

Solving and Re-solving the Big Box Dilemma in Vermont Communities

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I. UNDERSTANDING THE DILEMMA

Vermont has a rich history of natural and working landscapes surrounding compact settlements. This traditional land use pattern has helped define the qualities that make Vermont an identifiable destination for millions of visitors every year; and, for 600,000 residents, it has made it a desirable place to call home. For over forty years, the Vermont Natural Resources Council (VNRC) has been protecting and restoring Vermont's working landscape and natural resources through research, education, collaboration, and advocacy. VNRC is the voice for the environment in the Statehouse, helping to usher in such landmark environmental legislation as the billboard bill, the bottle bill, Act 250, Act 200, the Vermont Water Quality Standards, the septic rules, and the stormwater legislation of 2003.

A strong tradition of working landscapes, active community life, and strong environmental advocacy help keep Vermont's landscapes relatively intact throughout most of the state. In 1993, the National Trust for Historic Preservation named the entire state of Vermont an "Endangered Historic Place."¹ Vermont's unique historic integrity, as well as the threat of Vermont's first Wal-Mart, both contributed to this designation. The designation galvanized public attention on the issue of sprawl and the resulting threat to Vermont's economy and environment.

At the time, there were six proposed sites for Wal-Mart stores in Vermont: Bennington, Rutland, Berlin, Williston, St. Johnsbury, and St. Albans. The Bennington, Rutland, and Berlin stores were permitted and built in approximately 50,000 to 76,000 square-foot plots, in pre-existing vacant department stores, and in or near existing centers. Wal-Mart subsequently abandoned its plan to build in St. Johnsbury. The VNRC successfully challenged—all the way to the Vermont Supreme Court—a proposal for a 100,000 square-foot store in a cornfield two miles north of the town of St. Albans.²

Both the Vermont Supreme Court and the Vermont Environmental Board found that the proposed 100,000 square-foot Wal-Mart in a St.

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1. National Trust for Historic Preservation, *11 Most Endangered Places* (1993), available at <http://www.nationaltrust.org/11Most/list.asp?i=94>.

2. *See In re Wal-Mart Stores, Inc.*, 167 Vt. 75 (1997).

Albans town cornfield would constitute “scattered development.”³ Moreover, the location of the proposed project was not an “existing settlement” as defined by Act 250, Vermont’s Land Use and Development Law.⁴ The board further found that the project would have fiscal and economic impacts on surrounding communities, and that Wal-Mart would need to evaluate the region’s “financial capacity” before any construction could proceed.⁵ Wal-Mart chose not to do the requested capacity study and has not conducted one since. The cornfield north of town continues to grow corn, for now.

Wal-Mart’s sixth proposal concerned a 115,000 square-foot store at Tafts Corner in Williston. This area is now home not only to Wal-Mart and Sam’s Club, but to over a dozen other big box projects on property that was once more than sixty acres of prime agricultural land. Today, the Williston Wal-Mart stands as a poster child for the wrong kind of development in Vermont.

What are the hallmarks of the “wrong kind” of development in Vermont? In a nutshell, it boils down to five issues that effect Vermont’s environment, economy, and communities: Scale, location, predatory pricing, low wages, and transience.

II. SOLVING THE DILEMMA

Let us take a look at how—with encouragement from The Rutland Downtown Partnership, the VNRC, and the Preservation Trust of Vermont (PTV)—Wal-Mart addressed the issues of scale and location in the Rutland case.

Killington, Pico, Mendon Mountain, Salt Ash, and Shrewsbury Peak stand as a lush natural backdrop in contrast to downtown Rutland. Rutland’s distinctive architecture acts as a monument to the rise and fall of the economic engines that have provided livelihood for generations in this community. This story is told by the old glove factory that now houses the food coop, the revitalized Paramount Theater, the railroad infrastructure of the marble industry’s hay-day, and Depot Park at the entrance to the 1996 Wal-Mart store.

Typical Wal-Mart development is characterized by countrysides strewn with new and abandoned big box buildings and their endless parking lots.

3. *St. Albans Group and Wal-Mart Stores, Inc.*, # 6F0471-EB, Findings of Fact, Conclusions of Law, and Order at 42 (Dec. 23, 1994), *aff’d* In re Wal-Mart Stores, Inc., 167 Vt. 75 (1997).

4. *St. Albans Group and Wal-Mart Stores, Inc.*, # 6F0471-EB, Findings of Fact, Conclusions of Law, and Order at 41 (Dec. 23, 1994).

5. *Id.* at 32.

Further, retail analysts estimate that for every Wal-Mart superstore opening, two supermarkets will close. According to Wal-Mart spokeswoman, Mia Masten, even though the Rutland “shop” is a thriving business, it is rumored that Wal-Mart wants to close it to pave the way for a typical superstore development on the outskirts of town.⁶

Not only is the current Wal-Mart thriving in Rutland, but according to the several adjacent business owners, its very presence is helping the rest of the downtown shops attract customers. How could it be that the nation’s largest big box developer, known for developments of 200,000 square-foot “superstores” in sprawling locations across the land, has a 76,000 square-foot “adaptive reuse” store in the heart of downtown Rutland?

The answer: in 1996, Rutland took control and did it their way. They insisted that Wal-Mart meet two critical criteria for the community—down-size and downtown. This was a great first step for Vermont in handling the first wave of Wal-Mart stores entering the state. After all, Vermont had too much to lose as a state that sells its beautiful landscape and pristine environment. As a *New York Times* editorial states: “More than a quarter of the state’s income now comes from tourism, and nobody’s going to mail home a postcard of a Wal-Mart.”⁷

That was a decade ago. Fast forward to 2005 and notice that Wal-Mart is back. Vermont is once again poised to respond. This time there is more at stake. Not only are our communities and natural resources at risk, but we’ve realized that, to borrow a phrase from Bill Clinton, “it’s the economy, stupid!”⁸ We’ve learned over the past decade that Vermonters should consider three additional criteria for a successful Wal-Mart location. They are: buy local, pay livable wages, and stay put. That gives us what we like to refer to as Wal-Mart’s “five easy pieces:”

1. Down-Size: Vermont’s small scale landscapes and economies demand smaller stores, not big boxes.
2. Downtown: Our historic town centers need a critical mass of business to thrive.
3. Buy Local: Let’s keep as much revenue in Vermont as possible.
4. Pay Livable Wages: Vermonters deserve a livable wage.

6. Stephen Kiernan, Vermont’s Identity at Risk?, BURL. FREE PRESS, May 25, 2004, at 1A (“The Rutland store is very, very profitable,” Masten said, “but we get the complaint that it is tight for people, that it’s hard to move around . . . Our customers are telling us they want a larger store”).

7. *An Endangered State*, N.Y. TIMES, May 26, 2004, at § A, Col. 1, Editorial Desk.

8. Many people remember the phrase made famous by James Carville: “It’s the economy, stupid.” Carville, a brilliant political strategist, hung it on a sign in Bill Clinton’s Little Rock campaign headquarters.

5. Stay Put: Don't use the downtown store as a stepping stone to a sprawl location.

The question before us is this: Can the country's largest employer of cheap labor (the average Wal-Mart sales clerk earns \$8.00 per hour) and the buyer and seller of all things Chinese⁹ actually bring prosperity to Vermont's downtowns? The answer is maybe—if Wal-Mart is willing to be the good neighbor it purports to be in small towns throughout the country.

Let us take a look at workers' salaries. According to the state of Vermont Joint Fiscal Office, a livable wage for a single person is \$13.49 per hour with 73% of health benefits covered.¹⁰ As the average Wal-Mart employee earns \$8.00 per hour, employers who wish to compete with Wal-Mart will be forced to lower wages, thus threatening the quality of life of many Vermont workers.¹¹ Let us level the playing field! Wal-Mart or any retailer should guarantee Vermonters that they will pay a livable wage.

Furthermore, keeping dollars in Vermont is critical. "Buying local" should be a goal for all Vermonters. If Wal-Mart can sell Vermont's Cabot Cheese across the nation, it could probably sell it here in Vermont, along with a myriad of other Vermont products, including maple sugar products and furniture produced with wood from our own forests.

There is also a growing body of research from states such as California, Georgia, and Tennessee that demonstrates how Wal-Mart places a disproportionate burden on state welfare programs like Medicaid.¹² Because of Wal-Mart's low wages, many Wal-Mart workers either can't afford Wal-Mart's health insurance or are underinsured because of the store's poor health insurance. Vermont may want to look at Montana's proposal, now in the State Senate, to tax the gross receipts of stores with more than \$20 million in sales. The bill's sponsor, Sen. Ken Toole, says Montana residents are tired of subsidizing big box stores whose low prices and high profits are dependent on paying workers low wages. Toole states, "When you don't pay workers, they get public assistance. Guess who pays

9. Sarah Schafer, *A Welcome to Wal-Mart*, NEWSWEEK INT'L, Dec. 2004, available at www.msnbc.msn.com/id/6700787/site/newsweek/ (stating that "Wal-Mart buys so many Chinese-made products that if it were a country, it would be China's sixth largest export market (after Germany) and its eighth largest trade partner.").

10. State of Vermont Joint Fiscal Office, *Basic Needs Budgets and the Minimum Wage* (Jan. 15, 2005), at <http://www.leg.state.vt.us/jfo/reports/2005%20Basic%20Needs%20Budgets.pdf>.

11. Anthony D. Weiner, *Wal-Mart: The Anatomy of a Bad Neighbor—Workers, Business, and Society Suffer When Wal-Mart Comes to Town* (Dec. 16, 2004), available at <http://www.house.gov/weinerreport37.htm>.

12. Arindrajit Dube, Ph.D. & Ken Jacobs, *Hidden Cost of Wal-Mart Jobs: Use of Safety Net Programs by Wal-Mart Workers in California* (Aug. 2, 2004), at <http://laborcenter.berkeley.edu/lowwage/walmart.pdf>.

for that?”¹³ The proposal would impose a 1% tax on stores with more than \$20 million in sales, and would rise to 2% on stores with more than \$40 million in sales. It would generate about \$20 million a year to state coffers.¹⁴

If Wal-Mart is to build more stores in Vermont, we hope that Wal-Mart—and every town in Vermont it approaches—will consider the five easy pieces carefully. After all, we’ve only got one Vermont.

III. RE-SOLVING THE DILEMMA

Ten years after the first wave of Wal-Mart proposals, Wal-Mart is back. This time the giant retailer is hoping to build larger stores in Bennington, Rutland, Middlebury, Morrisville, Derby, St. Johnsbury, and yes, St. Albans again. It is déjà vu for those of us that worked so hard to keep them out the first time. The National Trust for Historic preservation has *again* in 2004 named Vermont an “Endangered Historic Place.”¹⁵ Wal-Mart says the Rutland and Bennington stores are not big enough. This time the proposed stores are bigger. This time the proposed stores in St. Albans, Derby, and Rutland are outside of town.

In order to keep Wal-Mart’s focus on better locations and smaller sizes, we must stop proposals for sprawl developments. In order to uphold the past decisions of the Environmental Board in 1994 and the Vermont Supreme Court in 1997, VNRC is again participating as an opposing party in the latest St. Albans’ Wal-Mart proposal. The new 161,000 square-foot project will have even greater water quality, sprawl, and economic impacts on the community than its proposed 100,000 square-foot predecessor. Moreover, the project will have a significant impact on traffic congestion at Interstate 89, Exit 20 at a time when the state is implementing guidelines for development at interstate interchanges.

VNRC will intervene in the permitting process in three ways: (1) it will participate in the Town of St. Albans Development Review Board (DRB) hearings, (2) the Act 250 land use review process, and (3) the Vermont Agency of Natural Resources’ (ANR) stormwater permit process.

13. Against the Wall, *Montana to Levy Tax on Wal-Mart?* (March 28, 2005), available at http://againstthewal.com/#Montana_to_levy_tax_on_Wal-Mart (Mar. 28, 2005) (citing, http://www.freerepublic.com/http://money.cnn.com/2005/02/16/news/fortune500/walmart_tax.reut/index.htm?cnn=yes (this cite is no longer available)).

14. *Id.*

15. Press Release, Vermont Forum on Sprawl, VFOS Releases Big Box Retail Store Poll and Statement on National Trust Designation of Vermont as an Endangered Historic Place (May 24, 2004), available at <http://www.vtsprawl.org/News/pressrelease/VFOS-Poll%2BStatement-WalMart.pdf>.

A 161,000 square-foot Wal-Mart at this site would require two stormwater permits: A state operational permit and a National Pollution Discharge (NPDES) permit.

VNRC is also providing legal and technical assistance to a grassroots organization, Northwest Citizens for Responsible Growth (NCRG), who is interested in appealing any local permit that is given by the Town of St. Albans.¹⁶ Wal-Mart filed an application for a conditional use permit with the Town of St. Albans DRB on May 18, 2004. The first two hearings were on June 10 and September 23. Hearings have continued through the winter and resumed on March 24. As of now, fifty-six local property owners and voters have submitted a petition to the DRB, setting the stage for a possible appeal of the permit, which could come this spring. For example, the proposed Wal-Mart would severely impact at least one property owner, who lives on an organic vegetable farm adjacent to the proposed project.

The Act 250 criteria also offer a means to challenge this project. The very criteria VNRC used to stop the Wal-Mart proposal in the 1990's are still applicable, and may be used to win this case. Our position is that the proposed project will create scattered development, traffic congestion, drain the economic vitality out of the downtown, harm the character of the area, and create an adverse impact on the scenic views of the countryside from the interstate.

VNRC believes it could successfully challenge a petition for a stormwater permit for the proposed project on this undeveloped site since the site is in an existing impaired watershed. Vermont law dictates that development in an impaired watershed requires "no net increase of pollutants" to the waterway.¹⁷ This will be an extremely high bar for Wal-Mart to reach.

VNRC is also working to expose the larger problem of permitting polluted stormwater discharges into waters that do not meet basic water quality standards. The Vermont ANR has been sorely understaffed and under-funded for years, and has yet to adopt a uniform policy for the issuance of stormwater permits. VNRC has been working for the past two years in a collaborative process with legislators, business members, local decision makers, and others to create workable and enforceable stormwater procedures. In June of 2004, the Legislature responded by passing stormwater legislation that should help us in this campaign and beyond.¹⁸

16. See Lee J. Kahrs, *Big Box Cap Takes a Few Raps*, ST. ALBANS MESSENGER, Jul. 7, 2004, available at <http://www.samesessenger.com/70704.html>.

17. *Re: CCCH Stormwater Discharge Permits*, Nos. WQ-02-11 and WQ-03-05, -06, and -07; Findings of Fact, Conclusions of Law, and Order at 32-33 (Oct. 4, 2004).

18. 10 VT. STAT. ANN. § 1264 (2004).

After the stormwater permit submission, there will be a 10-day comment period in which VNRC will request a public hearing. We will work to inform the community about the issues and will encourage citizens to participate. After the hearing, the ANR will respond to comments and issue a ruling.

Once the ruling is issued, parties will have 30 days to appeal. The appeal will go to the state Environmental Court, where it could take over a year to resolve. Based on Wal-Mart's track record nationally, if it loses this case, it will appeal the Environmental Court decision to the Vermont Supreme Court. If VNRC loses, we will also appeal. That case will likely take an additional year.

The Act 250 permitting process will probably run on a similar timeline if there is an appeal to the Vermont Supreme Court. If we assume that the permit application is filed this spring, District Environmental Commission hearings will be held later this year and could extend into the fall or winter. After a decision is issued, one or more parties will appeal to the Vermont Environmental Court. That appeal could take several months to a year to run its course. Recent legislation will allow VNRC to appeal any Act 250 permit directly to the Vermont Supreme Court.¹⁹ Thus, whichever party loses, they will likely take the case to the Vermont Supreme Court. That will take another year, delaying any resolution until late 2007.

In any case, Wal-Mart will have a difficult road ahead if it wishes to develop big box stores in the State of Vermont. As we work to show Wal-Mart where they should not build, we will also work with them to find an alternate site—closer to or in the downtown, and at a smaller scale.

This process of working with Wal-Mart has already begun. VNRC and PTV have met with the local developer and have discussed with Wal-Mart two alternative locations for the St. Albans store—an existing nearby shopping center with a vacant Ames department store, as well as an existing location in downtown. The PTV has prepared site and building plans for a downsized store at the latter site. PTV has also discussed these options with St. Albans officials. VNRC has sent a letter to Wal-Mart asking them to work with us on a downtown location. To date, Wal-Mart has not been willing to change its plans. VNRC has at least attempted to open the door for further dialogue.

VNRC and PTV will continue to offer constructive and workable options to Wal-Mart, its local developer, owners of nearby sites, and local officials. The dynamic may change as the permit process progresses. As Wal-Mart sees that it has serious opposition (or in the words of the Wal-

19. 10 VT. STAT. ANN. §8505 (2004).

Mart CEO Lee Scott, it is being “nibbled to death by guppies”), it may be more willing to work with VNRC and other concerned citizens to talk about downsizing in other locations.²⁰

IV. ORGANIZING THE COMMUNITY

It can be difficult to know what to do when Wal-Mart comes knocking on your community’s front door, but you don’t have to be an expert to make a big impact. Preemptive measures are usually most effective, but there are also many options if Wal-Mart has already begun to explore in your town.

1) Attend your town’s planning and select board meetings, before Wal-Mart comes to your community, and urge them to adopt a cap on the size of retail development, as Bennington and St. Albans have done and as Middlebury is considering. Call your town clerk for the date of the next meeting. In Vermont, if a citizen circulates a petition on an issue and collects signatures of 5% of the town’s eligible voters, the town must put the issue up for a town vote. Also, support the statewide effort to establish commercial caps in the Vermont Legislature.

2) Get help from organizations such as the Vermont Natural Resources Council, the Preservation Trust of Vermont, or the Vermont Forum on Sprawl to find out what they can do to help. In St. Albans, for example, VNRC contacted our members and others in the area to help form the group Northwest Citizens for Responsible Growth. This group is fighting the proposed Wal-Mart in their community. They now meet regularly, and VNRC is providing them with outreach, legal and technical expertise.

3) Start talking to your friends and neighbors. As more and more Vermonters learn about Wal-Mart’s devastating impacts, communities can galvanize in opposition and protect their local economy and environment. Facts about Wal-Mart’s effects on local economies, jobs, and the environment can be found at www.VermontWalMartWatch.org.

4) Call or write to your legislators. They want to hear from you! Find out the name and contact information for your legislator on VNRC’s website—www.vnrc.org. The website also provides an overview of the legislative process and tips on how to write a letter to or lobby elected officials. With enough citizen support, Vermont could pass a statewide cap on the size of retail development.

5) Write a letter to the editor of your local paper. Letters to the editor can be a very effective way to reach a wide audience for free.

20. Greg Levine, *Scott: Wal-Mart CEO Slams “Ridiculous” Critics in NYC Media Blitz* (Jan. 13, 2005), available at <http://www.forbes.com/facesinthenews/2005/01/13/0113autofacescan02.html>.

Again, tips for writing letters are available on VNRC's website.

6) Do your homework. Good retail space sits empty in many areas in Vermont. In Morrisville, community members are working with the Lamoille Economic Development Corporation, the Lamoille County Planning Commission, and others to find a suitably-sized retailer to fill the vacancy left by a downtown Ames store. Contact your town officials about becoming a part of the process in your community.

7) Think outside the "big box." What alternatives does your community have to battle the allure of a one-stop-shopping experience? Communities in other states are forming cooperatives where members contribute money and co-own a store that sells a variety of goods, from socks and jeans to toys and shovels. The money stays local, and the store acts as a draw for additional community businesses. Talk to your friends, family, and community members about forming a cooperative in your town. VNRC is now researching cooperative efforts from around the country.

8) Get started. Organizing a group in your community takes time and money. Many small, local groups have received funding from the New England Grassroots Environmental Fund. Go to www.grassrootsfund.org for more information. Aside from getting your friends and neighbors to chip in, visit your local businesses and ask for help.