would greatly increase the chance of closure of two or three of the District's existing chain grocery stores.

Richmond Virginia's experience demonstrates that losses to the District's food and beverage sector can be expected to be substantial.

The two LTR-subject Walmart's impact on the District's general merchandisers cannot be reliably estimated at this time. However, the experience of Chicago's Austin store is not auspicious and suggests a significant potential for diversion from existing District establishments

The most vulnerable District establishments are existing grocers located near and within the primary market areas of the proposed Walmarts, and along the major arterials that serve them. Impacts on

the District's wholesalers could also occur, and would be concentrated primarily among those at the Florida Avenue market and elsewhere along the New York Avenue and Bladensburg Road corridors.

The impact on general merchandisers will tend to be more dispersed throughout the District as these establishments tend, on average, to be smaller and more dispersed than the District's grocers.²

²Walmart's experience in the U.S. over the last two decades reflects its likely having become the largest domestic distribution-platform for imported retail goods. Changes in China (notably, incipient inflation), exchange rates, and the U.S. and world economy, could cause Walmart's future performance to differ from that of the past two decades.

About the Author

Mr. Michael Siegel is an independent consultant with over 32 years of experience. He specializes in public and environmental finance, regional and project impact analysis. His clients consist of state and local governments, federal agencies, not-for-profits, and citizen groups.

Mr. Siegel previously prepared an analysis of the District's non-public special education service providers for its (then) State Education Office, and later provided independent analysis and testimony related to the need, structure, level, and feasibility for a comprehensive School Modernization program for the District of Columbia's public schools.

Recent projects include an assessment of the impact of a proposed Walmart in Orange County, Virginia, two casinos proposed to be located near Gettysburg, Pennsylvania, a study of the proposed reversion in corporate status of the City of Bedford on Bedford County, Virginia, and an analysis of tax-base and revenue enhancement opportunities for Clarke County, Virginia.

Mr. Siegel is a past Assistant Director of the Government Finance Officer's Association, was the Director of the Office of Commercial Revitalization and the Main Street Programs for the State of Maryland. Earlier, worked on evaluating the impact of large-scale military facilities on local governments, and was the lead energy impact specialist for the Colorado West Area Council of Governments.