

**MINUTES
CARBONDALE BOARD OF TRUSTEES
REGULAR MEETING
NOVEMBER 10, 2020
VIRTUAL MEETING VIA ZOOM**

Mayor Dan Richardson called the Board of Trustees virtual Regular Meeting to order on November 10, 2020, at 6:00 p.m.

ROLL CALL:

The following members were present for roll call:

Mayor	Dan Richardson
Trustees	Marty Silverstein
	Ben Bohmfalk
	Lani Kitching
	Heather Henry
	Luis Yllanes
	Erica Sparhawk

Staff Present:

Town Manager	Jay Harrington
Town Clerk	Cathy Derby
Finance Director	Renae Gustine
Town Attorney	Mark Hamilton
Planning Director	Janet Buck

STUDENT OF THE MONTH

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

Damian Glover	Genevieve Vickers
Andy McMichael	Angie Aguilar
Josie Jolgren	Jesus (Sammy) Gonzalez Rea

CONSENT AGENDA

- Accounts Payable totaling \$353,818.17
- BOT 10-20-20 Work Session Minutes
- BOT 10-27-2020 Regular Meeting Minutes
- Liquor License Renewal – Village Smithy
- Liquor License Renewal – Main Street Wines & Spirits
- Liquor License Renewal – 450 Teppanyaki
- Retail Marijuana Store Renewal – CO Product Services

- Retail Marijuana Cultivation Renewal – CO Product Services
- Retail Marijuana Manufactured Infused Products Renewal – CO Product Services
- Medical Marijuana Manufactured Infused Products Renewal – CO Product Services
- Ruedi Water & Power Authority – Intergovernmental Agreement
- Public Landscape Acceptance – 1st Bank
- Recommendation for Appointment – Environmental Board
- Employee Handbook and Policies Update Concerning Vacation Time Accruals

Trustee Bohmfalk asked how the change of vacation time accrual will impact the budget? Renae responded the Town has been experiencing a rush of employees trying to use their vacation at years end. Jay stated that carrying 240 hours is pretty standard. We will be doing a buy down this year only because employees didn't take vacations during COVID-19. The new policy mainly impacts longer term employees who accrue more time. Financially we won't need to pay overtime to employees who cover while other are on vacation.

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

7 yes votes: Richardson, Henry, Yllanes, Silverstein, Bohmfalk, Kitching, Sparhawk

PERSONS PRESENT NOT ON THE AGENDA

There was no one present who wished to address the Board.

TRUSTEE COMMENTS

Trustee Silverstein stated that tomorrow is Veteran's Day and he thanked all of those who have served in the military for the sacrifices they have made to help keep us free and safe. Trustee Silverstein stated that Bill Lamont has passed away. Bill was a valuable asset to our community. He was a great planner, and athlete. He was on the Garfield County Library Board, and the Affordable Housing Board to name a few. He was an advocate for Carbondale, and he tried to attend all of the RFHS sporting events.

Trustee Kitching stated that Alpine Legal Services is holding a virtual meeting on senior legal matters of Friday. They will discuss wills and trusts, estate planning, scams targeting older adults, etc.

Trustee Sparhawk said she sent the Board an excellent article on the cost and impact of climate change which Colorado Communities for Climate Action (CC4CA) helped write. CC4CA's Legislative Committee is writing a bill that would create a funding pool for climate mitigation.

Trustee Bohmfalk told the Board that he attended the Bike/Pedestrians/Trails Commission meeting. They reviewed the community input on the 8th Street corridor project. It appears that there is not a lot of public support to do anything ambitious. Most people want to leave the parking as is on 8th Street. Trustee Bohmfalk stated that Mayor Richardson asked him to inquire about obtaining a student trustee. Trustee Bohmfalk doesn't think it makes sense right now; the kids are in too many Zoom meetings as it is. He would like to wait until things normalize.

Mayor Richardson stated that he attended the Coventure Pitch event and it was very successful. Mayor Richardson said that Ascendigo hosted a Trunk or Treat (in place of Trick or Treating) in the Fire Department parking lot. Mayor Richardson thanked Jean Alberico, and all of the clerks and election judges for conducting a well run election. Mayor Richardson thanked Public Works and the Police for their help with outside dining. Mayor Richardson stated that COVID is on the rise again and the Governor is trying to prevent another lockdown. He encouraged everyone to cancel social engagements, wash you hands, wear a mask, work remotely and do what you can so we don't have to shut down again.

ATTORNEY COMMENTS

The attorney did not have any comments.

CONTINUED PUBLIC HEARING – ANNEXATION, REZONING, MAJOR SITE PLAN REVIEW, CONDITIONAL USE AND VESTED RIGHTS

Applicant: Eastwood 133, LLC

Location: 0430 Highway 133

Trustee Henry recused herself from the public hearing and left the meeting. At the last meeting she explained that she has a professional relationship with the applicants.

The following members of the development team were present for the meeting: Rob Cairncross, Jordan Sarick, Doug Pratte, Andi Korber, Mavis Fitzgerald, Colby Christoff, and Ben Genshaft.

Mark Hamilton explained that the development team had a small window to review the packet material so the documents have not been finalized. There are two issues still being discussed. The Annexation Agreement – there is a provision that if certain things don't happen the property is de-annexed and returns to the County. Also, the public improvement schedule has some date changes. The public easements will be dedicated to the Town to allow the Town and CCAH to maintain the artwork.

Janet stated that there are also changes to the setbacks. Originally Janet only included the setback for the larger building. The document will be revised to include the smaller building setbacks.

Discussion ensued.

Colby Christoff gave an update on the CDOT Access Permit. The development will have full movement until the property to the north develops. At that time the shared access will become right in, right out.

Rob Cairncross discussed the Rental Fee Agreement. He made the following points:

- The developer chose not to max out the site (scale, height, setbacks)
- They are committed to a bike path with connectivity
- They are trying to create a sustainable public art walk
- They will maintain the landscaping
- It is important that it be a successful business
- It will cost approximately \$324,000 to construct the bike path and sidewalk
- There will be 2,800 square feet of murals which will cost \$70,000 - \$84,000
- They are committed to building a net positive low, impact building (solar, electric, etc.)
- The building will be costly due to the upgrades – it is an upper end storage facility
- The development will have a low traffic impact

Doug stated that the rental fee will give 1% to the Arts and 1% to the Town. The 2% will keep their project competitive. Beyond 2% the project could be compromised. There are many community benefits associated with the development and they will not have a big impact on town services. They want to contribute 2% rather than a higher percentage that would sunset.

Rob noted that the rental fee is a sort of tax. Most of their customers will be locals and they don't want to overburden them with higher costs.

Trustee Bohmfalk noted that he is the Bike/Pedestrian/Trails liaison and the documents do not contain language that the trail to the south will be constructed with the same specifications – it is only specified on the plans.

Trustee Yllanes asked if the project is sold could they transfer the 2% fee to the successor. Mark answered yes, as long as it remains a storage facility.

Trustee Kitching stated that a lot of opposition to the project has been expressed by the community. She believes they would need to have a 70% occupancy rate to achieve the money needed for maintenance. The developer answered that they anticipate a 90% occupancy rate – to break even they need 60% occupancy.

Trustee Sparhawk asked for clarification that the Town doesn't have to use its 1% for maintenance on improvements they have undertaken.

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

Trustee Richardson stated that it is hard to overestimate the impacts. He believes more than 2% is warranted.

Trustee Kitching stated that the Town and Arts should receive a minimal amount regardless of how occupied they are.

Trustee Sparhawk noted that they could build this project without undergoing an annexation. It is a nice looking project and there is minimum opportunity on that site. She likes that they are building a sidewalk.

Ben Genshaft stated that the developer would like veto power over (offensive) art. Jay explained that a clause was not included because the arrangement should be with Carbondale Arts not the Town.

Trustee Sparhawk made a motion to continue the public hearing to November 24, 2020 and to direct staff to amend and finalize the documents for consideration at the November 24th Board of Trustees Meeting. Trustee Kitching seconded the motion and it passed with:

6 yes votes: Sparhawk, Yllanes, Richardson, Kitching, Silverstein, Bohmfalk

Trustee Henry returned to the meeting.

PURCHASE OF THIRD STREET CENTER SOLAR SYSTEM FROM RC ENERGY

Jay explained that the Third Street Center solar panels is the last power purchase agreement that we have not purchased. In 2016 the Town purchased the Recreation solar panels. The value of the panels is \$123,903, the rate of return on our investment would be 7%, and the payback would take nine years. The money would come from the capital fund and it is currently not budgeted. Spending down the fund balance would take us to 70% reserves. Jay believes it makes sense to purchase the last agreement. Jim Volpa, of RC Energy, stated it is to the benefit of the Town to purchase the agreement; it's a good value. RC Energy is offering an extended warranty at no additional cost which would provide additional protection for the next eight years.

Mayor Richardson said the purchase makes sense, but he asked staff not to lose sight of the 75% reserve target.

Trustee Bohmfalk made a motion to approve the Bill of Sale from RC Energy and authorize the Town Attorney to review the assignment of the RC Energy Xcel contract to the Town of Carbondale and for the Mayor to sign it. Trustee Yllanes seconded the motion and it passed with:

7 yes votes: Bohmfalk, Kitching, Richardson, Henry, Silverstein, Yllanes, Sparhawk

HOLY CROSS ENERGY PURCHASE OF CEC

Jay explained that the Town purchased into Clean Energy Collective (CEC) solar projects in 2015 and 2016. CEC is exiting the power supply business and Holy Cross has purchased their solar arrays. Holy Cross has determined that the present value of

The Town's solar panels to be \$255,055.82. These funds would be deposited into the Water and Sewer funds and we would subscribe to the PuRE program (100% clean energy). Holy Cross will pay the enrollment fees for PuRE.

Trustee Kitching made a motion to sell the Town owned solar panels in GCasa and Sunnyside arrays to Holy Cross. Trustee Bohmfalk seconded the motion and it passed with:

7 yes votes: Henry, Yllanes, Bohmfalk, Richardson, Kitching, Silverstein, Sparhawk

CONSIDERATION OF ORDINANCE NO. 15, SERIES OF 2020 – REQUEST FROM KROEGER AND CARBONDALE MARKETPLACE TO DEFINE SCHOOL PROPERTY IN THE CARBONDALE MUNICIPAL CODE

Jay explained that staff received inquiries about the possibility of obtaining liquor licenses in Crystal Marketplace. The proximity to Colorado Rocky Mountain School (CRMS) would prohibit any class of liquor license at that site. There are currently no pending new liquor license applications in Carbondale Marketplace. The (CRMS) adjacent property is used for agricultural purposes. Staff is asking if the Board wants to take legislative action to redefine "school purposes" in the Liquor Code. Mark stated that the Town has the legislative discretion to change the sub-category of a school or liquor licenses.

Trustee Bohmfalk asked what are the separation requirements for a Fermented Malt Beverage (FMB) license? The biggest barrier is the distance to the school, particularly for the restaurants.

Trustee Silverstein stated that CRMS has the right to develop that property in the future. Mark explained that a new liquor license application is based on current, not future use.

Trustee Yllanes asked if we change the definition do we open ourselves up for liability.

Trustee Silverstein stated he agrees to grant a distance waiver for the restaurants but not the liquor store.

Mayor Richardson opened the meeting to public comment.

Briston Peterson, Carbondale, stated he is the property owner of Lot 4 in the Crystal River Marketplace. He has two tenants (Mings, and NY Pizza) who want to move in and obtain liquor licenses. They are unable to obtain liquor licenses because of the distance from the existing structure to CRMS. He noted that the Claddagh Irish Pub was granted a liquor license and it was 150 feet from the southern boundary of CRMS.

Cary Shanks, owner of Marble Distillery, wonders if this is a hastily formulated precedent. It is town-wide, not geographical in nature. He urged the Board to analyze impacts to the other stores. Variances are predicated on hardship. He asked was this

always the plan? Was this premeditated? He urged the Board to have a thoughtful discussion and separate out off and on premises licenses.

Julie Tran, owner of Main Street Spirits and Wine, stated that more thought should have been put into the building that wants liquor licenses. Think about the difference of off and on premises. She is concerned about the economic impact City Market would have on small liquor stores. What impacts will it have on small businesses?

Adam Stapen, an attorney representing Kroger, stated that changing a definition doesn't mean you approve a liquor license. The distance requirements would not allow City Market to obtain a retail liquor store; it allows for a FMB. City Market's model is to sell beer.

Joslyn Wood, an attorney representing Sopris Liquor & Wine stated that after reviewing CRMS' letter it appears that the school uses their grounds actively for their ranch program. The ordinance might not allow City Market to sell beer. The Town has the discretion to modify distance and she encouraged the Board to consider the implications and outcomes of changing the definition. The new liquor licenses would be grandfathered in if CRMS changes. The sale of beer at City Market is different than a restaurant. She encouraged the Board to allow on premises liquor licenses and prohibit off premises licenses.

Frances Jacober, Carbondale, stated that it's clear that a business cannot get a liquor license if is less than 500 feet from a school. Briston is requesting a variance for two restaurants and City Market is requesting a variance so they can sell beer. She is strongly opposed to a variance in order to accommodate a developer.

Terry Kirk, owner of Carbondale Plaza, stated there are two things to consider: first, giving City Market a liquor license. They are trying to obtain a license through the back door by surrendering their liquor license and applying for a new one. Secondly, to date no distancing changes have been made. Briston knew what he was getting in to and Terry assumes he knew the laws. Ignorance is not a defense.

Michael Zhang, owner of Mings, explained that he signed a lease and wants to move Mings to Crystal Marketplace. He was unaware that he couldn't apply for a liquor license. He can't predict how many patrons won't come to his restaurant because they don't serve liquor. He asked the Board to please consider changing the school definition. He noted that Glenwood Springs has changed the distance from school to restaurant distance requirement.

Justin Flor, manager of King Supers, was at the Carbondale Grand Opening. Several people approached him and told him they were surprised City Market is not selling Beer. He stated there is a need and convenience for the community. City Market does 5,000 sales per week and they have had only one violation.

Sigrid Piper, owner of WineTime, stated she owns the closest liquor store to City Market. She supports the restaurants getting liquor licenses because they are more

contained. City Market is understaffed and she doubts they will I.D. people. There are five retail liquor stores in town already.

Mike Hastillour stated he is concerned about the variance. He supports on premises liquor licenses – it will be benefit the community, but he doesn't support allowing City Market to obtain a license. His family owns Pop's Liquor and it will put them out of business.

Kevin Jones, owner of NY Pizza, wants to put a store in Carbondale. He has had a liquor license for 27 years and he hasn't had any problems. He never thought about CRMS having land right there. He believes that each liquor license should be considered individually. He told the Board he would be careful selling beer and wine at his restaurant.

Kiko Pena, owner of Sopris Liquor and Wine stated that he is strongly opposed to changing the school definition. The law was made to protect citizens. CRMS is a boarding school with no parental supervision. Wanting to change the rules in an insult. CRMS kids are not monitored and it is easy for them to obtain liquor. CRMS stated in their letter that they use the property for school purposes – for educational purposes. Please consider what a change will mean for all schools. Consider the consequences. Don't create loopholes for corporate America to jump through. Vote no. Stick up for us.

Mayor Richardson told the Board that we do not need to make a decision tonight. The Board agreed to table the discussion to December 8, 2020, and requested the Town Attorney provide more information about the purpose of the State law, what does direct route mean, should we take a town-wide or individual approach when considering new liquor licenses, and what have other communities done.

ENVIRONMENTAL BOARD – CLIMATE & ENERGY ACTION PLAN IMPLEMENTATION RECOMMENDATIONS

Environmental Board (EBoard) members Colin Quinn and Sandy Marlin were present for the discussion.

Trustee Henry stated that the EBoard has been looking at climate change and the Climate Action Plan. They have created a project tracking spreadsheet. They have seven recommendations regarding where and how the Town is spending money on climate change. They are asking the Board if the seven recommended items are on the right track and they would like to request additional funding in the 2021 budget.

Discussion ensued.

Mayor Richardson asked what are the EBoard's top two priorities? Sandy responded they want one place where energy saving projects can be viewed and monitored. They would also like to prioritize projects that are the most effective for reducing emissions.

Colin added that currently we can't track progress towards our climate action goals. The Town does a lot to reduce emissions but it's hard to say if we are achieving our goals.

Mayor Richardson stated that he thinks we don't have to track everything, and we should focus on our biggest priorities and be as effective and efficient as possible. Trustee Sparhawk stated that she is hesitant to put a lot of resources into tracking. If we do, will we have the resources to implement projects?

Brittany Biebl stated that tracking and gathering data takes a lot of time. The recommendations from the Climate Action Plan contain very little information. She wants more information available. It's not about tracking – we have an idea of what we are accomplishing.

Trustee Sparhawk stated we need to figure out a way to incorporate new ideas into the Climate Action Plan.

Jay stated that the EBoard is requesting an increase in their budget of up to \$50,000.

The Board directed Jay to find an additional \$15,000 - \$20,000 for the Eboards' 2021 budget.

ADJOURNMENT

The November 10, 2020, regular meeting adjourned at 9:34 p.m. The next regularly scheduled meeting will be held virtually on November 24, 2020, at 6:00 p.m.

APPROVED AND ACCEPTED



Dan Richardson, Mayor

ATTEST:



Cathy Derby, Town Clerk

