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## Old Bridge ShopRite continues battle against Wal-Mart

Local store owner asks state Supreme Court to hear case

BY CHRIS ZAWISTOWSKI

Staff Writer

The Old Bridge ShopRite store is taking its fight against the construction of a new Super Wal-Mart on Route 18 to the state's highest court.

The Old Bridge ShopRite at Route 9 and Fairway Lane, owned by Shakoor Supermarkets, is asking the New Jersey State Supreme Court to hear its case against the township Planning Board and applicant The Golf Center Inc., charging that the board acted improperly and overstepped its authority in approving The Golf Center's plan to construct a 150,000-square-foot Super Wal-Mart at Route 18 and Marlboro Road.

The appeal challenges a June ruling by the state Superior Court's Appellate Division, which affirmed a trial court's decision to uphold the Planning Board's approval of the applicant's preliminary and final major site plans. Foxborough Village Homeowners' Association Inc. is also a plaintiff on the appeal. In the Appellate Division case, Shakoor Supermarkets argued that public notice for The Golf Center's site plan application, which included the construction of a "a main retail store of 150,000 [square feet]," was legally insufficient because it failed to identify the store as Wal-Mart.

The lawsuit contends that the Planning Board granted approval without a hearing open to the public and without sufficient information.

Shakoor Supermarkets charged that the board's actions were "erroneous" and "an improper delegation of authority, arbitrary, capricious and unreasonable and deprived the public of due process."

Shakoor Supermarkets also claimed that the board did not have the authority to grant approval for the Super Wal-Mart because with an adjacent 7,200-square-foot garden center, the building violated the township redevelopment plan's standard that "no single-user commercial building may exceed 150,000 square feet." As such, the lawsuit charges that the Super Wal-Mart application required either a variance from the township Zoning Board of Adjustment or a Township Council-approved amendment to the redevelopment plan.

But the Appellate Court ruled against these claims.

"After carefully reviewing the record, briefs and arguments of counsel, we are satisfied that none of these arguments has merit," wrote Appellate Court Judge Marianne Espinosa in her opinion.

Espinosa wrote that the public notice requirement was satisfied because the creation of a main retail store of 150,000 square feet adequately informed the average citizen that a major big-box store was proposed for the site and alerted them to possible concerns like traffic.

Public hearing requirements were also fulfilled, according to the court. Espinosa said Shakoor Supermarkets argued that The Golf Center was allowed to submit a plan that was voted on without cross-examination. However, the judge said that Shakoor Supermarkets did in fact have the opportunity to cross-examine all witnesses.

Espinosa also wrote that because the proposed garden center would have no roof and is not defined as a building under the New Jersey Municipal Land Use Law or Old Bridge zoning ordinances, it does not count toward the size of the building. Because the Super Wal-Mart then would not exceed 150,000 square feet, no variance or amendment to the redevelopment plan is required, Espinosa wrote.

Wal-Mart's transactional attorney, Donald Pepe, said the lawsuit is preventing Wal-Mart from commencing construction on the new Super Wal-Mart facility, as development approvals will not be final until the issue is resolved by the highest court.

Pepe said this is not the first time ShopRite has fought Wal-Mart over store construction.

Because of New Jersey's Municipal Land Use Law, Pepe said, ShopRite has a constitutional right to challenge the Planning Board's decision. Wal-Mart cannot sue ShopRite on the basis of preventing construction, though, because it would be considered a strategic lawsuit against public participation, or a "SLAPP suit," which case law makes unconstitutional in New Jersey.

Pepe said ShopRite's lawsuit does not concern the actual use of the land.

"They are concerned about competition. Period," he said.

Shakoor Supermarkets' attorney, Ronald S. Gasiorowski, did not return a call seeking comment.