

AGENDA ITEMS #4

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STEAMBOAT SPRINGS PLANNING COMMISSION

PUBLIC HEARING MINUTES

March 22, 2018

The regularly scheduled public hearing of the Steamboat Springs Planning Commission was called to order at approximately 5:00p.m. on Thursday, March 22, 2018, in the Citizens' Meeting Room, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Planning Commission members in attendance were:

Chair Rich Levy, Vice-Chair Brian Adams, Lee Calihan, Martyn Kingston, Michael Buccino, George Eck, Tom Ptach and alternate Paul Weiss.

Staff members present were Staff Planners Kelly Douglas and Toby Stauffer, and Planning Director Tyler Gibbs.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

#1: CP-17-03, Future Land Use Designations

STAFF PRESENTATION

Tyler Gibbs:

The request to table is for two reasons:

We've found that the FAA is willing to comment very promptly as opposed to having to wait for an update to the entire Airport Plan. We expect to get those comments fairly soon, which will add some good information to that hearing.

There was also an oversight regarding a couple properties that weren't initially included.

MOTION

Commissioner Ptach moved to table CP-17-03.

Commissioner Eck seconded the motion.

VOTE

The motion carried unanimously.

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#2: DPF-17-11, Steamboat Grand Resort Hotel and URA

Commissioner George Eck recused himself from this item.

STAFF PRESENTATION

Toby Stauffer:

This is a final development plan to place a historic barn on the property associated with the Steamboat Grand Hotel. The barn would be located at the corner of Mount Werner Circle and Mount Werner Road. The project includes variances to landscaping, lighting, sidewalk and parking standards.

Staff is recommending approval of the project finding that it meets most of the criteria with the exception of the variances.

It will include phased site development: landscaping, creation of parking spaces, a soft-surface sidewalk. There will be some interpretive signage that will be added in Phase II discussing the barn and its association with the Yampa Valley.

There has been a minor amendment to the Grand PUD as part of this project and interpretation of the Base Area Design Standards, a technical variance to Sidewalk Standards and an off-site parking request. There's also two variances to landscape and lighting standards.

We have received a bit of public comment. One letter included some concerns about safety at the intersection. Two additional letters came in after the packet was built that were in support of moving the barn to this location.

The minor amendment to the PUD is to ensure that the PUD remains consistent with its intent. Some of the open space property on the Grand property was included in the density calculations in order for the Grand to build what it has today and some future development. By adding the barn, we've found that it doesn't add any density or change the intent or character of that PUD.

Landscape Buffer/Interior Landscaping Variance: The project proposes to not place a specific landscape buffer but utilize all the landscaping within the project to meet the landscaping requirements. Their justification is that what they're doing is equal to or better than the code standard, and staff agrees with that.

Lighting Variance: Our lighting requirements require lighting to be downward facing. These lights will be generally upward facing or parallel to the ground shining on the barn. The applicant's justification is that their alternative achieves a result that is equal to or better than, and staff agrees with that justification.

We find that the project is consistent; we are recommending approval with nine conditions.

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APPLICANT PRESENTATION

Ralph Walton, Steamboat Springs Redevelopment Authority Project Manager:
The SSRA is the body that's funding most of this effort. Allocation of those funds was made at their December meeting.

When the URA was formed in 2004, the Arnold Barn was a source of blight. That finding was necessary to create the URA. All of the foundational documents indicate that way-finding and signage is an important element of curing the blight and solving circulation issues. Further master plans concluded that a barn is probably the best signature item as a landmark to create a way-finding device at a key point of decision as you arrive at the mountain.

The advisory committee to the SSRA is called URAAC, and they've consistently ranked the iconic entry as one of the top five project activities since they started meeting about ten years ago. The historic preservation aspect of this process has been buttressed by the Save Arnold Barn Committee together with Historic Routt County. This group of 7-10 community members has not only raised money but spent a lot of time and professional time from architects, engineers and other folks to further the design and gain public support.

We had a rancher roundtable because we wanted local ranchers to comment; we really wanted an authentic treatment of all of the elements that you now see.

There are multiple stakeholders in this project: Steamboat Grand owns the land; Ski Corp owns the building today; the city is stepping up in multiple ways to support the project. Those parties are now working on definitive agreements to cover the development of this project activity but also the long-term maintenance of these improvements.

Walton reviewed historic iterations and locations of the iconic entry feature starting in June, 2006. 2014 saw the consideration of a scaled-down version of the barn using materials of the barn to skin it with a new sign for the Grand and backdrop landscaping.

In 2017, stakeholders arrived at the current concept. The barn was reoriented, a chorale was added, excess landscaping was eliminated.

Walton: We submitted the first site plan in December. We conceived of this as an administrative final development plan. We have the crosswalk, the parking pull-out with a tie-in to the existing trail from the Wildhorse Meadows side.

Walton showed where the pull-out and interpretive signs would be located.

Walton: Phase I of the project I like to call the way-finding phase.

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Part of the discussion of Phase II had to do with the trail that came out of the TAC review process as an enhancement of the whole plan by facilitating access down to the attraction. Ultimately, the parties agreed to the idea of maintaining the trail as a seasonal, soft-surface trail. There was some pushback to maintaining a paved trail year-round.

Through TAC review we also added a stormwater collection facility.

Walton showed which party has agreed to handle the maintenance of the various items associated with this project activity.

Chris Rundal, Baseline Engineering:

We looked at the parking pull-off location and decided the uphill lane on the right side just passed the center section was an appropriate location. Baseline put together a Parking and Pedestrian Access Letter as part of the application that looked at parking space numbers, the number of anticipated pedestrians using the crosswalk. This use is a fairly unique use, so there's some level of professional judgment that had to be used on the number of pedestrians. The upper range is 30 with a lower end of 10.

We proposed to move the speed limit sign, which changes from 35 to 25, down the hill to start slowing speeds as they approach this intersection. One of the safety considerations is the median that provides refuge so when pedestrians are crossing they only have one lane to cross on one side and the through lane and turn lane on the other side.

We did recommend that because the use is unique, once all improvements are in place that the city go out and do a count to see how many pedestrians are actually using this crosswalk to see if further features are needed such as a flashing beacon. But we're comfortable with the assumptions we've made and the improvements we've proposed in the plan at this point.

The plan does have advanced warning signs for the pedestrian crossing on both uphill and downhill sides. Then there will be the regulatory warning signs on each side of the crosswalk and in the center island, so it will be well signed and visible.

Walton: Lighting: We've got four poles on the corners each with two lights, angled so that they cover the entire broad side of each side. We need two lights each in order to do that. The beam spread of the light is designed to cover the barn. In lighting you have a push and a pull between an even wash of light on one hand and what they call light trespassing – light passing by the subject too much. You don't generally want any light to trespass, but you also want to wash it evenly and not have any dark spots. This particular beam spread is 34 degrees. When they tried a 64-degree spread, too much of the light was getting passed the barn. The snoot obscures the actual bright light so you won't see it directly unless you're ten feet in the air directly between the barn and the light. The snoot also helps us direct the light to where we want it on the building. The light that does pass by is diffused to 0.5 foot candles at the point it passes the roof on the left. We measured the light beam from the pole closest to the Grand all the way down to the intersection and determined that the foot candle power when it hits an imaginary wall at that area is 0.02. Because we've got other light at that intersection, we felt that we've accomplished bathing it evenly and minimizing the trespass.

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QUESTIONS FROM COMMISSIONERS

Commissioner Adams:

That description is very helpful as far as light from lamps that's leaving the site. My only other question is how brightly is the surface of the barn going to look? What kind of design guidelines do we have as far as that kind of light trespass from a site?

Stauffer: We have luminance measurements in our Lighting Code that talks about a ratio of source lumens to luminous area. On previous projects, we've requested a photometric plan which speaks to the candles that Ralph was referencing. Typically, that shows where the lighting is brightest and how that falls across the rest of the surface. That's usually how we measure the brightness of lighting in a whole context. So far it seems like this project can meet those brightness discussions that we had.

Walton: This new approach we've taken is much more in tune with what the Historic Preservation Commission wants to see and what the applicant and everyone I've talked to wants to see. The problem with doing a photometric analysis is it's plan view. We're not shooting at the ground. We could do a photometric analysis of the structure that it's capturing the light but not behind it. That's where we came up with the idea of the imaginary wall and to measure it just through the model of how far it would drop over 200 feet. The code envisions down-lighting that hits a surface. These lights are angled 10 degrees up off a ten-foot pole to get that coverage.

Adams: What kind of guidelines do we have as a city to make sure that future maintenance uses the correct light for this application?

Stauffer: We do have specifications for the lights and what they're proposing to use for the bulbs based on the light type. Like any project, they need to meet their approved development plan that shows this concept and the intent of the lighting. In the event that an incorrect light is placed that starts to affect the neighboring properties, we do have some recourse because we have some literature with this plan that would give us some guidance to get us back to the intent.

Commissioner Ptach confirmed that these lights will be on from dusk till dawn.

Commissioner Buccino:

As long as those uphill lights that are shining down toward the traffic are minimized.

Regarding parking, what evaluation did you come up with that indicated that the location where you have it is better than the other side? Is it because photographs will be hindered?

Rundal: We thought about putting it on the other side and discussed logically where we thought people would pull off when driving up Mount Werner Road as you're approaching the intersection. What we thought was there would be passers-by that would see it and want to stop and pull over. That's partially what drove us to think that where we show it is the most logical place. I think there will be people that

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could be driving from the other direction or making a left and coming around. We looked at parking numbers and tried to come up with the number of spaces that would be appropriate for the site given the city's code for a small park of this acreage. It was three spaces.

Buccino: Usually I'm going to pull over so my family can get out of the right side of the car. What we've created here is an increase in pedestrian traffic on kind of a blind corner. Where you're putting parking where someone is going to open their driver-side door I think is a lot more risky because you can't see that very easily as you're coming up and going around. Parking on the right side is a little more intuitive to me. If I turn left and miss it, then I'm going to park in the right-of-way. Someone is going to drive all the way around the loop and find a parking spot, but they need to make a U-turn right there. I kind of want to see another parking spot because I think people are going to park in the right-of-way no matter what. Condition 3 talks about the flashing beacon. It says "After construction of Phase II, pedestrian counts shall be taken to confirm the estimated pedestrian numbers in the mid-block crossing analysis dated December 14." And then what?

Rundal: I think confirm the assumptions.

Buccino: And what happens if it's super high.

Danny Paul, City Engineer/Applicant Representative:

We have uncontrolled mid-block crossings all over town. We have a database of them. If the count exceeds those levels, we'll look to mitigate with a flashing beacon. There's already some mitigation there as Chris stated. As for what drove us to land on this side with parking, to the left of the Grand is about a third of the volume; the majority of people are staying right and going to the Upper Knoll lot. People might get lost and come around the other way. They are allowed to park in the right-of-way, except for overnight in the winters. Both sides of this benefit from the wide lanes, so we're not as worried about the door-swinging issue.

Buccino: It makes a big difference that parking in the right-of-way is allowed. I'd like to see what happens when that count is done.

Paul: If you do make that left, there are two lanes with one being a climb lane that very few people use.

Adams: Was there just not room to put in angled parking? Was parallel parking the most traffic-helpful way of doing it?

Paul: At this location for it to be angled with the striped bike lane, it would have to be back-in diagonal. We're in the middle of a pilot program with that on Yampa Street. We don't want it to be front-end not only because of the bikers but the fact that vehicles need to reverse into live traffic. So parallel seemed to be the best. There's some extra space in there for three vehicles or two really big trucks.

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Rundal: Danny mentioned that the road is already wider than normal with an extra 6-8 feet of shoulder. Because of the concern that was brought up about doors opening with parallel parking, we made the parallel parking stalls a little wider than they maybe need to be to avoid any conflicts with vehicles coming up the hill.

Commissioner Kingston:

I think from experience at other ski resorts that whether the crosswalk is flashing or not it's probably going to help slow down traffic coming through there.

Flashing lights can also add confusion. I know the post-placement counts will dictate the next step.

We also discussed on Monday the fact that pictures will probably be taken on the far side of the road as people come into the area and turn around the corner. I think the way you have it arranged is optimum for minimizing the safety concerns there.

The barn is going to be moved thanks to the Grand onto a parcel that allows restricted development. Are there any implications for what the Grand can or cannot do for the rest of the restricted area?

Stauffer: When the Grand was built in the state it's in today, they looked at the entire parcel which includes this piece and the rest of the hill that goes up towards the Grand. They did allow themselves some expansion room closer to the Grand across from the Transit Center. The rest of the parcel was noted as an open space area. There was a condo plat to divide up the ownership which indicated the area where they could add future development and then an area that was excluded from that. Where the barn is located is in that open-space area excluded from the more intensive development area. So I don't think this limits expansion of the Grand in the future. Our charge as we were looking at this project was to make sure that the intent of the open space preserved to allow future development of the Grand, the intent of that PUD and the open space was maintained as well. That's where we looked at adding this barn as a natural resource feature. It's not going to be occupied or used like a typical structure. That is consistent with the intent of the open space and doesn't change the development or the open space character of the parcel.

Adams: It seems closer to artwork than to a structure that takes up open space.

Stauffer: Even though it is a structure, it's not a structure in the way our code typically thinks of one.

Kingston thanked everyone involved in finding a solution for the Arnold Barn.

Adams asked whether the soft-surface seasonal sidewalk fell under Complete Streets requirements.

Stauffer: When the Grand was developed, we didn't have the Complete Streets requirements that we have today. Now our future Sidewalk Master Plan and our Complete Streets together indicate that a sidewalk is needed on one side of Mount Werner Road. So in this location there is the asphalt trail on the south side. The frontage along Mount Werner Road is a complete street already. With new development, we do envision that we make those streets complete. For Mount Werner Circle, one side of the road is required for that road classification as well. That's where the soft-surface sidewalk comes

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in for this property. There is a technical variance to provide a soft surface rather than a concrete surface, but the surfacing can be varied through the Engineering Standards. That variance was approved by the Public Works Director.

Paul showed where there will be a sidewalk per the Porches Development Agreement.

Paul: Once we see how popular this soft-surface trail becomes and if we get support from the Grand, we're hopeful they'll see the benefit of maintaining it. We're optimistic that someday it will be concrete – hopefully sooner than later – and be a year-round trail.

Commissioner Levy:

This section is called out in the Steamboat Springs Sidewalk Master Plan as one of its top-tier priorities. If it's not a concrete sidewalk now, at what point could we require an upgrade to a concrete sidewalk? How would that happen?

Stauffer: We would be looking at if there were high levels of use on that sidewalk or if the maintenance costs are too high, or they wanted to open that sidewalk in the winter, the sidewalk would be required to be paved. Any future development of the hotel site would also require that. The URAAC will probably have a role in that as well.

PUBLIC COMMENT

Arianthe Stettner, Chair, Save Arnold Barn:

I have served on City Council; I'm on the board of Historic Routt County; I was the chair of Colorado Preservation, Inc., which is our state-wide nonprofit group, and I also serve on the Historic Preservation Commission. Ralph gave a great explanation of how this project has gone through many iterations and phases. It came to the Preservation Commission in 2015 when the Tuff Shed concept came before us that didn't get a lot of traction. We started gathering momentum to form SAB in 2016. In doing so, we did a lot of preliminary research to determine whether moving the barn was practical. We brought in specialists from outside Steamboat to determine this: one who specialized in deconstructing buildings, another who specialized in moving buildings. Dennis Humphreys, who is a 40-year architect with a specialty in preservation well known throughout the west, really wrote a thoughtful letter describing that this building in a man-made wetlands is deteriorating. The land on which it's sitting is encumbered with a parking easement. There was a whole legal cloud of whose obligation it was to do what and at what time. That is why Toby's work to really clarify the maintenance obligations of the barn in its new location is showing the lesson that we've all learned from these prior development approvals. Suffice it to say that with the SAB team working closely with Ralph and the city, we have been able to resolve the legal complications. Ski Corp has stepped in to own the barn. the Grand has stepped in to provide an easement to put the barn on the property. We're providing pro bono preservation solutions, and we're all working together to save this important piece of our history. This is Steamboat; we're an authentic town; we need to have an authentic barn in that location well preserved celebrating who we are with this

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combination of ski, agriculture and a real genuine community. Thank you for your support and your careful consideration of this application and your time this evening.

ADDITIONAL QUESTIONS FROM COMMISSIONERS

Levy: One of staff's comments is that we can waive Base Area Design Standards because the project has been approved by HPC. There's two letters in our packet: one suggesting eight-foot lighting poles and one suggestion that the structure registered with the Steamboat Springs Historic Register.

Stauffer: In the end, the recommendation from the HPC was that they would like to see eight-foot poles. The applicant was considering that based on what they could achieve versus the ten-foot poles. HPC also recommended that the structure be registered. Our code doesn't necessarily require it. Those two decisions were made independent of the Base Area Design Standards. The Base Area Design Standards would typically apply since this is zoned RR, but it didn't make sense to apply them to a historic structure when they would change the character and the nature of the structure. They would take away the historic integrity of the structure.

Levy confirmed that HPC's recommendations were not conditions of approval.

Stettner: At the time we reviewed that particular proposal for the lighting, we didn't understand the technical aspects of the ten-foot pole versus the eight-foot pole. Having those described to us subsequently, we were totally comfortable. I believe in the minutes it showed that whatever the lighting engineer suggested we would support.

Regarding the recommendation for historic designation, right at the time we were reviewing this application, the ownership of the ski area was changing. That made it very awkward to say who was going to approve this one way or the other. The attorneys on both sides of this property transaction were not wanting to encumber the other with one thing or another. I hope in the future we will be able to turn that recommendation into a reality as the new owner becomes more familiar with our community and how we operate. But right then was not the moment to make that happen.

Levy: Is there a time limit between Phase I and Phase II completions?

Stauffer: The project has an expiration of three years, which is a typical final development plan term. So Phase II would need to happen within that timeframe or it would need to come before these public bodies again.

Levy: According to the applicant, the Phase II project is what initiates the need for the crosswalk and those other improvements. I would ask why doesn't the establishment of the barn itself create the need for the crosswalk and parking facility.

Walton: There's two parts to that. The original idea in '06 as it evolved in '15 and '17 was to provide access from one side to get to the site. That was going to be year-round. The issue came when we added

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the yellow line to enhance the access to the site. The maintenance costs overwhelmed the parties. The requirement for that trail was begged by the TAC review body to the idea that you've got signs on the property; you're inviting people to interact with the barn up close. If you remove those attractions and just have a way-finding landmark, then the need for the yellow line (soft-surface trail) goes away. That's what gave rise to a Phase I without interpretive elements on site, including the parking and the crosswalk. So we're just going to be a drive-by way-finding tool. That wasn't the full desire of everyone; we wanted to implement the whole program. Our intent is to try to push forward diligently to solve the maintenance issues, to get to bidding this project so we can embrace it all this year.

Levy: With the Moore Barn, we have no interpretive display and people have been walking up and taking pictures of it for years. My concern is that once the barn is in place and the crosswalk and parking system is not in place, are you saying that we don't have a need for those things?

Walton showed what he considered to be a trail for safe picture taking and explained that there would be a sign to demark the best/safest spot.

Levy confirmed the reason for amending the PUD to prevent harm of the intent or character of the existing PUD with this development.

COMMISSIONER DELIBERATION/MOTION

Commissioner Kingston moved to approve DPF-17-11 subject to conditions 1-9.

Commissioner Adams seconded the motion.

DISCUSSION ON MOTION

Ptach expressed his disappointment that flashing lights for the crosswalk are not included in the initial Phase II plan. He thought that not including this would sacrifice safety in order to spend a bit less money.

Adams registered his excitement with the project but lamented that there were a few areas that could be upgraded.

Levy echoed Ptach's concerns regarding the crosswalk and expressed disappointment in the phasing plan that does not include the crosswalk and parking in Phase I.

VOTE

The motion carried unanimously.

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#3: CU-18-01, 410 S Lincoln (Unplatted)

STAFF PRESENTATION

Kelly Douglas, Staff Planner:

The proposal before you tonight is a conditional use application to locate a marijuana store at 410 S Lincoln Avenue in Steamboat Square. It's just a little north of the Hilltop Parkway intersection with Lincoln. It's zoned Community Commercial.

They're seeking two modifications to the use standards:

- A) 1,000 foot distance to a park;
- B) Adjacency to a residentially-zoned parcel.

We've received public comment; the main concerns are regarding location, adjacent uses, access, parking and traffic.

Staff is recommending approval.

APPLICANT PRESENTATION

Ryan Fisher, Applicant:

We don't have a presentation, but I can answer any questions or concerns the Commission might have.

QUESTIONS FROM COMMISSIONERS

Eck: Regarding the parking, on one of the maps it shows 40-ish parking spots within the parcel. For an application like this where there's 410 and 440, our some of those spots designated for them? Do they meet the parking requirement based on that 40 number?

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Douglas: They do meet the parking requirement. This is CC, so the standard is actually the maximum.

Fisher: I have a letter here from the owner of the building that there's 43 spots for 440 and 410 S Lincoln. Currently in 410 there's 16 individual tenants occupying somewhere between 15 and 30 parking spaces of those 43. We anticipate our staff using about six on a daily basis with the rest for customers.

Eck: Is the parking requirement based on this parcel or the use?

Douglas: All parking standards are based on uses. The standard for an office, which is how this property is classified, is one space per 300 square feet. That is the same standard for a marijuana store. In our code when we have a change of use, we talk about how the net difference is the concern; there is no net difference here, so the standard is met.

Adams: When the min is the max in CC, let's say when they came forward they were 3,000 square feet so they needed 10 parking spaces. If the min is the max, and they decided to provide two, would they meet the requirement?

Douglas: Yes. So what they have complies any way we slice it.

Adams: So if there's no min, then there's no number that needs to be met.

Eck confirmed that 440 and 410 is all owned by one person.

Fisher: We also have a letter from the owner specifically assigning 16 of those spots directly to RK Enterprises' use.

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Adams: When we're looking at approvals like this, do the approvals run with this specific tenant at this specific time? What is the approval associated with?

Douglas: The conditional use approval depends on the use, so the use must commence within three years. Once it commences, it's vested in perpetuity. They can continue having that use there as long as they like. They forfeit conditional-use approval if they're vacant for 12 months.

Adams: So if any new tenant were to come with this kind of use, they would already be pre-approved?

Douglas: No. The marijuana store is a conditional use, so this applicant is applying to have that use at this location. If they were to leave and we had another marijuana store propose to be in this location, they would be going through this same process.

Adams: So while it is based on use, it is tenant/owner-specific as well.

Douglas: Yes, that's the nature of this type of use. The use chart says it's a conditional use, so in any zone district where it's allowed, it is a conditional use and that proposal will always come before you.

Kingston: Given the nature of this application and the volume of objections coming from the community living around this proposed use, how do we assess conditional use in the context of impacts on the zone district as a conditional use proposal? Do we have greater latitude to consider impacts on other uses in that zone district because it's a conditional use application?

Douglas: Section 300(F)(2) says that use standards may be modified through the conditional use process and that City Council has the authority to attach conditions in order to avoid or minimize specific impacts. There has to be a rational nexus for conditions attached to an approval. That's another provision of our code.

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Kingston: That doesn't exactly answer my question as to whether in considering whether to approve or deny a conditional use application you can consider the use in question relative to other uses in that zone district. That's the thing I'm struggling with – especially given the volume of objections coming from other users in that district or near that district.

Douglas: The approval criteria is designed to guide your and City Council's decision.

Kingston: One of the problems I have with that is the mitigation of impacts. All those impacts relate to tangible things like odor and noise, whereas obviously marijuana involves moral, political and ethical questions that have been raised in a dozen or more letters before us coming from residents in the area and from that karate academy. Is that a legitimate impact to be considered? You've got that list of tangible things; can we add those other considerations, too?

Douglas: I don't believe so. I think the Colorado State Constitution allows this use. It allows our locality and all other localities in this state to decide how, when and where they want to regulate marijuana. Our city has established standards that allow marijuana sales to occur in certain zone districts and with certain standards. So it has been decided that marijuana is an acceptable use in our community; the question before you today is if this location is appropriate.

Kingston: We've got a conditional use that is asking us to vary or modify a very strict objective standard of distance from that location to a park. It's also asking us to consider the impacts of this proposal on neighbors in this zone district. Your examples don't contain examples about impact on children or morality or ethics. None of those are listed.

Douglas: Because those are not provisions of our code. I think the role of my staff report and hopefully me today is to assist with how this proposal meshes with our code.

Kingston: We do say that certain uses need to be in certain zone districts, and we also protect certain zone districts with other aspects of the code like the distance from parks and schools. So it seems like there is a way to deny this proposal based on the fact that it's a conditional use application that is asking us to vary a very specific objective distance that this proposal does not meet. Is that a way I can think?

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Douglas: They are requesting to modify the use standards. I think we rely on our code and the approval criteria to guide whether that is a good decision or not. I think in cases where there's differing opinions on whether something is appropriate or not, we must be fair and rely on the code to help us decide those decisions. If we begin denying applications on account of some members of the community or of a body just not liking that proposal, I think we walk a fine line.

Ptach: Martyn brings up a very specific point here. We've got a definitive measurement of 1,000 feet and a definitive standard that it won't be located adjacent to RE, RN, RO, RR, MH, MF or G zones. In granting this conditional use, we have to determine that it's in the best interest of the community to grant waivers of those two positions. We've heard some significant pushback – not only from the karate group but just from neighbors in these zone districts that there would be an adverse impact. In that case, I'm assuming we as Planning Commission have the ability to disagree with staff's finding that it doesn't negatively impact it and say that it does negatively impact it and not grant it.

Douglas: Certainly, every application can be denied. That is your authority.

Kingston: In the packet we just received today, we have a letter from Ethos Legal Services, which is written on behalf of the applicant.

Douglas: That's not the applicant of this application.

Kingston: It's not the applicant, but it seems to support the move. The vast majority of the narrative suggests that Planning staff (Bob Keenan is mentioned by name several times) points out explicitly in the past when the applicant moves away from this location to west of town, for all intents and purposes they would not be able to return to that zone district in that location at any point in the future. Am I reading this letter correctly?

Douglas: Yes, that is what it says. However, our marijuana regulations have changed since then. City Council adopted an ordinance on September 3, 2013, that allowed marijuana in the CC zone district and established use standards. I don't know from that letter when these conversations happened. A lot has changed around how we regulate marijuana since it first became allowed.

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Kingston: But not the principle that we want marijuana to be in a separate zone district to many of the uses contained in the current applicant zone district; hence the 1,000 foot barrier and the repeated emphasis on putting marijuana retail in appropriate zone districts.

Gibbs: I think the conditional use means that when that premise is vacated, there is no automatic right for them to come back or for someone else to come back. So you're looking at this fresh.

Eck confirmed that marijuana stores are conditional uses in all zone districts in which they're allowed: CC, CS and I.

Eck: There's nothing in our code that says marijuana stores need to be on the west end of town.

Douglas: No, there's not, and I think that was a deliberate decision by City Council when they allowed CC to be one of the zone districts in which it's allowed. I provided you a map in your packet that demonstrates that these standards are very difficult if not impossible to meet in our community.

Eck: So it appears like the vast majority of CC, which is explicitly one of the zones that Council says can potentially have marijuana stores, is located south of downtown between downtown and the resort.

Douglas: That's correct.

Eck: So one could guess based on the location of CC zoning that it was contemplated in 2013 when this decision was made that this is potentially going to be an area of town where it can be located.

Ptach: With the additional parameters or qualifications laid down in the criteria.

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Gibbs: My recollection is that there was not an analysis done at that time of what the impact of the 1,000 foot buffer would be on CC or CS. So I think you're correct in stating that the intent was that it would be allowable subject to these provisions that were already part of the code without an analysis of whether that would or wouldn't in effect prohibit it from this area.

Ptach: And if City Council wants to change that in the future, they can change that. But these are the rules that we've got to work with right now.

Eck: If you look at all the schools and parks that are in town with these 1,000 foot radiuses, it's most of the map.

Douglas: Yes. That's what it's intended to show.

Levy: Some of the comments we've received mention a parking problem at this location. Can you describe as a conditional use how those impacts are judged by us? Can we say that we think these parking impacts exist solely because of this application? How do we determine the impacts of this use vis-à-vis parking?

Douglas: I think we rely on our parking standards to tell us how much is needed. So when we look at the standards and they're the same, that tells me that we can't assume that this use is going to create a problem.

Eck: There was a reference to the Highway 40 Corridor Access Plan that was forwarded to us in the last couple days. Does that have any binding effect on any planning endeavor?

Douglas: CDOT issues access permits to properties that have a driveway off of 40. It's based on the uses that are there. So when the applicant came with this application, we had them submit a traffic study. So they had a traffic engineer look at how many trips will be generated by this use and evaluate whether there would need to be a modification to the access permit. That would be things like a turning lane or a decal lane or something along those lines. The traffic engineer that the applicant contracted came back to us with a report that showed a comparison between an office use and a non-urban dispensary use. Their analysis was that at peak traffic, there will be

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two more trips for a dispensary over an office use. The threshold for modification of an access permit attributed to a change of use is 20%. So two is an extremely minimal impact on that. So based on our parking standards and the access permit analysis that the traffic engineer has performed and our Engineering Department has confirmed, we don't believe that there should be any additional impact from this use.

Adams: What is the intent behind separating from these residential uses? Is the intent to mitigate visibility? Or is the intent to mitigate pedestrian access?

Douglas: I'm not sure what the intent is. It seems that a separation is desired. That's often the case between uses, particularly ones that can have an impact. I don't have a good answer to your question, but it is a standard. So when we look at it, we look at impacts in general. That's the basis of my analysis in this report is to look at what it would be like if it was there. We found that due to topography and these sites not feeling adjacent, there would be a minimal impact. We also thought that since there is no legal access to either of these parcels, it seemed unlikely to impact anyone.

Adams: What happens to the vested right that this approval would have if there became legal access to one of those lots and they were developed with multi-family townhomes on them. Would that somehow change their approval?

Douglas: No.

Adams: But if those existed right now it could potentially change their approval.

Douglas: Maybe. But I would maybe argue the same case that it's steep; they're up there and this is down here, and they aren't adjacent to each other. Maybe there still wouldn't be a way for someone to just walk down the hill. Maybe the access would be such that it would actually make you travel much further.

Adams: If we're theoretically justifying this based on the fact that they don't feel adjacent, then we're really not talking about adjacent visually; we're talking about adjacent in an access mode.

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If you can't climb down a 20-foot wall, then it's not adjacent. But if there was an access where they could easily walk around the gas station and that's 50 feet from a future multi-family, then the access is still potentially very close. Whether it was access or visually adjacent was an important distinction as far as how to accept this use or not.

Douglas: We also have to look at the conditions as they are today. I think it would be unreasonable to deny an application based on something that may or may not happen or have an impact. It seems to me that we should consider the code and the conditions we know could happen. What we're debating is whether it feels adjacent. That's staff's analysis that they feel separate. I don't know that development of that would necessarily make them feel more adjacent; it might make them feel more separate. It's hard to anticipate how it would be since we don't know how the access would be achieved. I think we have to work with what we have and evaluate what the impact would be on the conditions now and hope that we're making a decision that will serve the community in the future.

Eck: What is the distance to the closest developed residential parcel?

Douglas: There is a single-family neighborhood on Trafalgar and Pamela Lane.

Calihan: But that's not an issue to consider here because they're not adjacent.

Kingston: The letters describe impacts on other existing uses, some of which have been in use feet away for 18 years and involve children. Am I wrong in saying that that's potentially a negative impact and that since we're deciding a conditional use, we have more latitude to consider those negative impacts on existing uses in that zone district?

Douglas: I think the onus is on Planning Commission and City Council to treat this use like any other use. This is a commercial use that's allowed in our community, and to think about it as not a commercial use I think is to...

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Kingston: In the code it specifies we must consider potential negative impacts like odor, noise, dust. You can't say this is not a potential negative impact if 15 or 20 neighbors write and say this is a negative impact. Are we just denying that their impressions of impact are negative because it's not in the existing list of examples of negative impacts?

Douglas: I think so because the state has determined that this is a legal and acceptable use. Our code has tried to anticipate the impacts that it might have on children.

Kingston: We also have a clear standard that it has to be a radius of 1,000 feet from the closest corner of a public park. That is a clear, physical standard that is built on some kind of social/communal reasoning. That's also in the code.

Douglas: Correct. We are within a thousand feet of a park with this proposal as shown. However, as we've discussed, the park use is not happening on all of the parcel where the park is. In the worksession on Monday, you mentioned if there was a swing set on the property line of the park, would it be different? Absolutely. The active park use would be happening within a thousand feet of this use.

Kingston: But the code as written doesn't say that.

Douglas: Right. And that's why we're discussing modification of this standard. So we have to think about it reasonably. Dudley Field is the closest active park use on Emerald Park. The stretch between Dudley Field and the property line of the parcel that contains Emerald Park is a wetland area; it's not suitable for passive or active recreation.

Kingston: We have a karate academy within feet of the door of this location. Small children are moving in and out of there and have been for 18 years. Is it not reasonable if you were a parent to be concerned or worried that...

Douglas: Concern is completely fair, and I think we're all empathetic to that. However, our code is clear. A karate studio, while it may be a valuable use in our community, is not a park, school, seminary, college or university. Commercial uses change often. That's why we don't have...

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Kingston: I understand your reasonable standard as applied to a park that if the kids aren't assembled in that wetland at the far corner of the park, it seems reasonable to extend the radius and allow this to vary. I'm saying isn't it equally reasonable to assume that since there's very vague language here saying we're looking for compatibility with existing uses to approve a conditional use that where you've got an immediate area packed with children that it is reasonable for people to be concerned that their children are exposed to this use. It seems logically just as reasonable. I just want to make sure that that's said. I know I'm voicing the content basically of about 15 letters and 23 people who have written in.

Levy: On one hand, you say the state tells us we have to regulate this business like all other commercial businesses, yet is this the only business to which we apply the thousand foot distance regulation to parks?

Douglas: I believe so.

Levy: So isn't that a dichotomy in your statement? Either they have to be regulated the same, or we can allow differences.

Douglas: The State Constitution gives our community the authority to establish standards. Our community has established strict standards for this use.

Ptach: We've established a thousand-foot buffer from a park, whether or not there's a swing set or wetlands in the park. It's a thousand feet from the park boundary.

Eck: There was another application I recall a while back that had a similar variance request. I think it was actually a little closer as the crow flies. No planning decision by us or Council is binding, but I believe the logic was that they used the walking distance rather than the radius.

Douglas: That's correct. The code is clear on how to measure this; it's a buffer of a thousand foot distance. However, yes, City Council chose to modify that standard in the same process that you're evaluating the modification of the same standard in this proposal.

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Eck: We modify by variances all sorts of standards on a regular basis. Here, it's 947 as the crow flies from the park, so that would be about a 5% variance from the standard. Mr. Fisher, could you speak how you mitigate odor and other tangible impacts to your surrounding property neighbors?

Fisher: I think generally a retail storefront isn't going to have too much of a smell or odor impact. However, we can certainly use carbon filters and that type of mitigating equipment if there are any smells.

Eck: My understanding is that marijuana stores can't have signage with marijuana and that sort of thing. So if kids are done training for karate, they're not going to see a big pot leaf when they walk out.

Fisher: That's correct. You're not allowed to see through the windows, either.

Eck confirmed that there's no smoking allowed on the premises.

Calihan: And how do you regulate who's allowed in your shop?

Fisher: It's 21 or older. We would have an ID check at the door.

Adams: Even though it doesn't have the same level of smell and you're proposing carbon filters and all that, I think we were talking about on Monday that just an operating use has to comply with smell and noise ordinances, anyway. So this establishment can't have a smell coming from it.

Douglas: That's correct.

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Eck: And if someone makes a complaint, Code Enforcement goes and does measurements of some sort?

Douglas: I worked on a grow operation permit a little while back that had some code enforcement issues. In this particular case, we went out there a few times a day over two weeks and documented what we smelled. We asked for help from the Police Department. They would go when we weren't available and report back to us whether they smelled anything. We came up with a report at the end and determined that there was no smell. That was satisfactory to City Council. In the end, the applicant did decide to get another filter to help out the neighbors. But we never found a smell. I think that method of handling it is typical and has been effective in the past. So if somebody smells something, they should say something, and we will investigate.

Levy: We have alluded to a similar situation at Billo over at Curve Plaza. Have we had any problems with its location in proximity to the park? We also had similar discussions about how there were family-oriented businesses around it that felt that they would be negatively affected. Are you aware of any complaints of that nature because of that location?

Douglas: I am not.

Gibbs: I was in a conversation with Chief Christensen this morning, and he also indicated that there had not been any issues with the Billo location other than the break-in.

Adams: There was a public comment suggesting that another retail store had already tried to apply here and was immediately denied and felt they were not given the same opportunity. Can you speak to that history at all?

Douglas: I do not know a lot about that. I am aware of the comment. I can't find applications or denials. Maybe it was communication between our department and the party here. That's not discoverable to me in our files. That may have happened; I certainly won't dispute it. But I think the main thing to focus on is that our regulations have changed since then. And although I can't speak to those conversations or the circumstances surrounding them, I don't think that has a bearing on this application. If Golden Leaf was to come with a proposal in this location, I think we write the same report. Each case stands alone, so I can't say whether we'd support some other application. But I do think that conditions have changed, and the information provided in the

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letter—though it is valuable – I don't know that it's necessarily material to consideration of this proposal.

Eck: There was a citation to a city code section that stated, I think, that if an application is denied at a location, for the following two years within a thousand feet of that location, there can't be an approval. Is that kind of the gist of that?

Douglas: That's regulations from the Licensing section of the Municipal Code for retail marijuana.

Eck: But in any case, for the last two years there hasn't been an application?

Douglas: No. But I'd also encourage you all to focus on Chapter 26. That criteria is what we're evaluating here. The applicant will still have to go through the licensing process. They could receive conditional use approval and not receive their license.

Adams: The 50-foot portion of the park in question, I feel like I remember it being mostly a path through wetlands around there – pretty unusable.

Douglas: That's correct.

Kingston: What are the questions the Planning Commission should be evaluating based on a conditional use that meets the thousand feet and meets the other factor of adjacent residential property? What considerations should we be looking at to assess whether this should be given a conditional use? Because on one hand you're saying that by state statute this marijuana retail store has the same rights as other commercial uses; however, I'm still struggling with what are the considerations that we should be looking at.

Douglas: The criteria for approval.

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Kingston: And the criteria for approval includes things like negative impacts on existing surrounding uses. Compatible with the direction and policies of the Community Plan; consistent with the zone district; mitigates negative impacts.

Douglas: I think it goes on to say more. It says: The proposed use will mitigate any negative impacts to surrounding properties in the community, considering factors such as hours of operation and the potential for off-site impacts such as odor, noise, smoke, dust, glare, vibration, shadow and visual impacts.

Kingston: Is that a comprehensive, closed list? It uses the words "such as," which I take to mean examples include.

Gibbs: They are examples.

Kingston: I'm assuming that the things I'm raising and that people are raising in their letters to the Commission are valid considerations to be considered by the Commission and by Council.

Eck: I would say in my opinion those are all things that could be considered in these four criteria.

Kingston: I just want to make sure for the record that that is recognized as being the case.

PUBLIC COMMENT

Emily Kelly, Ethos Legal Services, Representing DNC Medical Marijuana Doing Business as Golden Leaf:

I am the drafter of the letter that several of you spoke to. I want to make very clear that Golden Leaf does not oppose this variance. That letter is simply intended to give you all a little bit of history about this exact same location. Golden Leaf moved into that location, 410 S Lincoln, right when it opened. Included with that letter is their original application. They were approved in 2009; they were officially licensed at 410 S Lincoln in 2010. Shortly thereafter, they

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approached the city about expanding. They wanted to utilize more of that building; they got permission from the landlord; and they were informed at that time that any expansion in that location would be denied because of the then-existing code. Since then, the code has changed dramatically. At that time, it was 500 feet from a park or a school or various other requirements; now it's a thousand feet. Nonetheless, Golden Leaf was informed unequivocally that their expansion in that same exact location would not be permitted and that they need to find another location that was more suited for the character of Steamboat Springs.

Fast forward to 2013, they relocated to 1755 Lincoln, which I believe is zoned Industrial. They went through the whole conditional use process. They've never had any issues over there. They abandoned 410 S Lincoln because they couldn't expand there, and even though they would have been grandfathered in for that one small unit, they needed additional space.

Fast forward a couple years and they approached Dan Foote as well as some members of City Council to say what about us having a separate location in a different area of town perhaps closer to the mountain. While those conversations were very informal and an application was never submitted, it was pretty clear in 2014-2015 that that would be unequivocally denied. Don't bother trying. Marijuana needs to stay away from the resort town. This is slightly after the town of Vail unequivocally said that there would be no marijuana permitted within city limits because it would taint the character of their town. There was a lot of concern about the negative impacts of marijuana on tourism.

So Golden Leaf was told pretty clearly to stay on the west side of town.

So Golden Leaf does not oppose RMR moving to 410 S Lincoln, but the history is noteworthy.

Natural Choice did successfully get a variance to be within a thousand feet as the crow flies from a park. The logic that City Council used in order to justify that was that in order to access that park, people would have to walk in a direction that was more than a thousand feet. Candidly, if we're granting variances to two out of three dispensaries in town with regard to that thousand feet requirement, I'm not sure why it's a requirement at all. It seems kind of arbitrary if we're not going to follow the code the way that it's written.

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One of the main things that I'd really like to point out in terms of the history of the code is the adjacency to certain zoning. In this case, it's multi-family units. I was literally just informed today that Lot 1 of Fox Creek has a pending development application, and that's directly adjacent to this proposed new location. That's the extent of my knowledge. I haven't seen the application.

With this history and everything that's going on in the national landscape of marijuana, and considering the way the code is written, I think that we as a community need to decide how we want to treat marijuana and how many variances are we going to grant. Do we want to be a marijuana-friendly community, which it seems like we do. If so, how are we going to make sure that it's fair across all businesses. Are we just going to grant variances left and right? Or are we going to say here's our code; here's how we intend to enforce it. What are our standards? What kind of community do we want to be when it comes to marijuana?

If we're going to change a variance for this application and for Natural Choice's application, where does it end?

Those are all questions for you all to consider.

One of the owners of Golden Leaf is here, and we are happy to answer any questions about the history since a lot of it is verbal and maybe not readily accessible to you all.

Betsey Wilbanks:

I am a patron of several of the businesses already in the building. The owner of the building is also a very good friend of mine. There seems to be some exception taken with the fact the portion of the park in question is within a thousand feet, but it's a wetland. Wetlands are developed all the time. Whether or not it's a wetland has no bearing on this whatsoever.

I take real exception to this traffic study that was submitted. I am a permit writer by trade; I've written CDOT access permits. There's a loophole where you can get around them where you do a theoretical study as opposed to an actual study of the actual traffic patterns. And given what I have read and what I have heard tonight, it appears that it was the more theoretical study that was done as opposed to an actual study on actual traffic patterns.

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Being a patron of the businesses that are in the building, I can tell you that with the blind hill towards downtown and the traffic light towards the east side of town, it is impossible to turn left out of there. You've either got to turn right and go through the old Iron Horse Inn or go through the Hilltop Sinclair parking lot – both of which are illegal. If this passes, given where the majority of their traffic is going to be coming from on the mountain area, you might as well just station a police officer there all day because there's going to be accidents like there's no tomorrow.

I second the statements about where do we stop with these variances.

Linda Kish:

What I've noticed is that the marijuana stores here just kind of seem to be available rather than a focal point of the city. So I would encourage you to stick to your rules and have this not by residential areas or by parks.

Lea Wolff Martin:

I am the mother of two of the kids who attend the karate academy and a signatory to the letter that you received earlier this month. When we found out that there was an application for RMR to move into Steamboat Square, several families in the dojo did have concerns about having their young children around retail marijuana on a regular basis. We are there 2-3 hours 2-3 times a week. We appreciate that you are hearing our concerns.

We have some very legitimate concerns with the parking and traffic issues in that location. I'm there at peak time from 4-7. That would be two more trips in an hour into that access point to hit RMR. That does not seem like a reasonable number. I haven't seen the traffic study. I'd like to have an opportunity to review it.

If there was a 20% increase into that access point off 40, that triggers a whole different set of evaluations and studies and potential mitigation that needs to occur at that location. So I think that needs to be further reviewed.

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In the parking lot itself, I think RMR said they were going to get 16 spots out of the 40-ish that are there. That parking lot is at capacity. There are people that can't find parking or that have to drop off their kids and reverse out. That parking lot can't handle turning around large vehicles, so any shuttle busses coming into that spot will have to back out, which is a safety hazard to everyone.

I know the intent is there for commercial use. Any retail that would affect that environment I'd probably be standing here before you today.

One thing I read in the Community Code was: Marijuana stores won't operate in a manner that shall adversely impact the public health, safety and welfare of the immediate neighborhood in which the use is located. We do think that there is going to be a safety concern to our children with that parking lot; a safety concern in and out of those access points on Highway 40 and that those need to be considered.

Karen Hughes:

I am truly curious as to why this proposed location has had little or no public notice aside from a newspaper article dated January 30 mentioning only that they are proposing that and that there has not been a scheduled meeting. Then again on March 20 a very loosely-written article proposing a pot shop move pending. I'm not sure how others here were notified. I think this type of business proposal has a bigger impact on a business that's required to do public notifications, letters to surrounding neighbors and businesses. I apologize if I've missed this, but I think this is a huge public concern and that there should be more notification. It's obviously inadequate and needs to be revisited before any approval of this business is able to move.

The obvious reasons for this location not being ideal: You've heard the traffic with the intersection being congested. There is a new residential development in the process of being built directly east of that intersection. That application is happening. It is a huge multi-family residential development that is directly east of this proposed location. It is evident that there is a significant problem for westbound and eastbound traffic already bottlenecking at the light by the Post Office, which at certain times will back up all the way to the light at Hilltop Parkway. We all know what a nightmare it is to be in that traffic line. This compounded with another location and an influx of individuals who wish to patronize a dispensary who will either attempt a U-turn on Lincoln or stop traffic trying to access this property – this proposed location lacks user-friendly ingress and egress.

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I have witnessed many potential accidents at the intersection of Old Fish Creek Falls and Hot Springs where people are trying to let people in and out and people cut; it's a nightmare.

The CC zone ordinance reads: It's designed and intended primarily to provide nodes of commercial services and sales of goods for residents and visitors as well as nodes for office, lodging and residential development. Emphasis shall be placed on minimizing the impact of vehicular traffic through the provision of low-intensity commercial development, encouraging a mix of complementary uses that might reduce single-purpose automobile trips, mitigation of the aesthetic impact of parking lots, utilization of joint access properties and safe, efficient, well-connected pedestrian, bicycle and transit facilities. I don't see how this location ideally fits any of those criteria.

Legitimate errors have been concerned from parents whose children attend the karate academy. They've been noted but thwarted. The mention of that past application in the paper who said that was a comment previous that it did not derail the application. Derail? Who are we trying to represent here?

In addition with the proposed future build-up slated for the surrounding properties, it's only a matter of time when residents unwittingly purchase dwellings in proximity to this operation. They will be insisting on some level of recourse to address their concerns. This is not unlike an airport that eventually finds its operation surrounded by residential homes with occupants complaining of the noise and the congestion, thereby forcing the airport to placate their concerns for the property investments and quality of life.

In their analysis of the application, city planners noted RMR plans to mitigate odors by using activated charcoal filters. I'm just wondering who the experts are here. If you drive by Downhill Plaza any time, the smell and aroma of the operations are there. No amount of ventilation or filtration completely mitigates the pungent odor of marijuana, which is quite obvious at the location this enterprise now operates. Given the fact that the prevailing winds in Steamboat originate from the west, it only stands to reason that the property owners downwind will be constantly inundated with the aroma regardless of topography.

The state law requires RMR to shield all views of marijuana and related products. Then why this location? It's obviously for the exposure.

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In the end I've been tasked with the owners that have a property down the road which has verbally been denied for this same type of use; they have asked this question: If this proposal is accepted, is it the Council's wish to exclude other dispensaries on the east side of Steamboat Springs, in which case it unfairly creates a monopoly for this individual enterprise. Currently a moratorium is in place allowing only those three individual businesses with a marijuana license to relocate as they wish. This in turn will most likely open a Pandoras box of litigation in order to establish equal footing within this industry.

So I thank you for your time. I'm just curious as to why staff is recommending approval at this location.

Erica Olson:

I've had an office in the proposed area for the past 6+ years. I've spent over four years across the street at 405 S Lincoln and have been in 410 S Lincoln for the last two years and change. I work extensively with locals; I also have a good number of second homeowners and tourists that I have worked with.

When I heard about the proposal of RMR coming in, I started asking some of my clients about it and getting their feedback. I would also like to note that I actually received no official notice about this. I had to hear about it from one of the other tenants. We've known that RMR was looking at somewhere in the area but not specifically where.

Some of the feedback that I have gotten include the kids at the Rocky Mountain Karate Academy. There's arguments on both sides. A lot of people say it gives parents the opportunity to talk to them as a parent.

It's also worth noting that none of us in 410 or 440 have any long-term leases. So if the Karate Academy turns out to be the sticking point, I would not be surprised if they were given notice from their landlord that they probably needed to move.

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I've also had a client who is a local express concern about Mindsprings, which is a mental health and substance abuse clinic directly across Highway 40. Yes, there is a liquor store right next to 410 and 440. But the argument that was brought up to me was they don't need any more temptation and that this is a different variety of vice that they may be struggling with.

I would also like to bring up the parking and the traffic pattern. I have worked in that building 5-6 days a week every week for the last 2+ years, and I can tell you there is currently not enough parking. I don't think that 410 being vacated of the current tenants is really going to solve the issue if RMR is only allowed 16 spots. People already have issues finding parking to patronize the businesses at 410 and 440. I think what we'll end up seeing is a spillover into the neighboring areas (gas station, Coldwell Banker.) This is extra wear and tear on the property that they would have to maintain.

There are two exits – one on the east and one on the west, and it's almost impossible to turn left out of either of them. With the west exit, you have the hill which blocks view, you have the median, and you have trees. It's dangerous to turn left out of there. The east exit requires you crossing two lanes to get into a left-hand turn lane; from there you either have to do a U or you have to go across into the Mindsprings/Flower Mill parking lot. There's a median there. Sometimes there's a sign there -- a lot of times there's not because the sign gets hit and knocked down – directing people to keep to the right of that little island. The amount of times people know where to go when that sign isn't there or even sometimes when it is, is really low.

A lot of times I have had cars come in and almost hit me when I've been trying to exit from 405.

The last option people have to get out of the east exit is basically to pull a U into the gas station parking lot. I have seen an accident occur.

In talking with some of the dispensaries around town, I have been told that peak time is usually around 5-6:30. Rush hour is already a problem there, and attempts to turn left will greatly increase the risk of an accident.

The traffic study – as has been mentioned, actual versus theory. I've been there for two years, and it's a nightmare. I don't care what a traffic study says, whether two more stops. I don't know if it takes into account which direction people are trying to turn. If you're just going one

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direction and you stop and you head back up, that's fine. But if you're trying to come in from the west or you're trying to turn left when exiting the building, it's going to be a huge problem.

Some other concerns I've heard from locals, tourists and second home owners alike are about it setting the tone for Steamboat about having a dispensary right before you hit downtown coming in from the mountain. We all know that canna tourism is a huge draw for Colorado. We've all benefited from it here in town; the rest of the state has benefited from it. There have also been a lot of detractors with people moving to Colorado, etc. But one of the things about Steamboat that I hear over and over again from tourists and from people who were once tourists who have chosen to move here is that Steamboat is known for its family-friendly atmosphere. Colorado has voted to make marijuana legal; no one is denying that. But a dispensary right before heading into downtown a lot of people would not see as family friendly. The tide is changing across the country as far as peoples' views regarding cannabis, but there are a lot of tourists who have spoken to me who consider it kind of tacky or view it with suspicion.

How do we want to handle cannabis in our community? Do we want to make it front and center of part of our way of life? Do people want it to be a little bit more discrete? These are all questions we have to ask, but as far as this particular location goes, I would consider 410 S Lincoln to be a terrible, terrible location for a dispensary.

Mike Rodsman [ph], Owner, 410 and 440 S Lincoln:

I've been associated with that complex since 1983. The girl from Ethos got my attention. A little clarification: I never had to deal with Golden Leaf; I dealt with a prior entity named DNC, which was then acquired by one of the principals of Golden Leaf, I believe after they moved. To my recollection, there were never any discussions about them expanding. They had a very small office. It was a medical dispensary prior to the legalization of recreational sales. We did not have any deal for them to expand, so there could not have been an application that was denied subsequent to them moving or prior to them moving.

Parking is a challenge in Steamboat everywhere. I believe that complex has more parking than many. What I tell potential tenants when they're looking at it is that I've never pulled in here and not been able to find a space. I'm not there that much lately; maybe there are times when you can't park there and you've got to go somewhere else.

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The left turn out of there is problematic. The way you do it is you come out the east entrance, wait for the light to change, go across two lanes and get in the left-turn lane, wait for the light at 3rd Street to give you a pulse and then you turn left. You can get out of there. Or you can sit at the west entrance and wait for a pulse and hammer down.

The Karate studio: They haven't been there 18 years; they've been there about 8 I'd say. Their use has been problematic with kids running amuck a little bit. I think safety in the parking lot, whether RMR is there or not, can be addressed by the fact that the kids should be accompanied by their parents. That was the deal I had when they moved in was that the kids would not run loose around the property. The reality of that has been less than optimum over time.

The shuttle vans and getting in and out of there: In the front lot there's two entrances, and you can drive in one and drive around and exit the other.

As far as the parking load going forward, if RMR were to be in there as a single tenant with a storefront and a stream of customers each spending 15 minutes on the high side, maybe half an hour tops for tourists, but most will be shorter, there's currently 13 tenants in that building. If half of them are there at any given time, that's six cars. If they each have a customer, that's six more cars for 12 spaces. If they have back-to-back appointments and their next round of customers are there, there's an overlap of six more for maybe 10 minutes. That's 18 spaces. It would be very unusual for all 16 offices to be occupied at the same time and have one customer plus another waiting. That would be 48 spaces and there aren't that many. Plus there's a whole other building with a dentist office that has seven employees.

My feeling is that net load on the parking lot would probably decrease from current usage with RMR there as a tenant. Time would tell.

That's my feeling speaking from experience. Obviously, I'm in favor of it. Financially it's to my benefit to have them come. Also from a landlord-tenant management perspective; one tenant is way preferable than 16 revolving tenants. So selfishly, I'm all for this. I think it's a good location that's better than west end. Driving the west side quite frequently, I think anything we can do to take the traffic load off of Elk River Road, especially inbound, would be an improvement.

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And to Ms. Hughes's comment on the traffic load on the highway: I'm thinking this is kind of negligible one way or the other. I'm thinking that traffic is still going to be backed up to McDonald's at 5:00 whether there's a dispensary at 410.

If we really want to manage the traffic, maybe we should consider asking Triple Crown to leave our fine community because their traffic impact is going to be quite a bit more than this one no matter where it is.

STAFF COMMENT

Douglas: The Fox Creek Condominium development is under review now. That parcel is not adjacent to this parcel. You can see it on the project location map on your staff report. The parcels identified in the report are the only ones that are adjacent.

Calihan: Presumably a traffic study would be done for that.

Kingston: I'm still struggling with the criteria for evaluating conditional use and its impacts...

Levy: It's a thousand feet to parks, and it cannot have an adjacent MF or other residential zone property.

Douglas: I wanted to address the notice piece. Notice only gets sent to property owners; sometimes tenants don't get the benefit of that. They did post the sign out front. They've signed an affidavit certifying that; I've also seen it personally. So the notice was performed in accordance with our code.

Levy: If someone within that 300-foot radius came forward and said I didn't get that, we would double-check that list. If there was an apparent violation, we would actually restart this process. Is that correct?

Douglas: It depends on the circumstances, but potentially, yes.

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ADDITIONAL QUESTIONS FROM COMMISSIONERS

Levy: Could you also talk about the owner's responsibility to address the potential increased parking problem, not to remedy an existing parking problem is how our code speaks to this review?

Douglas: Our code states that with a conditional use or any expansion of a use, the net difference is what the applicant is responsible for. So we look at what is existing and then we look at the new use, and we do a calculation. We're not going to have applicants remove spaces if there was less, but we do ask them to make up the difference if there is a net difference. We rely on our parking standards to tell us that. They say that an office or other commercial use like a marijuana store has the same parking standard. So while there may be a deficient design in the parking lot, the onus is not on the applicant to fix that with this application. They are proposing to come into a situation where they do not have a higher parking standard to meet. In the CC zone district, the standards are the maximum, not the minimum as would be the case typically. My perception is that to hold this applicant to a different standard and say that you're going to cause more when our standards say that it's the same requirement as Office and when the traffic report substantiates that there will be no substantial additional impact, it doesn't quite add up with what we have to rely on as a city to make decisions.

Buccino: If a daycare was where the karate place was and it was licensed or sanctioned by the state, we wouldn't have this discussion now, would we?

Douglas: No.

Buccino: But a school of karate is not sanctioned or licensed in any way that you know of or heard of.

Douglas: No. It's not a school, and it doesn't meet the definition of a childcare center; nor is it an institutional use; it's a commercial service.

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Buccino: I know in the past this Fox Springs Development has looked at buying both John Petty's lot and the one on Hilltop and connecting them to be able to do a multi-family project that would encompass both of those parcels, one being the one in question. One of the criteria that you have as a staff is that there's no legal access so that we don't need to consider the residential zone there or that's one of the variances. What I'm asking is what's going on with Fox Creek Filing 2, Lot 1, and how does that relate? Are they combining those two lots? I don't know what the application is, but I have a feeling that's the intent of the developers.

Douglas: It's not.

Buccino: It's just a single proposal for Fox Creek Lot 1.

Douglas: Yes.

Buccino: My concern, though, is we don't know where that's going and that with this large parcel that's zoned for residential right behind the proposed RMR, if they get legal access in the next 2-4 months and now we have a residential development being built right behind RMR, the horse is already out of the barn; we can't do anything.

Douglas: Yes.

Buccino: So there's a residential lot right there behind it. Part of staff's report states that it has no legal access currently. I have clients in the past that have come to me and we were talking about how to develop that lot with those two parcels because they were going to purchase those two together and combine them and make a larger property. At the time it didn't make fiscal responsibility sense, so they never did it. Is it possible it could happen? Yes. Are we limiting to some of the real estate around there? Possibly. But I think just to throw out the residential right behind it is a little bit short-sighted in a way.

Calihan: The secondary consideration on that is that the actual lots are very vertical, so it doesn't feel like there could be a direct behind neighbor.

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Douglas: There's a 20-foot difference from the parking lot to the rear property line of the subject parcel. For these two parcels that we're talking about behind, there's a 40-70-foot difference from the rear property line of the subject parcel to the highest point on these two parcels. These lots were platted with that note in 1999 that they cannot be developed without legal access.

Eck: With that 20-foot drop, even if they get legal access, it's going to be through Sunlight or whatever we're calling it; they're not going to be coming through the RMR parking lot or the other parking lot. They're going to get onto Hilltop in some way.

Douglas: I couldn't speak to the potential, but however it worked out, it might actually feel more separate taking into account the topography.

Levy: If this request is approved, that does not preclude those properties from developing. That would be their choice at that point.

Gibbs: If they were developed and RMR left, somebody else would have to go through this whole process again, and the conditions would be different.

APPLICANT COMMENT

Fisher: Regarding the potential development of the adjacent property, I guess it would be a bittersweet irony if the owner of that property who also owns Billo was the impeding factor to our location there. But, we were the first dispensary to open in Steamboat Springs in 2009. We've worked really hard to be the kind of partner to the town that we can be, given our business. I think we've been very sensitive about where we locate our operations. When we first sited, there was no zoning requirement for our use. We sensitively decided the site where we did. I think the fact that we've taken the kind of time we have before considering a move shows that we do take to heart even the subjective impacts that have been listed tonight. Given the fact that this is a location that previously housed a marijuana dispensary and the world did not burn down, and given the fact that objectively it very nearly meets the very stringent qualifications set out by our local zoning code, I would hope that when the Commission is considering our use of that parcel, that the objective impacts of our use are what are being considered and not the subjective opinions that may have been provided by letter or by voice tonight.

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I'm never going to win the battle of the perception of marijuana even though I could paper this Commission with the stats and figures showing that youth marijuana usage rates are down; crime is down; this, that and the other. But I don't believe those are part of this discussion. I think this discussion should be based on traffic, and I think the traffic study shows that we meet those standards. It is a variance, but as far as consideration of the variance goes, just how do we meet the standards required to consider a variance. I think objectively the 947 as the crow flies and the 1,200+ feet as we walk to a non-usable portion of a park, and an inaccessible residential development as we stand today are objective considerations that I'd hope you consider that will allow our use.

COMMISSIONER DELIBERATION/MOTION

Eck: I think this proposal is compatible with the community plan. I think it's consistent with the purpose of the zone district; it's one of the three zone districts in all of town where a marijuana store is allowed. I do think it mitigates the negative impacts on the surrounding properties. I think parking will be a challenge as the landlord said, but they meet the parking requirement. People can question the traffic study, but that's the study that we have. On the park thing, it's a 5% variance from what the standard is. I think with the walking distance thing that's been used before by Council, it meets the intent of the code. With the residential issue, as we talked about, access if something is developed there is going to come around all the way to Hilltop. So it's actually going to be pretty non-adjacent in reality. So I think it's consistent with the criteria for approval.

Commissioner Eck moved to approve CU-18-01.

Commissioner Adams seconded the motion

DISCUSSION ON MOTION

Ptach: I'll be voting against the motion. I think we've got to draw a line in the sand. These gentlemen – I know their business; I've seen them present before; I think they're wonderful businessmen and an asset to the community. We have a definitive 1,000 feet for the park, and we have a definitive black and white that it shouldn't be adjacent to property zoned residential. Those two alone I do not feel meet Criteria #4 which is that the proposed use complies with all

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other applicable requirements of the CDC. Additionally, on reflection, I think we made a mistake on the 1,000 feet to the park in Curve Plaza for that very reason. I think you start to open up the floodgates. If City Council and the community wants it different, let's change the code. But this is what we've got to work with right now. So I will be voting against it.

Levy: One of my big things is that I'm pretty sure the state and the Planning staff has mentioned that we're supposed to regulate this the way we do other commercial; I think the state specifically references liquor stores. There's a liquor store in this location. If we're talking its influence on minors, I think we're supposed to be reviewing those products the same way; so I really have trouble with the argument of it being close to the dojo and it being a problem. We've heard there's been no problems with Billo and the variance we granted for similar reasons there.

Traffic already exists. I did have a pretty extensive talk with Stuart King, our planning engineer, and he's told me how CDOT came up with those traffic numbers. They don't do actual studies; they do go out and survey areas and try to determine the appropriate number of travel trips generated by a certain business. I was surprised to learn that that number is actually only 2% higher than office. They actually went out to similar locations throughout the state and reviewed how many trips are generated by a dispensary.

The driving situation coming in and out of that development is bad, but because the increase is only 2%, this use is not required to fix that problem. It would have to reach the criteria of a 20% increase even to consider making changes.

Variations: I'd say 90% of the products we see before this Commission contain variations, and I'd say 90% of those get approved by us. I've argued about following the code a number of times as well, but variations are written into the code so we can make these decisions ourselves.

So given those considerations, I will be supporting the motion.

Kingston: I will be opposing the motion for the reasons I've largely stated throughout the evening. I tend to look much more closely at things when there's a fair volume of opposition coming from the community. In this case, I think I counted at least 20 different names that have voiced opposition. The opposing vote comes first of all on the fact that this does lie within the 1,000 feet radius, which is a strict and very definitive standard. Secondly, the fact that there are contiguous residential lots, and we've just defined the policy as not so much property that has been developed already as residential but simply zoned for residential uses in the future. The fact that there's no legal access now does not necessarily preclude the possibility that access won't come in the future.

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I do have concerns about traffic flow. I'm very respectful of the fact that the CDOT study and variance references have been made from staff that this should not be a concern, so I'm not going to stress that too much.

But I think mostly I'm concerned because we are here to discuss the impacts on existing uses and zone districts and the compatibility with the requirements of the CDC. Unlike the previous proposal where we didn't hear opposing voices to the extent we've heard them tonight, I'm certainly not convinced that this proposal passes the test of those two elements of negative impacts on existing zone users and the requirements of the CDC.

Calihan: I'll be supporting the motion today. This is the first time this type of variance has come across my desk. In looking at what we have varied in the past, it seems to be in line with what we've allowed. It also seems to me like it doesn't make sense to say that we approve of something in our city boundaries but then not allow any space for it to happen legally.

Adams: I 100% agree with all the public comment issues with parking. I guess my biggest problem is our code, quite honestly. I will be the first person to suggest that we should take a look at what that max is in those zones. I just don't think that makes sense. I like the optimism that we're trying to reduce car traffic in town; I have a problem with the way it's being utilized and the way it's creating these conditions that people then face when they're using these commercial establishments. That being said, I don't think that we have the purview to deny based on that. I think they're meeting the standard.

I would also bring up that we consider the biases that marijuana stores have that liquor stores once had and don't anymore and that we try to look at this as a long-term kind of condition and what those things are doing and how we are separating liquor stores with their neon signs and marijuana stores with their closed doors, closed windows, mitigated smells, etc. I think we have a lot of enforcement in place to make sure we're carefully walking into this new legalization of this product. I think that those are things that can be enforced if this project moves forward.

I think the applicant today has heard a lot of feedback about this neighborhood that they could be moving into and that this neighborhood has problems with any smells that might emanate or with any kids that might be able to try and get access to the area; might have problems with shuttle busses backing up. I hope the applicant takes all of that to heart if successful with this application. You want to be moving into a place that's successful for you, and hopefully you will take every step necessary to make that successful for the neighborhood which is then successful for you.

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As far as the two variances are concerned, in general I feel very similar to Tom as far as how that 1,000 foot is being applied and we are resting on the code. For me, this specific variance was more acceptable due to the shape of the park where it is within the thousand feet, and that it seemed more based on wetlands and shape that this was park property because it was no other property. Being unusable as park property made the variance a little more the reason why we have variances and why we have a grey area.

As far as the multi-family and the height and if those are really properly separated so those could be an acceptable variance I have struggled with a lot. If not for the very difficult landlocked and no legal access to these lots, I would have really, really struggled with it. But I think those difficulties for those lots have made this variance acceptable in this specific case.

VOTE:

The motion carried 4-3 with commissioners Kingston, Ptach and Buccino opposing.

#4: Approval of Minutes: January 25 PC Public Hearing

Commissioner Ptach moved to approve the January 25 meeting minutes; Commissioner Eck seconded the motion.

The motion carried unanimously.

Director's Report

None.

Adjournment

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Commissioner Buccino moved to adjourn the meeting at 8:17 p.m.

Commissioner Adams seconded the motion.

The motion carried unanimously.