



ADMINISTRATIVE HEARING OFFICER
MEETING MINUTES-November 25, 2022

STAFF IN ATTENDANCE

Nick Tatton, Administrative Hearing Officer
Todd Thorne, Building-Planning Administrator
Doris Johnston, Administrative Assistant
Commissioner Larry Jensen
Lynelle Hansen, Deputy County Attorney

OTHERS ATTENDING

Dennis Pawelek, Carbon Vape Shop

The meeting was called to order at 9:05 AM

1) Call to Order

Nick Tatton opened the hearing and Mr. Tatton and the staff introduced themselves.

2) Approval of Minutes

Nick Tatton approved the minutes from the previous meeting on 10-25-2022.

3) Review and decision on an appeal request pertaining to the denial of a Conditional Use Permit for a Specialty Tobacco Business located at 4303 S 225 E on parcel 2A-1516-0008 for Dennis Pawelek

Dennis Pawelek, Carbon Vape, explained he applied for a Conditional Use Permit (CUP) but it was denied because another business had already obtained a CUP for a vape shop nearby. Mr. Pawelek felt both permits should have been issued pending the conditions and the other requirements. Mr. Pawelek referred to the Planning Commission minutes (9/6/22) from the other application (Nine Mile Vape) and a question was asked if a non-compete agreement was in place. Mr. Pawelek said Todd Thorne had answered no.

Todd Thorne replied about the response and said this was because it is not relevant to the Planning Commission's decision. Mr. Pawelek said he does have a non-compete agreement and he is in civil litigation with the owner of the other shop. Mr. Pawelek said he is trying to protect his business.

Nick Tatton asked if this other business owner was a prior employee of Mr. Pawelek's. Mr. Pawelek said yes and found out she and the other employees were trying to sabotage the business and set up another business. Mr. Pawelek said employees also stole records. This was reported to law enforcement and the County Attorney. Mr. Pawelek continued speaking of the bad situation with the other shop owner.

Todd Thorne explained with our county requirements, we follow the state requirements of at least 600 feet from an existing vape shop, 1000 feet from community location, 1000 feet from agricultural use or zone. From a land use perspective, an applicant has to meet those requirements. Where Mr. Pawelek is

Final minutes of the Administrative Hearing Officer Hearing, November 25, 2022

currently located, he is over the 600 feet from where the other shop's location that was issued the CUP. As they stand now, they are both in compliance with the distance requirements. With Carbon Vape wanting to move locations, that puts them less than 600 feet from the vape shop that has a CUP. Todd said what we look at is from a land use perspective. The other items such as the non-compete agreement is not evaluated in our process. The CUP is issued and they then proceed with the health department and the business license. Mr. Pawelek can operate where he currently is now and the other shop can operate where they currently are.

Commissioner Larry Jensen asked if Mr. Pawelek has purchased the property. Mr. Pawelek said he was under contract. Mr. Pawelek said he did not know he had to have a CUP for this. He then applied for the CUP. If he would have obtained his CUP first, he would have been able to move sooner. Mr. Pawelek had more questions and concerns about the truthfulness of the other applicant on the non-compete agreement and felt it was relevant. Todd Thorne said the other shop applied for a vape shop business and that is what we need to know. Todd added from what they provided us there was no non-compete. We did not ask for a non-compete agreement and they did not provide one, so the answer was no. Todd reiterated that it was a land use decision. Todd explained this meeting is to decide if Mr. Pawelek meets the requirements for a CUP. Todd said the question is; are you within 600 feet of another vape shop? Mr. Pawelek's understanding of the statute was it is "conditional".

Lynelle Hanson, Deputy County Attorney, said this seems to be very frustrating but this forum needs to discuss the CUP. Lynelle gave the timeline of approval for the other shop, Nine Mile Vape. They received the state EIN# on August 19, 2022 and the CUP on September 6, 2022 so they were set before Mr. Pawelek's application. Lynelle added the Health Department approval was on October 3, 2022.

Nick Tatton verified that the County's ordinance pertaining to smoke shops mirrors the State statute in terms of the proximities. Lynelle Hansen and Todd Thorne agreed. Nick asked Mr. Pawelek if he was informed that there was an issue with the proximity prior to making the application. Mr. Pawelek said no but he understands the State statute but felt it also has to do with obtaining the Health Department license.

Nick Tatton asked how the distance is measured from the shops. Todd Thorne answered it is from the front door of the business to the nearest property line. If Carbon Vape were to move, it would be less than 600 feet away from the adjacent lot where the other shop (Nine Mile Vape) is.

Nick Tatton said he will review the ordinance and issue a decision by the end of the week.

4) Adjourn

Nick Tatton adjourned the meeting at 9:26 am



Nick Tatton, Administrative Hearing Officer