

# Coping With Superstores

by Constance E. Beaumont

As companies like Wal-Mart, Home Depot, Meijers and B.J.'s march across the country building bigger and bigger stores, local planning commissioners wonder how they can protect their communities from the homogenizing effects of these behemoths. While welcoming the consumer and economic benefits associated with these "big box" retailers, many communities lament the problems they bring: sprawl, traffic congestion, displacement of locally owned small businesses, even changes in a town's way of life.

Can planning commissioners negotiate with the new superstores so that communities get more than a plain box surrounded by acres of asphalt? Can communities say "no" altogether to superstores? Are there steps planning boards can take now to strengthen their bargaining position vis-à-vis today's retail giants?

The answers to these questions are *yes, yes and yes*. Below are some specific actions planning commissioners can take to ensure that their community — not some out-of-state corporation — calls the shots when it comes to new growth and development.

The first and most important step is to recognize that communities *can* prevent the sprawl and commercial glut associated with

superstores. This type of development is *not* inevitable. Moreover, it interferes with important public goals, such as conserving limited resources and protecting community assets — a rejuvenated downtown, for example. It also sets the stage for wasteful, duplicative public expenditures. This then makes it harder to pay for important human services.

The second step is to recognize that many local plans and zoning ordinances actually invite sprawl and retail glut and therefore need revision. Planning laws commonly promote these problems by:

- allowing huge stores in inappropriate locations, such as prime farmland or in areas not served by adequate transportation systems (that's *systems*, not just roads);
- mandating parking, building setback, and other features that make it impractical for customers to reach stores except by car;
- prohibiting the intermingling of homes and stores, even when stores are small, pedestrian-oriented, well-designed structures that serve neighborhood rather than regional needs; and
- permitting more retail space than the local economy can absorb.

If your existing laws encourage sprawl, revise them — unless you want to be at the mercy of outside development forces.

 London, Ontario, p. 19. But since it can take months to revise local planning laws, your local governing body may want to enact interim development controls in the meantime.  Skaneateles, N.Y., p. 15.

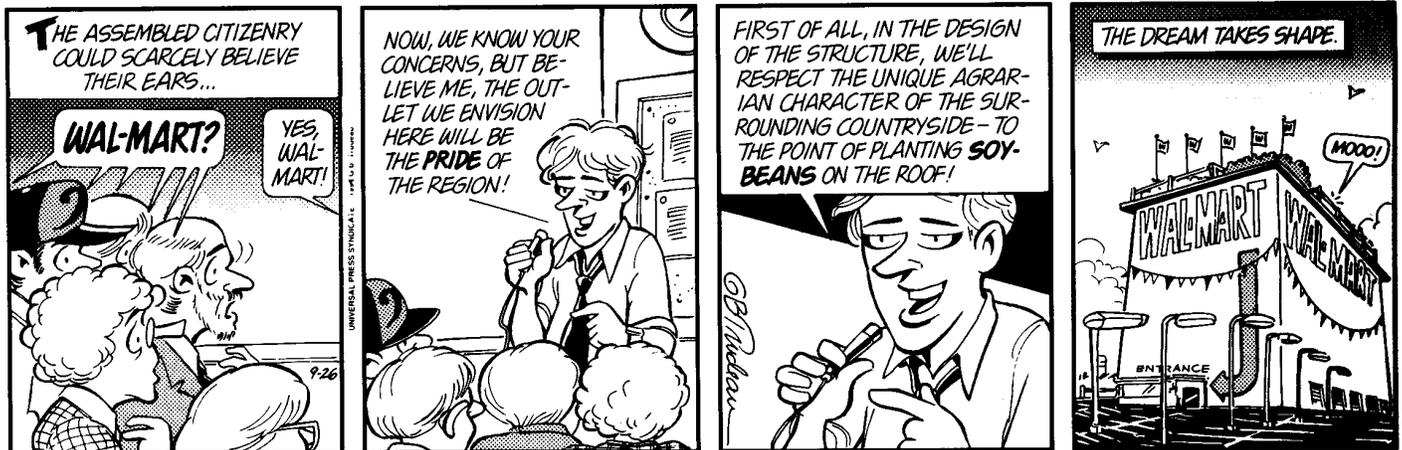
If a developer has already proposed to build a superstore in your community, you may need to review the proposal under your existing rules. Even so, you may still be able to bring about improvements in the project — or reject it altogether if the project fails to meet zoning requirements or lacks an adequate infrastructure — e.g., roads, sewer and water.

If the developer needs a rezoning, remember that the burden of proof is on him, not the community, to justify the rezoning. Unless there are compelling reasons to rezone the land in question — e.g., the surrounding land is already developed commercially — the community is usually well within its legal rights to "just say no." This is especially true if the proposed development violates the comprehensive plan.

If the land slated for a superstore is already zoned for large-scale commercial development, the developer may have "as-of-right" zoning. This means the developer can build if he meets the zoning code. However, any project as big as a superstore is likely to need a special exception or some

## Doonesbury

BY GARRY TRUDEAU





## Skaneateles, N.Y. Enacts Moratorium on Superstores

Skaneateles is a small town of about 8,000 people in the Finger Lakes region of New York. It has managed to concentrate its commercial activity in the village center and, in that respect, differs from the many towns that have allowed nondescript sprawl to pop up anywhere. But with a large developer's recent proposal to build a 150,000-square-foot shopping center, a project nearly four times bigger than any of the town's existing stores, Skaneateles saw its cohesive retail center as threatened.

To make sure the permanent community, rather than transient development pressures, retains control over its future growth, the town fathers decided in 1993 to revise Skaneateles' comprehensive plan and zoning ordinance. The new plan would put a lid of 45,000 square feet on the allowable size of shopping centers. Centers between 15,000 and 45,000 square feet would be subject to special design review by the town planning board.

While the town council is *expected* to approve these new rules, it hasn't done so yet. Since writing and enacting the new plan and zoning ordinance will take many months, the town, in December 1994, enacted a moratorium on all large-scale developments. As the moratorium law states:

*As a beautiful and historic town abutting one of the cleanest lakes in New York State, Skaneateles faces significant development ... pressures. It is reasonably anticipated that, with preparation of a comprehensive plan and ... zoning law ... underway, a flood of applications for new development could likely be received from*

*applicants hoping to ease in under the wire before revised zoning is enacted ... . Recognizing that the completion of these efforts and compliance with necessary legal requirements and procedures is ... time consuming ..., the Town Board finds that ... unless reasonable measures are taken during an interim period ... any significant variations in the areas ... where changes are contemplated in the density or type of development ... may destroy or materially damage the work of this revision process... .*

*For a period of 6 months ... the Planning Board ... shall not accept, process, review or grant approval of any subdivision plats ... containing more than four lots ... regardless of the fact that such plats had been submitted to the Planning Board prior to the effective date of this local law.*

The moratorium exempts development projects that have already received preliminary approvals or that do not involve major changes to the town's character. It also says the town may grant variances if the moratorium would "deprive [a property] owner of all reasonable use of [his property]" or cause "unusual hardship."

Most states provide either explicit or implicit authority for interim development control measures such as moratoriums, provided they:

- advance the public health, safety and welfare;
- have a reasonable time limit;
- are enacted in good faith — e.g., to prevent irreparable damage to a town working diligently on a new comprehensive plan and zoning ordinance; and
- include some provision for addressing bona fide economic hardship cases.

However, any town considering a moratorium should obtain good legal counsel, as state laws vary.

additional approval: a zoning variance; a permit to build in a sensitive area, such as a steep slope, wetland, flood plain, historic or archaeological site. The developer's need to obtain any one of these additional approvals can give the local planning board more time to evaluate the development's impacts.

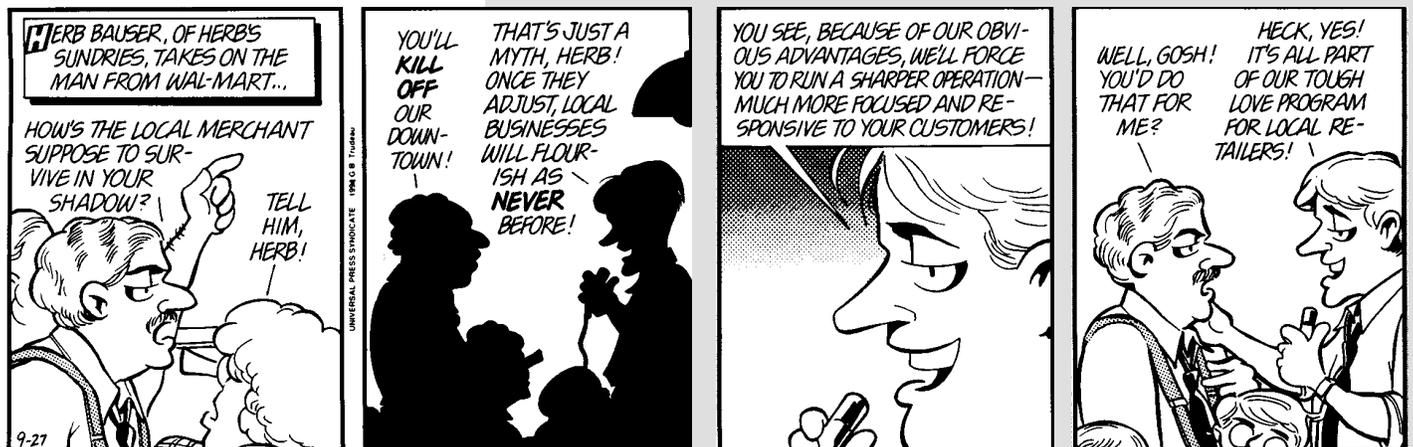
To be sure, planning commissions must meet deadlines contained in local ordinances for reviewing pending proposals. But they should not feel unduly rushed. Extensions may be available through the ordinance.

Whether your town favors or opposes superstores, there is no doubt that such large developments will have a permanent, irrevocable impact on your community. Find the time necessary to make sure a project's various effects — environmental, traffic, economic and social — are thoroughly evaluated and well understood. *Economic Impact Study, p.18.*

Some planning boards have commissioned independent studies and asked the developer to pay for them. Depending on local circumstances, this may or may not be appropriate. If you decide to commission a study, be sure to select a competent consultant, someone who understands all the ramifications of this type of development.

If for some reason your town cannot or

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does not want to commission an independent analysis, make sure that certain key questions get adequately addressed during public hearings:

- How much traffic will the superstore generate? (It's not uncommon for a single superstore to generate as many as 10,000 new car trips a day.)

- How much will it cost to build and maintain new roads and water and sewer lines needed by the superstore? Who will pay? If the superstore displaces existing businesses and jobs while placing a heavier demand on police, traffic and other municipal services, what will be the net, long-term effect on the community's tax base?

- How do the existing jobs provided by local businesses compare in terms of wages and health benefits to the jobs promised by the superstore?

- Who is the developer's anchor tenant? The developer may argue that he is not free to disclose the tenant's identity, but remember: different retailers generate different traffic and sales volumes. You need to know what these are in order to assess the project's impact.

If your local governing body has decided the town should have the superstore but would like certain changes in the store's design and appearance, it is entirely appropriate to suggest such changes. If your ordinance calls for special design review of large projects, you may be able to require desired changes. If not, you can still ask the developer and retailer to make certain design improvements. National retail discounters



When a superstore closes its doors—often due to the commercial glut resulting from overbuilding—this is what a community can be left with.

are notorious for insisting on rigid development formulas. But if communities collectively roll over and *don't even bother to ask* for better designed projects, they're unlikely to get them.

You may be able to appeal to a company's corporate self-image. Get a copy of their annual report and see what it tells the public. Wal-Mart's 1993 annual report states: "As serious as environmental challenges are becoming — pollution, global warming, overpopulation, waste of resources and others — the real hurdle is in the mistaken collective belief that we simply can't do anything about them ... so all of us are working harder to understand the environmental issues ... and to do the right things in all of our stores across America."

Planning commissioners can point out the inconsistency between such statements and a company's insistence on building "sprawl-marts" that are accessible only by automobile, a major contributor to air and water pollution. Use these public corporate statements to press developers and retail giants to build projects that are community, as well as environmentally, friendly.

Besides these techniques for persuasion,

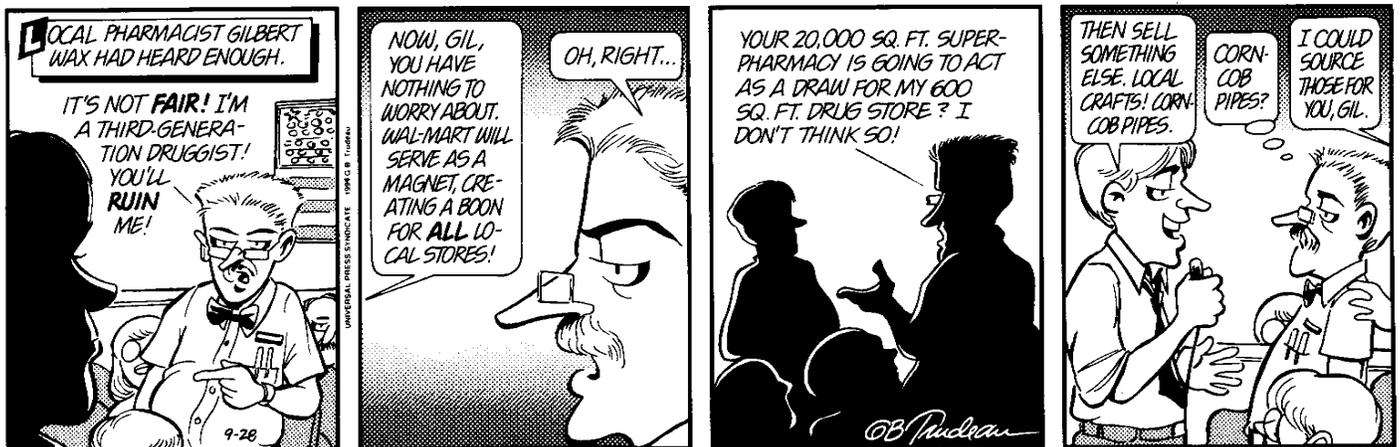
negotiation, and information gathering, there are specific zoning tools planning commissioners may want to explore:

**Lids on "big boxes":** In October 1994, Westford, Massachusetts enacted a ban on the construction of stores larger than 60,000 square feet. Stores between 30,000 and 60,000 square feet are allowed, but must obtain a special permit from the planning board. Westford's ban will

remain in effect until December 1995, by which time the town hopes to complete and enact a comprehensive master plan governing future retail development. One year earlier, Greenfield, Massachusetts enacted a cap of 40,000 square feet on the size of stores.

**Local business retention zones:** As big chains displace locally owned retailers with long-term roots in the community, there is growing interest in laws that protect local businesses. Greenwich, Connecticut's zoning ordinance permits the creation of "Local Business Retention Zones," defined as zones that "do not depend on areas substantially larger than the neighborhood districts they are designed to serve and do not attract a significant part of their clientele from beyond the surrounding neighborhood."

**Bans on "formula" development:** Look-alike fast food restaurants typically accompany superstores and create more sprawl in their own right. To protect its unique character, Solvang, California, recently enacted an ordinance that bans "formula restaurants" in the town's "tourist commercial" zone. Other communities, including Carmel, California, have placed restrictions on franchise restaurants.



*Design guidelines:* Cambridge, Massachusetts enacted special design guidelines requiring new commercial development to include a mixture of uses — e.g., retail, housing, office and restaurant — thereby reducing the need for car trips. The guidelines require walkways linking buildings to adjacent neighborhoods, yet another step to reduce automobile dependence. As a result of these and other guidelines, Cambridge succeeded in persuading a major big box retailer — the Lechmere Company — to build a multi-level store with an attractive brick and glass facade and no surface parking. Half of the store's customers arrive by foot or transit because the developer provided sensible pedestrian amenities and transit connections.

*Plans that support downtowns:* Including good, strong language in a local comprehensive plan can help a city defend zoning actions in court, as Lawrence, Kansas, discovered in 1991 when both federal and state courts upheld the city's denial of a cornfield rezoning for a sprawling mall on the ground that such development would violate the plan. The plan said: "It shall be the general policy to emphasize and lend support to the Central Business District as the primary regional center and to analyze closely any proposal for the extension of regional, community, strip or spot commercial development in light of potential negative impact on the CBD area." The U.S. Court of Appeals held that "...retaining the vitality of the downtown area was a legitimate interest of the [Lawrence] city commission. Declining to rezone property in a manner that would threaten the vitality of the downtown retail area is rationally related to that purpose."

*Jacobs, Visconsi & Jacobs v. City of Lawrence, 927 F.2d 1111 (1991).*

In considering any of the above techniques, planning commissioners should, of course, consult with their legal counsel (and other appropriate legal experts) to make sure all relevant laws are complied with. It is also critically important to treat property owners and citizens fairly and courteously throughout the planning process.

### SUMMING UP:

There is growing evidence that our sprawling land-use patterns and the automobile dependence promoted by such patterns are exacerbating a host of social problems. They are making it difficult for people who can't drive, such as the elderly, young children, and the poor, to interact socially or to get to jobs. They are contributing to the financial stresses of low- and even middle-income households, whose transportation budgets now rival their housing budgets, according to the Bureau of Labor Statistics. They are fostering a degree of social anonymity that makes it harder for residents of a community to get to know one another. Worst of all, they are stifling the development of civic life and community spirit — two prerequisites to solving this country's formidable social problems.

Planning commissions need to examine their land use policies to see whether they are encouraging the kind of development the community really wants. Should superstores be encouraged, or even allowed? If allowed, should the community, through its land use laws, exercise some control over where they are located and how they are designed? The choice is yours. ♦

Constance E. Beaumont has served since 1989 as the National Trust for Historic Preservation's Director for State & Local Policy. She is the author of the recently published book, "How Superstore Sprawl Can Harm Communities and What Citizens Can Do About It" (1994).



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### Resources:



*How Superstore Sprawl Can Harm Communities*, by Constance Beaumont, is available by calling the National Trust for Historic Preservation at: 212-673-4255 (it costs \$16 including postage). Helpful guidance can be also found in four publications: *Rural By Design* by Randall Arendt; *Vision for a New American Dream* by Anton C. Nelessen; *Saving Face: How Corporate Franchise Design Can Respect Community Identity* by Ronald Lee Fleming; and *Saving Place* by Philip B. Herr. The first three are available from the American Planning Association Bookstore, 312-955-9100; the last one, from the National Trust's Northeast Office, 617-523-0885.

For additional information on legal issues concerning superstores, see "How to Cope With — Or Without — 'Big Box' Retailers" by Alan C. Weinstein in the July-August 1994 issue of *Zoning and Planning Law Report*, published by Clark Boardman Callaghan, 212-929-7500.

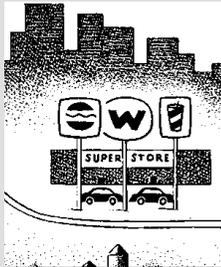


## Editor's Notes to Coping with Superstores



### Economic Impact Study

An excellent, in-depth analysis of the economic impacts of a proposed Wal-Mart store was recently prepared by Thomas Muller & Elizabeth Humstone (for the Vermont Natural Resources Council). The study looked at the impact the store would have on downtown St. Albans, Vermont, and on Franklin County. Copies of the report, *Economic, Fiscal, and Land Use Impacts of Proposed Wal-Mart Store on Franklin County Communities*, are available for \$6.50 from: VNRC, 9 Bailey Ave., Montpelier, VT 05602; 802-223-2328. Also of interest is a related video, *Back Against the Wal*, narrated by commentator Ron Powers, dealing with the effects of this kind of development on small, rural communities. The video is also available from VNRC (for \$10.00).



Vermont's Environmental Board, which reviews major development projects under the state's land use law (Act 250) this past December denied Wal-Mart permission to build outside of downtown St. Albans. The Board noted that "on an overall basis the public costs of the proposed project are projected to outweigh the public benefits... the ratio is projected to be approximately three dollars of public cost for each dollar of public benefit." For more information on this decision, contact the Environmental Board at: 802-828-3309.



### A Look Back ... A Look Ahead

The impact of superstores discussed in Constance Beaumont's article is only the latest chapter in the story of how retailing has been changing over the years — and how this change has affected our communities.

Superstores have their roots in the chain store system that took hold when the Great Atlantic & Pacific Tea Company (A&P) was founded in New York City in 1859. Within 20 years, A&P had opened 100 stores. A&P was soon followed by other food stores, as well as by

Frank Woolworth's 5-and-10 cent store chain, and George J. Whelan's United Cigar Store empire.

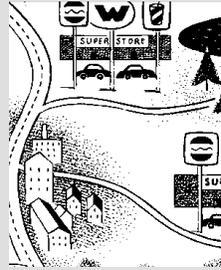
Chain store growth accelerated after World War I. This, in turn, led to the first organized opposition to chain stores by members of the National Association of Retail Grocers and other independent retailers, as well as wholesalers who were being bypassed by the chains. The independents argued that the chains were engaged in predatory price-cutting, aimed at driving them out of business. The battle against the "chain store menace" was on.

The anti-chain strategy centered on enacting state chain store taxes. By 1929 (the year in which chain stores' share of total retail sales nationwide reached 20 percent) a number of states had enacted, or were considering, such taxes. North Carolina, for example, set a flat-tax rate of \$50 per store on each store in excess of one. Indiana adopted a graduated tax, with higher per store taxes as the number of chain stores increased. The U.S. Supreme Court, in 1931, upheld the constitutionality of these taxes. *State Board v. Jackson*, 283 U.S. 527.

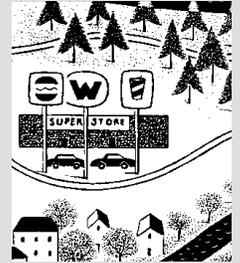
Ironically, not long after the Supreme Court's ruling, the anti-chain movement began to ebb. The chains successfully fought back with large-scale advertising campaigns promoting chains' benefits to consumers. Consumers seemed to agree, as chain store growth continued. Interestingly, the chains sought and gained the support of two key constituencies: farmers and labor — farmers, by stressing that chains relieved the problem of commodity gluts; labor, by entering into collective bargaining agreements with key AFL unions.

In the late 1950s, chain stores entered another period of expansion that continues today. In fact, more than 95 percent of today's chains started in the last three decades.

Looking ahead, most experts foresee continued growth for chain stores (now referred to as "multiunits"). As Stanley Hollander & William Keep note in their article, "Mass Mer-



chandising / Traditional Retailing": "Multiunit market share has expanded over the years ... such businesses now account for half or close to half of all retail sales. ... There are several factors that suggest continuation of multiunit market share growth during the foreseeable future. Technological improvements facilitate the type of centralized management that characterizes these organizations. The economies of scale that result from increasing store count and the ability to divide tasks between store operations and central merchandising put them in very powerful positions vis-a-vis both their customers and their suppliers." From *The Future of U.S. Retailing: An Agenda for the 21st Century*, edited by Robert A. Peterson (Quorum Books 1992)



The boom in catalog & TV shopping, and the future growth of interactive electronic shopping, will also have profound impacts on retailing, and, in turn, on the physical shape of our communities. For a good summary of the current state and future prospects of "teleshopping" and "cybermalls" see "Will the Information Superhighway be the Death of Retailing," in the April 18, 1994 issue of *Fortune*.



### Views of the Landscape:

"Today's economics and the growth of franchise business has, for all practical purposes, run individual operations off the main drag ... Thus what we see everywhere tends to be the same. The pseudo-vernacular of McDonalds, Exxon, Long John Silver, Midas Muffler or Piggly Wiggly appear everywhere. And each of their products are exactly alike and reliable — we can depend on that. So it follows that architecturally they should be identifiable as what they are. That is precisely what an icon is: easily identifiable, about itself and bearing a direct resemblance to something familiar."

From: "Architectural Icons: The Best Surprise is No Surprise," by Dennis Alan Mann, in *Icons of America*, edited by Ray Browne & Marshall Fishwick (Popular Press 1978).

"The sudden arrival of the chains produced particularly dramatic results in smaller communities. A Pennsylvania

town of 12,000 I knew in the late 1960s had perhaps two or three franchised outlets. Commercial activity focused on a prosperous main street where most businesses were locally owned. Visiting the area ten years later, I was shocked to see the economic transformation. Where fields and homes had stood, franchised outlets now lined the highways leading to town. Downtown stores that had once flourished had closed or moved to the three malls that had sprouted in outlying areas.

*From: Roadside Empires, by Stan Luxenberg (Viking Penguin 1985).*



## London, Ontario, Plans for Big Box Retailers

In an effort to develop a planning policy for “big box” retail outlets (i.e., superstores), the City of London’s Planning Division has researched the locational needs and impacts of this form of retailing. The proposed policy includes locating big box retailers within existing and planned commercial centers, instead of within quasi-retail/industrial areas. This would have the advantage of both utilizing existing public infrastructure and ensuring a “level playing field” between big box retailers and traditional retail development (by precluding the use of cheaper industrial land). The proposed policy also calls for designating “commercial policy areas” within the City having area-specific design guidelines and special policies to better address unusual mixes of commercial uses, including big box retailers.



According to John Fleming of the Planning Division, “the policy approach recognizes that big box retailers are part of the retail market’s continuing evolution, and seeks to give them an opportunity to come into the City, but in a way that is consistent with the City’s goals of encouraging compact, coordinated development within commercial nodes and associated corridors.”

For a copy of London’s policy framework report, contact John Fleming, c/o Dept. of Planning & Development, City Hall, 300 Dufferin Ave., London, Ontario N6A 4L9; 519-661-5343.