



ADMINISTRATIVE HEARING OFFICER
MEETING MINUTES-December 20, 2023

STAFF IN ATTENDANCE

Nick Tatton, Administrative Hearing Officer
Todd Thorne, Building-Planning Director
Doris Johnston, Permit Technician
Lynelle Hansen, Deputy County Attorney

OTHERS ATTENDING

Jeremy Ruetzel, Attorney, Carbon Vape/Dennis Pawelek
Alexandrea Sherman, Nine Mile Vapor
Oscar Guzman

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 for November ²⁸~~25~~, 2022

3) Review and decision on an appeal of the approval granted by the Carbon County Planning Commission for a Conditional Use Permit extension for Alexandrea Sherman located at 4267 S 225 E, parcel 2A-1516-9

Jeremy Reutzel explained it is hard to argue against a ruling that is not articulated in any fashion that we can understand. There is no ruling, no findings of fact, no analysis, there was just simply a vote by the Planning Commission. They made no findings, considered no law and did not issue any reasoning for their ruling. We are trying to understand why they did what they did.

Section 5.1.14 Carbon County Code, says unless there is substantial action under a conditional use permit, within a period of one year from the date of approval the conditional use permit is granted, the conditional use permit shall expire. Mr. Reutzel said there is zero evidence that there was substantial action taken under the conditional use permit. Mr. Reutzel said this means the permit is expired. Mr. Reutzel said the Planning Commission can grant an extension but it can't create a new conditional use permit after it has expired. The proper procedure should be to apply for a new conditional use permit. Mr. Reutzel commented that it was said that they filed an application timely, but there is nothing in the code that talks about the timing for filing an application, it simply says the conditional use permit expires in one year. Mr. Reutzel said that was their responsibility to take care of this, if they didn't they have to file for a new conditional use permit. That is the analysis.

Lynelle Hansen said the Planning Commission did have the information and the relevant code and they made their decision. They had all the paperwork Mr. Reutzel provided. They had both the law and the

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information. As to the problem of was it already expired; Ms. Sherman asked for an extension before the application had expired. Todd Thorne granted the extension, so they thought they were in a good place. However, then it was realized that Todd Thorne was not the person that was to grant this and it was the Planning Commission that was to grant this. Because Alexandra Sherman had filed on time, it doesn't seem that she should be penalized for the County approving and then having the second body approve it as well. Lynelle Hanson said she believed the Planning Commission made an informed decision and they are the body that needs to decide. It is up to the Planning Commission to determine what substantial use means.

Nick Tatton asked if Alexandra Sherman had any comments. Miss Sherman said Lyn covered all of it and had no additional remarks about the timeline of the extension.

Jeremy Reutzel said there is no law that says an application has to be filed. It says when it needs to be extended. It is irrelevant to the law on whose fault it is. The Planning Commission does have an obligation to provide a reason of the ruling which they did not do. Mr. Reutzel commented that the County Attorney said that Todd Thorne granted the extension. Todd Thorne cannot grant the extension and there is no evidence of when the application was actually filed.

Lynelle Hanson said the extension was sent by email and it is in the record and Todd Thorne's response is also in the record. Lynelle Hanson added the Planning Commission went into some explanation on who had the authority to grant the extension. The Planning Commission members thought they granted that to Todd Thorne but in the Code it had not been given to Todd Thorne. That is why it went back to the Planning Commission and why there was a delay.

Nick Tatton said he will review this and give the ruling over the next week.

4) Review and decision on an appeal of the denial by the Carbon County Planning Commission for a Conditional Use Permit for a Specialty Tobacco Business located at 4303 S 225 E, parcel 2A-1516-8 for Dennis Pawelek/Carbon Vape

Jeremy Reutzel said this is essentially the same issue that was decided about one year ago. The County granted Alexandra Sherman a conditional use permit. Because of this, they cannot grant a conditional use permit to Mr. Pawelek because of the State Code that doesn't allow these specialty tobacco stores to be within 600 feet of each other. This is not a County ordinance, it is a State law and this should be enforced at the licensing process not through a conditional use permit. Conditional use permits are usually granted with the condition that you have to comply with all other laws. Mr. Reutzel said this is what should have been done here instead of picking and choosing who they were going to grant a conditional use permit to.

Mr. Reutzel added that Mr. Pawelek had a specialty tobacco license at another location and the Health Department after corresponding with the Planning Department gave that permit and claimed that it

should be yanked because he couldn't get a business license and he did not have utilities to the building. Yet two months later they granted a business license to Ms. Sherman. This is unequal treatment. Mr. Reutzal said if they wanted to treat them fairly, they would grant both a conditional use permit subject to getting a tobacco license. They are not Federal or State law enforcement, they are the County and they overstepped on that.

Lynelle Hansen said she believed this is the matter that is in the courts. This happened last year and they appealed in Court and it is still being determined by the Court. Lynelle said she would think that we would let the Courts determine the outcome of that and we would follow the decision.

Nick Tatton asked what exactly is the District Court considering on this. Lynelle Hansen explained this is the appeal from last year. It was ruled, and then Dennis Pawelek appealed the ruling and is in the appeal process of what was decided last year.

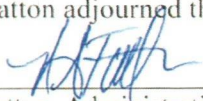
Jeremy Reutzal said this is a second conditional use permit and is the second time we tried and is based off the extension they granted to Ms. Sherman, not the actual conditional use permit.

Lynelle Hansen said it is a different permit, but the exact same issue.

Nick Tatton said he will reserve the right to request additional information and he will consider those matters and try to be expedient in issuing something by the end of the month.

5) Adjourn

Nick Tatton adjourned the meeting at 1:15 pm



Nick Tatton, Administrative Hearing Officer