

**Town of Basalt, Colorado
Ordinance No. 21
Series of 2019**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT,
COLORADO, GRANTING FINAL SITE PLAN APPROVAL FOR THE
CONSTRUCTION AND OPERATION OF THE ARTS CAMPUS AT WILLITS
(TACAW) ON THE TOWN PARK-ARTS CENTER TRACT PARCEL LOCATED
IN WILLITS TOWN CENTER**

RECITALS

A. WHEREAS, the Town of Basalt, Colorado ("Town") owns a parcel of land in the Willits Town Center ("WTC") PUD comprised of approximately 0.78 acres and designated as the "Town Park – Arts Center Tract" ("Arts Parcel") on the Plan of WTC. The initial developers of WTC dedicated the Arts Parcel to the Town of Basalt for the purposes of a town park and arts center; and

B. WHEREAS, the Applicant entered into a lease agreement with the Town for the construction and occupancy of a performing arts campus on the Arts Parcel (also known as the TPAC parcel) pursuant to Ordinance No. 10, Series of 2017; and

C. WHEREAS, the Applicant submitted an application for Sketch Plan review which was reviewed by the Planning and Zoning Commission at a public hearing on June 19, 2018. At the meeting the Planning and Zoning Commission recommended approval of the Sketch Plan, with conditions; and

D. WHEREAS, the Basalt Town Council reviewed the application and associated materials and granted Sketch Plan approval by a vote of 6 to 0 through Resolution No. 23, 2017; and

E. WHEREAS, the Applicant submitted an application on June 4, 2019 for Final Site Plan review to construct a building on the Arts Parcel; and

E. WHEREAS, the Planning and Zoning Commission considered the application at a public hearing scheduled for August 20, 2019 and continued to September 3, 2019. Throughout the meeting evidence and testimony was offered by the Applicant and Staff. The Planning and Zoning Commission recommended that Town Council approve the proposed application with conditions by a vote of 5 to 0.

F. WHEREAS, at a public hearing held on September 10, 2019, the

Town Council heard evidence and testimony as offered by the Town Staff, the Applicant, and members of the public. At the public hearing held on September 10, 2019, the Town Council considered this Ordinance on first reading and continued and set a public hearing and second reading for this Ordinance for September 24, 2019 for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado; and

G. WHEREAS, at a public hearing and second reading on September 24, 2019, the Town Council heard evidence and testimony as offered by the Town Staff, the Applicant, and members of the public; and

H. WHEREAS, the Basalt Town Council finds that the Applicant's request is consistent with the applicable provisions of the Town Code, provided the Applicant adheres to the conditions identified in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

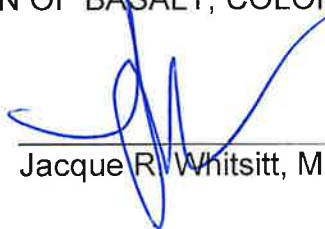
1. The Town Council incorporates the above recitals, representations of the Applicant, and all exhibits as finds and determinations, and conclusively makes all of the findings of fact, determinations, and conclusions contained herein for the purposes of Final Site Plan approval.
2. Based on the evidence, testimony, exhibits and comments from the public, Applicant and Town Staff, the Town Council hereby approves the Final Site Plan application subject to the conditions contained in **Exhibit A**, and the use restrictions contained in **Exhibit B**, attached hereto.
3. This Ordinance shall be recorded with the Offices of the Clerk and Recorder of Eagle County, Colorado.
4. The approvals and conditions herein shall be binding on and inure to the benefit of the heirs, successors, and assigns of the owners of the Property.
5. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passes this Ordinance and each part, section, subsection, sentences, clauses or phrases be declared invalid.
6. This Ordinance shall be effective 14 days after final publication of the Ordinance in accordance with the Town Home Rule Charter.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON September 24, 2019 by a vote of 6 to 0 on September 10, 2019.

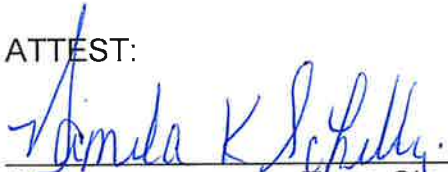
READ ON SECOND READING AND ADOPTED, by a vote of 6 to 0, on September 24, 2019.

TOWN OF BASALT, COLORADO

By:


Jacquie R. Whitsitt, Mayor

ATTEST:


Pamela K. Schilling, Town Clerk



First Publication: Thursday, September 19, 2019
Final Publication: Thursday, October 3, 2019
Effective Date: Thursday, October 17, 2019

Exhibit A

1. The Arts Campus at Willits (TACAW) shall comply with all the material representations made in the application and meetings before the Planning and Zoning Commission and Town Council.
2. The dimensional requirements included in the application are approved and shall be shown on the final site plan document to be recorded in the public records of Eagle County.
3. The Applicant shall be required to include at least the number of restroom stalls shown in Sketch Plan including at least one "ADA/non-gender/family restroom".
4. The Applicant shall consider the installation of a grease trap and ventilation system for the kitchen to avoid the need to retrofit the building at a later date.
5. The Applicant shall develop a program to reduce waste at the facility, including compost and recycling. TACAW shall meet with food and waste haulers to ensure facilities are properly sized before finalizing the building plans. The Applicant shall meet with the Town Planner for approval of these facilities prior to building permit.
6. The gate proposed at the eastern end of Market Street must be reviewed and approved by the Technical Review Committee (TRC).
7. The building design, as shown in the application and supplemental materials, is hereby approved by the Town and to the extent necessary the Town grants waivers to the design guidelines included in the Willits Town Center PUD Control Document.
8. The final materials shall be submitted to the TRC for approval prior to issuance of building permit.
9. Prior to submitting a building permit application, the Applicant shall meet with Town Staff and potentially the developers of Blocks 4, 9, and 11 to establish a coordinated construction management plan and to coordinate administration of the public improvement requirements and financial security for these blocks established in the Amended and Restated Development and Vested Rights Agreement for Willits Town Center Planned Unit Development. Use of Town Right-of-Way for construction staging and construction access is at the sole discretion of the Town. The final coordinated construction management plan requires review and approval by the TRC.

10. The Applicant shall submit and obtain approval of a construction management plan prior to building permit issuance.
11. The Applicant shall obtain approval of the final landscape plan from the TRC prior to building permit issuance.
12. The Applicant shall work with Town Staff to find an appropriate grate for the street trees associated with the site to avoid grates that are buckling and caving in, as is found elsewhere in Willits Town Center.
13. The open space at rear of the building, backing up to Lewis Lane, that is contemplated for TACAW Phase II shall be attractively landscaped to the satisfaction of the Town Planner. Trees, shrubs, and other landscaping chosen for the area must be approved by the TRC. The Applicant shall demonstrate to the Town's Engineer that the area will drain properly. The area shall include an ADA accessible pathway to the lower lawn in a location approved by the TRC.
14. The Applicant may construct a hedge around the private open space at the rear of the building that is reserved for TACAW Phases II and III with openings as represented in the memorandum from Ryan Honey dated September 17, 2019. Temporary barriers or fencing can be placed in the openings during TACAW sponsored events. The hedge and fencing may not exceed four feet in height.
15. The Town Council acknowledges that the desired use of the entire Town Park-Arts Center Tract is a performing arts campus pursuant to the Lease by and between the Town and the Applicant. At any time during the term of the Lease, the Applicant may submit to the Town a final site plan for development of Phase II and/or Phase III of the Performing Arts Campus on the Town Park-Arts Center Tract. Notwithstanding, if, at any time after ten years from the date of the issuance of a Certificate of Occupancy for Phase I, unless extended, the Applicant does not have a valid final site plan approval to construct Phase II of the Performing Arts Campus in the area reserved for Phase II, the Town may evaluate and approve allowing public access and improvements permitted by the PUD Control Document to the southern fenced area of the Town Park-Arts Center Tract, until such time as Phase II is developed. Such access and improvements may require the removal of the fence and additional changes as deemed appropriate under the circumstances. The Town would be responsible for the cost of creating public access and improvements. For clarity, allowing public access and improvements shall not preclude the Applicant from developing Phase II or Phase III of the Performing Arts Campus during the term of the Lease; however, the Applicant shall be required to remove at its cost any improvements as part of the development of Phase II or Phase III. Upon request by

TACAW, and for good cause shown, as determined by the Town in its sole discretion, the Town may grant two, five-year extensions of the foregoing 10-year period.

16. The Applicant shall comply with all applicable regulations of the Building Code, including the Sustainable Building Regulations in place at the time of building permit submittal. The Town encourages the Applicant to exceed the requirements of the Sustainable Building Permit Checklist.
17. The Town supports the Applicant's efforts to make this a fully electric building.
18. The Applicant shall monitor and record bicycle parking demand (as evidenced by the actual number of bicycles present) during TACAW events and shall report this demand data periodically to the Town. If bicycle parking demand regularly exceeds the twenty (20) spaces initially provided, TACAW shall install an additional twenty (20) spaces using the same design and layout as required by Condition 8 of Resolution No. 13, Series of 2018.
19. The Applicant shall identify one or more bike share station locations with an adequate number of bike loading docks either on-site or within adjacent blocks to the site as determined by the Town Planner after meeting with the local bike share administrator (currently WE-cycle).
20. The Applicant shall work with Town Staff prior to building permit to determine whether it is appropriate to locate one or more electric vehicle charging stations, to be paid for by others, in the parking areas required for this Site Plan.
21. The Applicant shall provide a "parking monitoring and management plan" developed by the Town's parking consultant prior to building permit, which shall include the following:
 - a. Ticket Information. The Applicant must include information in its ticket purchase system which recommend participants reduce vehicle use by utilizing such activities as mass transit, carpool, walk, use a bike sharing program, bicycle or combine trip activities in order to reduce demand on parking.
 - b. Use of the Town-owned Parcel 2E. the Town intends to make parking constructed in the Town-owned Parcel 2E available to patrons of the performing arts center when it is not being used by the future development on Parcel 2E.
 - c. Scheduling. Once specified triggers are met, TACAW must adjust the scheduling (dates and times) of its events to mitigate any parking overflow

demand that materially and adversely affects other land uses in Willits Town Center and adjacent residential neighborhoods. Triggers would include ticket holders parking on Willits Lane and/or significant levels of overflow parking in adjacent residential areas as determined by the Town of Basalt. Other potential measures identified in the TDM plan (e.g. expanded bus pass program, and incentives for shared ride travel) may be required if the Town of Basalt determines that these are needed to further mitigate parking overflow issues.

22. The Applicant shall comply with the Transportation Demand Management Program (TDM) for Willits Town Center as outlined in the document prepared by Felsburg Holt & Ullevig dated January 8, 2016 and included as **Exhibit C** of Ordinance No. 28, Series of 2015. A TDM status report and any recommendations shall be submitted by TACAW to the Town Planner for review and approval before issuance of any building permit for the building. (*Note – this is also required by the Developer before filing a plat on any of the remaining blocks in Willits Town Center*).
23. Applicant shall submit a lighting plan for the site that demonstrates compliance with Section 16-434 *Street Lighting and Lighting for Common Areas* and Section 16-435 *Nonresidential Lighting Standards* of the Basalt Municipal Code for approval by the TRC.
24. Signage proposed for the site must meet the requirements of the Willits Town Center PUD. All signage requires submittal of a sign permit application prior to installation. All signage shall be reviewed and approved by the Willits Town Center Review Board (WTCRB) prior to submittal of the sign permit to the Town. All sign lighting shall comply with the requirements of the Town Code.
25. The affordable housing mitigation requirement is waived to the extent there is any current requirement as stated in Resolution No. 13, Series of 2018.
26. The Applicant shall satisfactorily address the comments provided by Chris Lehrman, SGM, as the Town Engineer, in his letter dated August 15, 2019, as determined by the Town Planner. Item 8 of Lehrman's letter has been satisfied by the inclusion of four handicapped accessible parking spaces adjacent to the site.
27. The Applicant shall satisfactorily address the comments provided by Chris Lehrman, SGM, as representative for Mid Valley Metro District, in his August 15, 2019 letter as determined by the Town Planner.

28. The Applicant shall satisfactorily address the comments provided by Brooke Stott, Assistant Fire Marshall for the Roaring Fork Fire Rescue Authority, in her letter dated July 29, 2019 as determined by the Town Planner.
29. The Applicant shall satisfactorily address the comments made by Perry Will, Area Wildlife Manager, Colorado Parks and Wildlife, dated May 14, 2018 and May 9, 2016 prior to building permit.
30. The Applicant shall pay all applicable development review fees, as calculated by the Town Planner, prior to building permit issuance. The Applicant shall also pay all applicable building permit fees as calculated by the Town Building Official prior to building permit issuance.
31. Insubstantial changes to this approval may be approved by the TRC.
32. The Applicant shall pay all applicable development and building permit fees.
33. The Applicant shall provide a final site plan, public improvements agreement, and amended plat to allow the TPAC tract to extend into the Market Street right-of-way for review and approval of the Town. The documents shall be submitted to the Town Planner for review, execution and recordation prior to building permit issuance and no later than 180 days of the effective date of this ordinance and prior to building permit issuance. The Town Planner may extend the recording deadline. If the site plan and associated documents are not approved, executed and recorded within 180 days or as the deadline is extended, the approval shall be null and void.
34. Most, if not all, of the public improvements are secured by other parties. In conjunction with filing the documents listed above, adequate assurances must be provided that the public improvements will be constructed before the certificate of occupancy is granted for the Performing Arts Center. The Town Attorney will work with the Applicant's Attorney to make sure that the necessary documents and agreements are in place before building permit.
35. Vested rights shall be granted for the earlier of three years from the effective date of the approval ordinance or the building permit deadline as included in the lease the Applicant has with the Town. If the Applicant does not obtain a building permit within this time frame, the approval shall be null and void.
36. This Ordinance does not amend any of the other agreements TACAW has entered into with the Town, including the lease or the funding agreement and should not be construed as such.

Exhibit B
Permitted Uses for The Arts Campus at Willits

A. Primary Uses.

The primary use is as a Performing Arts Campus, which includes:

1. Performing arts;
2. Film;
3. Culinary arts;
4. Music;
5. Lectures and discussions;
6. Comedy;
7. Festivals;
8. Educational performances and classes;
9. Practice rooms for music, theatre, etc.;
10. Community gatherings.

B. Accessory Uses.

The accessory uses include, but are not limited to:

1. Office space associated with the arts center;
2. Kitchen. The kitchen may have many uses, including, but not limited to, a classroom for culinary classes, food preparation or catering operations during events, food preparation for sale during events or (not during events) when the building is in use for public or private purposes;
3. Retail space. The retail space associated with the arts center. For example, a gift shop which may sell arts center branded items as well as items related to other non-profit organizations with which the arts center has a relationship. This may include additional area for special events such as a booth or table in the lobby selling items related to a particular event;
4. Refreshment area. This area may function as a bar (serving both alcoholic and nonalcoholic beverages) during events and may function as a small cafe when the building is open and no events are scheduled. The total area to be used as a small café when no events are scheduled combined with any area used as retail space is limited to 750 square feet;
5. Special Events. The building, the outdoor spaces or portions thereof may be used by other non-profit organizations as well as private parties. These may include fund-raiser events, company or corporate retreats, weddings, conferences, and other

public or private uses. Provided, however, the total number of "special events" shall not exceed 100 per calendar year.

6. Civic/workspace. When the building and grounds are not in used for either a public or private function, the lobby, grounds and refreshment area may be used as a civic and collaborative workspace for people to gather and obtain a refreshment.

C. Limitations on Uses.

The Primary and Accessory uses permitted on the property are further restricted by the following:

1. Two-thirds of all events at the Performing Arts Campus shall be events constituting primary uses (Nos. 1 through 8). Further, not more than 50 of the 100 special events per year may be private events such as weddings, corporate retreats or similar private functions where the general public cannot purchase a ticket. In the event the public is welcome to a third-party function, such function shall not be a private special event for purposes hereof. For example, if a third-party non-profit entity sponsors a documentary film held at the facility and the public is allowed to purchase a ticket and attend, then the function is not a private special event for purposes of this section.

2. For clarity, each day of an event counts as a special event. By way of example, a three-day private corporate retreat would count as three events.

3. The Town can use the space if available for Town meetings or trainings. These events are not included in the limit described in part C.1, above. The Town would be responsible for reasonable out of pocket costs of TACAW providing the facilities.

4. The Town Manager may increase the number of these events given the particular circumstances at that time by administrative approval.

5. TACAW shall demonstrate compliance with these limitations in the annual reports required by Resolution No. 23, Series of 2017 as amended.

D. Lease Restrictions.

The following additional use restrictions are included in the lease the Town of Basalt entered into with the Applicant as approved by Ordinance No. 10, Series of 2017. This paragraph is repeated here so that the use restrictions can be viewed in one place. Amendments to these provisions may be made through amending the lease the Town has with TACAW.

1. Use of Premises. The Tenant may use and occupy the Premises for the sole and exclusive purpose of building and occupying a Performing Arts Campus ("Building") to be owned and operated by the Tenant. "Performing Arts Campus"

or "Building" means a structure or structures to be constructed on the Premises and operated as performing arts campus along with accessory uses as shall be further defined and limited by the specific land use approvals granted by the Town of Basalt in accordance with the Basalt Municipal Code. The use of the Premises as a performing arts campus is a requirement of this lease, and the Tenant's failure to utilize the Premises for this purpose shall constitute a default in the Tenant's obligations pursuant to this Lease. The Tenant shall allow the RE-1 School District to have at least three performances per year at the Building including two rehearsals for each event for a fee to cover all reasonable associated costs. The Tenant shall allow the Landlord, through its designee, which may be changed from time to time, to install a public art piece on the Premises, provided the art piece and the placement thereof shall be subject to the reasonable approval of Tenant. The Tenant may place or install permanent art pieces within the building and on the Premises. However, temporary visual art or art for sale must be installed by or in partnership with the Art Base or the RE-1 School District unless the Art Base waives this restriction for a specific event or occurrence. No other use of the Premises is permitted without the written consent of the Landlord. The Tenant shall not use the Building as a visual arts center. No visual arts class shall be held on the premises unless in partnership with the Art Base or its successor organization unless the Art Base waives this restriction for a specific event or occurrence. However, if the Art Base moves its operation outside of Town limits or ceases to exist, this provision related to the Art Base shall not apply. Tenant shall not use or permit the use of the Building for any unlawful purpose. Tenant shall be liable for the actions of its guests and invitees. No hazardous or dangerous activities are permitted on the Premises or Building.