

**MINUTES  
CARBONDALE BOARD OF TRUSTEES  
REGULAR MEETING  
OCTOBER 10, 2017**

**STUDENT OF THE MONTH**

Students from Carbondale Community School and Ross Montessori were in attendance to receive the "Student of the Month" award. The following students were awarded a Certificate of Achievement from Mayor Dan Richardson:

Sophie Genung  
Bristol Ditlow

Yahjairi Castillon

**CALL TO ORDER:**

Mayor Dan Richardson called the Board of Trustees Regular Meeting to order on October 10, 2017, at 6:06 p.m. in the Town Hall meeting room.

**ROLL CALL:**

The following members were present for roll call:

Mayor  
Trustees

Dan Richardson  
Heather Henry  
Ben Bohmfalk  
Marty Silverstein  
Erica Sparhawk  
Frosty Merriott  
Luis Yllanes

Staff Present:

Town Manager  
Town Clerk  
Town Attorney  
Asst. Town Attorney  
Finance Director  
Planning Director  
Police Chief

Jay Harrington  
Cathy Derby  
Mark Hamilton  
Taurin Udall  
Renaë Gustine  
Janet Buck  
Gene Schilling

**CONSENT AGENDA**

- Accounts Payable totaling \$267,901.22
- BOT 9/19/17 Work Session Minutes
- BOT 9/26/17 Regular Meeting Minutes

- ACME Retail Marijuana Store License Renewal Application
- Liquor License Renewal Application – Mings
- Liquor License Renewal Application – Phat Thai
- Liquor License Renewal Application – Silo
- Art Space Feasibility Study
- Letter of Support for RFTA TIGER Grant Application
- Letter of Support for City of Glenwood Springs TIGER Grant Application
- US Green Building Council Sponsorship

Trustee Bohmfalk questioned the funding for the Art Space Feasibility Study. He thought the Town wasn't selected for the affordable housing project. Jay explained that even though we weren't selected DOLA awarded the Town a \$25,000 administrative grant; the Town is required to match the grant and Carbondale Arts is contributing \$5,000. The difference is the Town will not receive Boettcher funding. We will have access to all of the other same funding streams. The Board asked if the match was budgeted – it was.

Trustee Bohmfalk made a motion to approve the Consent Agenda. Trustee Silverstein seconded the motion and it passed with:

*7 yes votes: Bohmfalk, Silverstein, Sparhawk, Richardson, Henry, Merriott, Yllanes*

#### **PERSONS PRESENT NOT ON THE AGENDA**

Lynn Kirchner, Main Street, gave an update on Carbondale Homeless Assistance (CHA). CHA continues to provide the homeless with showers and bus passes. They also have provided funding for medical emergencies. She noted that the price of an annual recreation pass is \$328. She said any help that the Town may provide would be greatly appreciated.

#### **TRUSTEE COMMENTS**

Trustee Silverstein announced that the Humpty Dumpty sculpture won the Art-Around-Town Best in Show.

Trustee Yllanes attended the Energy Advisory Board. There was an interesting presentation on property taxes.

Trustee Bohmfalk attended the Bike/Pedestrian/Trails Commission meeting. They have identified priority projects which will be provided to the Trustees. They are focusing on small projects. They would also like to work with CDOT to create a pedestrian crossing by Ross Montessori School.

Trustee Merriott asked that a variable sign be placed in a strategic location and it should have language encouraging people to slow down from dusk to dawn due to the presence of wildlife.

Mayor Richardson thanked the First Friday and Potato Day volunteers.

Mayor Richardson attended the Communities That Care Orientation. They discussed health initiatives, substance abuse, mental health and holistic solutions.

### **ATTORNEY'S REPORT**

The attorney did not have a report.

### **SPECIAL EVENT LIQUOR LICENSE – KDNK HALLOWEEN PARTY**

KDNK has applied for a Special Event Liquor License for a Halloween party to be held at the Third Street Center. All fees have been paid, and the Police Department has reported no problems with the applicant or the premises.

Trustee Sparhawk made a motion to approve KDNK's Special Event Liquor License. Trustee Yllanes seconded the motion and it passed with:

*7 yes votes: Sparhawk, Richardson, Yllanes, Silverstein, Merriott, Bohmfalk, Henry*

### **PUBLIC HEARING – ORDINANCE NO. 16, SERIES OF 2017 – MAIN STREET MARKETPLACE REZONING**

**Applicant: Crystal River Marketplace, LLC**

**Location: NW Corner Highway 133 and Main Street**

Bob Schultz (planner) and Briston Peterson (developer) were present at the meeting.

Janet explained that the site is a vacant 6.4 acre parcel located at the northwest corner of Highway 133 and Main Street. It is generally located along west Main Street, behind the 7-11 store.

The request is to rezone the property from the Planned Community Commercial zone district to the Mixed-Use zone district. The proposal is for a mixed use development with commercial and residential components.

The property shown on the conceptual plan is Lot 1 of the Carbondale Marketplace Subdivision which was approved by the Board last year as part of the City Market development. The subdivision plat has not been recorded but the lot lines and rights-of-way shown on the conceptual plan follow that plat.

The UDC only requires a conceptual plan with a rezoning application. The Board should take this opportunity to offer feedback on the site plan that the applicant can take into consideration when preparing future Site Plan Review submittals.

The property is designated as "New Urban" in the Comprehensive Plan. This designation allows for a flexible mix of commercial uses and residential uses in a pedestrian-friendly environment. Providing an interesting and walkable environment through building design and streetscape standards is an important competent in this zone district.

The Planned Community Commercial Zone District as an obsolete zone district. No land may be rezoned to this district and property owners are encouraged to rezone land from this zone district.

The Planning Commission reviewed this at its August 24, 2017 meeting and unanimously recommended approval of the application.

While Janet supports the rezoning, she noted that the proposed development is more residential than commercial. It is important for the Town to ensure that the commercial properties are preserved for future revenue.

On the other hand, there is a need for rental housing in Town. This development would provide a good mix of rental housing units near the shopping areas along the highway and the Downtown while providing some commercial square footage. In addition, residential development along Main Street creates more of a buffer for the residential neighborhoods to the south. If this is approved, it is important that the properties north of this site along Highway 133 include more commercial development.

Janet recommend approval of the rezoning application with the findings and conditions listed in the staff report.

Mayor Richardson asked Bob Schultz and Briston Peterson for their comments.

Bob stated that the project can stand alone if City Market is not built. They would like to construct a mix of two (2) and three (3) story townhome style buildings to create a separation from City Market. The design includes a green space in the center and several pedestrian trails.

Discussion ensued and the following points were made:

- The Board prefers townhomes over apartment buildings.
- Briston would like the number of parking spaces reduced through private regulation.
- Buildings should be energy efficient and possibly have a day care center.
- The Board likes the brownstone look, and they like the garden level units.
- The green space is a good size.

- The Board likes the pedestrian connections.

Mayor Richardson opened the meeting to public comment. There was no one present who wished to address the Board so Mayor Richardson closed the public hearing.

Trustee Henry made a motion to approve Ordinance No. 16, Series of 2017, with the following conditions and findings:

**Conditions:**

1. All other representations of the Applicant in written submittals to the Town or in public hearings concerning this project shall also be binding as conditions of approval.
2. The Applicant shall also pay and reimburse the town for all other applicable professional and staff fees pursuant to the Carbondale Municipal Code.

**Findings:**

1. The rezoning will promote the public health, safety, and general welfare.
2. The amendment is consistent with the Comprehensive Plan as the area is designated New Urban which envisions a flexible mix of retail, restaurants, service commercial and multistory mixed-use buildings with buildings being the focal point of the site by locating them close to the street. This development would provide a good mix of rental housing units near the shopping areas along the highway and the Downtown while providing some commercial square footage.
3. The amendment is consistent with the stated purpose of the proposed zoning district, specifically, the rezoning will provide a compact, mixed-use development pattern that provide people with the opportunity to live, work, recreate, and shop in a pedestrian-friendly environment. There would be multimodal access to and from Downtown. This would provide mixed-use development with direct connections from housing to commercial and employment areas.
4. The rezoning will not result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated.
5. The rezoning will not result in material adverse impacts to other property adjacent to or in the vicinity of the subject property.
6. Facilities and services (including roads and transportation, water, gas, electricity, police and fire protection, and sewage and waste disposal, as applicable) are

7. available to serve the subject property while maintaining adequate levels of service to existing development.

Trustee Sparhawk seconded the motion and it passed with:

*7 yes votes: Yllanes, Richardson, Silverstein, Sparhawk, Henry, Bohmfalk, Merriott*

**ORDINANCE NO. 17, SERIES OF 2017 – 1<sup>st</sup> BANK RESUBDIVISION OF LOT 5 AND EXTENSION OF RECORDATION PLAT**

Mayor Richardson stated that his employer will be doing work for 1<sup>st</sup> Bank. He recused himself and left the meeting.

Janet explained that staff received a letter from 1<sup>st</sup> Bank requesting an extension of the subdivision plat recordation to May 28, 2018. The request is due to the City Market extension of the Carbondale Marketplace Subdivision deadline of February 28, 2018.

Janet noted that staff is supportive of the extension as this development was approved contingent upon recordation of the Carbondale Marketplace Subdivision plat.

Trustee Henry requested a condition be added requiring the engineering cost estimates to be updated.

Trustee Henry made a motion approving Ordinance No. 17, Series of 2017, with the added condition that the engineering cost estimates will be updated. Trustee Silverstein seconded the motion and it passed with:

*6 yes votes: Henry, Yllanes, Sparhawk, Merriott, Silverstein, Bohmfalk*

Mayor Richardson returned to the meeting.

**PUBLIC HEARING – CONSIDERATION OF REVOCATION OF SPECIAL USE PERMIT – RETAIL AND MEDICAL MARIJUANA INFUSED PRODUCT FACILITIES**

**Applicant: Laughing Dog, LLC**

**Location: 500 Buggy Circle, LL#3, 4UL#2 and #3**

Trustee Merriott stated he received a public hearing notice because he owns a property located within 300 feet of Laughing Dog. He recused himself and left the meeting.

Mark Hamilton and Taurin Udall, Town Legal Counsel, Angela Roff, Town Prosecutor, and Steve Garcia, owner of Laughing Dog, were present at the hearing.

Janet affirmed that she met all public hearing noticing requirements as set forth in the Municipal Code.

Angela gave an opening statement. She stated that staff is recommending that Laughing Dog's Special Use Permit be revoked because of numerous odor complaints dating back to June, 2016. After staff responded to several complaints the odor has still not been remedied. Condition #3 of the Special Use Permit requires the mitigation of odor.

Angela called witness David Zamansky, owner of Novus Glass. David said that Laughing Dog has been in business for one and a half years. The odors started within one – two months. In the beginning he only complained to Steve. They could not find where the smell was coming from. After five months of odor he started complaining to the Town. He only smells the odor approximately 30% of the time. The smell affects his customers who have complained that the smell resonated in to their cars. Some of his customers won't sit in the building. No one has said that the odor has made them ill. He hopes something can be done about the odor. He does not want Steve to lose his business.

Steve Garcia asked David how many times have you come over and it didn't smell? David responded 5 or 6 times.

Angela called witness John Plano. John explained that when he receives a marijuana odor complaint he goes to all of the facilities in that vicinity to make certain where the odor is coming from. Angela asked John if he has received odor complaints concerning Laughing Dog. John responded yes and he documented each odor complaint. John noted that Steve has been very responsive to his requests for odor mitigation (i.e. negative pressure, etc.). John stated that the majority of the odor complaints have come from David at Novus Glass.

Steve asked John how many times have you come over and it didn't smell? John responded a few. Steve asked if all of the complaints came from Novus Glass. John responded yes.

Angela called witness Jay Harrington. Jay stated that on August 21<sup>st</sup> he received an odor complaint from Novus Glass. John Plano and John Leybourne were not in the office so Jay, Gene Schilling and Gretchen Stock-Bell went to Laughing Dog. Jay said a very strong odor was emanating from the building. They went into the building and discovered an unfiltered air conditioner was running, blowing the odor out of the building. The odor was very strong. They also visited the other three marijuana facilities in the vicinity – they did not smell any marijuana at any of the other facilities.

Angela called witness Gene Schilling. Gene verified Jay's statement. He went to Laughing Dog on August 21<sup>st</sup> after Jay received an odor complaint. He does not have a good sense of smell however, the odor was strong, and easy to smell. They discerned that the smell was coming from the air conditioner inside the facility.

Steve called Scott Duryea. Scott is responsible for the property management of the building. Scott said they took every precaution to prevent odor. They sealed the building and performed two blower tests. In his experience, over the last ten years there is one person in the building who complains about every other business. Scott stated that the building had been losing money but now has excellent tenants. He said the business owner complains about other things besides odor – mainly parking. He fears that if Laughing Dog's Special Use Permit is revoked they will lose money.

Steve called Brett Snead. Brett has lived in an apartment above Novus Glass for the last eight years. It's been a year since he has detected any marijuana odor. Angela asked Brett who he works for. He responded Rudd Construction. Angela asked if Rudd Construction owns the building – they do.

Mayor Richardson opened the meeting to public comment.

Charles Tyler Jones works for Steve. He works late and on more than one occasion he said he smells Brett's food cooking more than he smells marijuana.

Josh Antes, stated he is a mechanical contractor and he was responsible for installing the HVAC system. He installed SP Manufacturing's HVAC as well. The two systems are identical. He conducted a test and verified that the building is under negative pressure. They also have a charcoal filtration system that works well.

Emily Messeu, stated that she has worked at the facility since it opened. She said that Steve does whatever is asked of him. If there are new laws he makes sure that they are in compliance.

Matthew Glackin, said he is trying to make a living and he wants to learn more about the compliance side of the business.

Mayor Richardson closed the public hearing. Discussion ensued.

Trustee Yllanes noted that there was a six month gap where the Town received no complaints.

Angela gave a closing statement. She stated that the Town has received multiple odor complaints; the business is not compliant with the Special Use Permit. The permit specifies that odors are forbidden and there are odors. Steve is not doing everything he can to mitigate the odor. He received multiple visits from staff before he tried to fix the system. He is not replacing the filters in a timely manner to avoid odor. The Town should not let operations that are producing marijuana products create smells – there should be no exceptions. She asked the Board to consider revoking Laughing Dog's Special Use Permit. They have been given numerous chances and it's apparent that there is an odor problem.



Steve stated that John Plano and John Leybourne came to his building on September 27<sup>th</sup> after receiving an odor complaint. On September 28<sup>th</sup> the mechanical contractor came to the building and offered new solutions to remedy the odor (he read the letter from the contractor).

The Board agreed that they did not want to revoke Laughing Dog's Special Use Permit at this time. Rather, they directed Angela to meet with Steve and reach consensus on additional permit conditions (to curtail odor) including, but not limited to:

- Require regularly scheduled interior building inspections
- Comply with the HVAC improvements specified in Burggraaf Associates' letter
- Enter in to a maintenance contract for filter changes
- Improve cooling system (air conditioner) in the building
- Oven should be addressed

Trustee Bohmfalk made a motion to continue the hearing to November 14, 2017. Trustee Silverstein seconded the motion and it passed with:

*6 yes votes: Henry, Silverstein, Yllanes, Sparhawk, Bohmfalk, Richardson*

### **2018 BUDGET OVERVIEW**

The Trustees accepted the 2018 Draft Budget.

### **ADJOURNMENT**

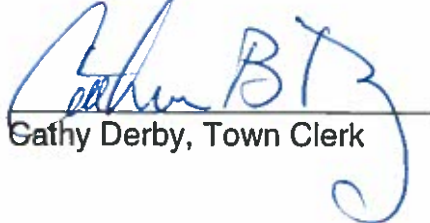
The October 10, 2017, regular meeting adjourned at 10:05 p.m. The next regularly scheduled meeting will be held on October 24, 2017, at 6:00 p.m.

APPROVED AND ACCEPTED



Dan Richardson, Mayor

ATTEST:



Cathy Derby, Town Clerk

