

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, APRIL 22, 2003  
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The Board of Trustees of the Town of Berthoud met for a regular meeting on Tuesday, April 22, 2003, in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 7:32.

MEMBERS PRESENT: Mayor Milan Karspeck  
Mayor Pro-Tem Jenny Foote  
Trustee Don Ashcraft  
Trustee Glen Buckingham  
Trustee David Gregg  
Trustee Michael Patrick  
Trustee Peder Thorstensen

STAFF PRESENT: Administrator Jim White  
Public Works Director Bill George  
Planner Wayne Reed  
Town Clerk Mary Cowdin  
Deputy Town Clerk Charlene Reed

**PLEDGE OF ALLEGIANCE**

Mayor Karspeck led the pledge of allegiance.

**CITIZEN PARTICIPATION**

There were no items presented for citizen participation.

**REPORTS**

Trustee Foote updated the Board on events planned for June in Berthoud. On June 8, 2003, there are plans to unveil the sculptures in the park, and plans for a flag ceremony.

Administrator White reminded everyone that Saturday is Arbor Day. The Arbor Day presentation is scheduled for 9:00 a.m. at Town Hall, followed by tree plantings at the Skate Park. Mayor Karspeck noted there are raffles planned with rain gauges, soaker hoses and other items related to the drought as the prizes.

Administrator White noted the Berthoud Clean-Up Day is scheduled for Saturday, May 17, 2003. We will have dispensers for general household trash and hazardous materials at Turner Middle School. The dispensers for general trash are being provided by Waste Management and Larimer County will provide the dispensers for hazardous materials. We plan to have the cemetery area open to allow people to dispose of limbs and branches, and the Town Arborist has a company scheduled to come in and grind the limbs and branches to mulch. This event is scheduled to last from 8:00 a.m. to 2:00 p.m.

### **CONSENT AGENDA**

The consent agenda consisted of items 5a, the Minutes of the regular meeting on March 25, 2003 and April 8, 2003 and the minutes of the special meetings on April 1, 2003 and April 15, 2003 and the Financial Statement for March, 2003.

Trustee Patrick noted the minutes from March 25, 2003 and April 1, 2003 have not been modified. Mayor Karspeck removed these minutes from the Consent Agenda and noted they will be continued to the next meeting.

**Trustee Gregg moved to approve the consent agenda as submitted. Second by Mayor Karspeck.**

Trustee Ashcraft noted these minutes are public record and cannot be released to the public until they are approved. He encouraged Staff to be sure these corrections are made prior to the next meeting.

Ms. Cowdin asked if these corrections can be made at the meeting, since there are several people waiting for the minutes. Trustee Patrick noted there were significant changes in the draft of the allocation ordinance and the public facilities ordinance, which were not included in the minutes. He noted Attorney Fickel took notes and we need to compare the changes made to the minutes to be sure they are accurate due to their legal value.

**Trustee Thorstensen arrived at 7:40 p.m.**

**Mayor Karspeck, Mayor Pro-Tem Foote and Trustees Thorstensen, Gregg, Buckingham and Patrick voted YES. Trustee Ashcraft ABSTAINED.**

### **PROCLAMATION – ARBOR DAY**

Mayor Karspeck read the Arbor Day Proclamation, designating April 26, 2003 as Arbor Day in the Town of Berthoud. Berthoud received the Tree City Award this year for the 20<sup>th</sup> year. As mentioned, we will celebrate from 9:00 to 11:00 a.m. at Town Hall and in addition to the raffle prizes, there will be information on drought management. He noted we also received the Tree City U.S.A. Growth Award for the third consecutive year.

### **HABITAT FOR HUMANITY**

Public Works Director George noted Habitat is requesting permission to proceed with all or part of the lateral sewer connection to the first house on the project. On Thursday, April 10, 2003, Habitat submitted a sewer plan, marked "Preliminary, not for

Construction.” This plan differs from the original plan changing the direction of the sewer alignment and placing a town maintained sewer line under private property.

Public Works Director George noted this was discussed with Jim Loonan, the Design Engineer for Habitat. In order to mitigate the possibility of sewer backup into the Habitat Lateral, the Town raised the invert in manhole number 1. We also moved an existing water line to make sure it would not interfere with flow. He requested Board approval for this modified plan.

Trustee Patrick expressed appreciation to Public Works Director for his prompt and thorough completion of this project. Public Works Director George noted it took the better part of two days to find a solution, but we did get it resolved. He thanked Trustee Patrick for his comments.

**Trustee Buckingham moved to approve the revised plan for the installation of a sewer lateral for the Habitat for Humanity project. Second by Trustee Patrick. All members voted YES.**

#### **ERICKSON REZONE AND FDP/FINAL PLAT.**

##### **Rezone**

Planner Reed requested that the rezone and Preliminary/Final Development Plan and Final Plat be considered together. Mayor Karspeck opened the public hearing. Planner Reed distributed information regarding the conditions for approval proposed by the Planning and Zoning Commission at their meeting on March 13, 2003. This agenda item is to consider a request to approve the rezoning of approximately 1.342 acres from R2 to PUD. This property is located at the end of 5<sup>th</sup> Street, north of Capital Avenue. The Board will then be asked to consider a request to approve a combined PDP/FDP, containing six (6) single-family lots, and a final plat containing 1.639 acres and seven lots. He noted as part of the FDP, the developer will extend 5<sup>th</sup> Street North past Capital Avenue. The Applicant is replacing the sanitary sewer main to this property, and will improve that line consistent with recommendations from the Public Works Director. Participants from all involved agencies have reviewed and approved this plan, including the Public Works Director, the Fire Chief, the Town Planner and the Building Official. Planner Reed summarized the waivers being requested by this applicant and suggested the applicant address these items with the Board. He noted the Planning Commission recommended approval of these items with four conditions. Two of those conditions have been resolved, and Staff is recommending approval with two conditions involving Landscape Maintenance and Private Easements. The items regarding parking on the auto court and drought tolerant turf were addressed as a part of the Development Agreement.

Trustee Ashcraft pointed out that studies show that all turf grasses use the same amount of water, and asked what specifically they plan to use as a "drought tolerant" turf. Planner Reed noted this wording was used to allow the developer to use something other than blue grass. Trustee Ashcraft expressed concern that we are including something in the plan that has not been created. He agreed it is important to encourage the use of drought tolerant materials to conserve water, but suggested this has not worked with turf grasses. He also expressed concern that the applicant only has a two year plan for watering, noting that no plants can survive without water in this climate.

Trustee Patrick asked for the evaluation standards used for the modification of the architectural requirement regarding garages. Planner Reed noted the standard is to recess the garage 10' from the front of the house. This proposal was presented to and agreed to by a prior Board, and the applicant can answer questions regarding this modification.

Trustee Patrick asked what in our development code would allow the Board to consider such a variance. Planner Reed noted, in this case, it is a waiver of requirement. The development code allows you to come up with flexible development standards, but any modifications must be addressed when the plans are approved. It is the applicant's responsibility to present the request and convince the Board that they are acceptable.

Trustee Buckingham agreed with the concern presented by Trustee Ashcraft. He felt a better approach to maintenance beyond the initial two years would be to make this the responsibility of the homeowners association.

Trustee Buckingham requested the definition of an auto court. Planner Reed noted this is a planning term, involving a private driveway accessed from multiple dwelling units, allowing access to a public street, or essentially a shared driveway.

Trustee Buckingham asked how garbage service will be handled for this development. He also noted on page 6 of the FDP there are two models shown, and asked if those are the proposed models that will be built in this development. Planner Reed referred these questions to the applicant.

Trustee Gregg expressed concern that sewer lines are running through private property, and asked if there is sewer on Capital that could be extended to this area. Planner Reed noted if that is done each house would be required to have a lift station. Even with the plan presented, lots 1 and 6 require private lift stations to lift effluent to the gravity line.

Trustee Gregg expressed concern that we are mixing wet and dry utilities and questioned the setback requirements. Planner Reed noted the PUD is contemplating smaller lots, and stated in general this plan is consistent with our setback requirements. He noted parking standards or guest parking provisions are not included for patio home developments, but he required the applicant to provide eight parking spaces to resolve this issue.

Jim Doyle of Landmark Engineers addressed the Board, noting their goal has been to meet the 1992 Comprehensive Plan. They are committed to maintaining high quality development, blending with and complementing the existing homes in Berthoud, and to maintain a trash free environment. They want to provide controlled development that will not burden the residents of the area. The plan is to maintain the rural feel with tree lined streets and open space. The intent is to utilize at least three different home models, but up to six different plans can be used. These homes will reflect the tradition of Berthoud, with front porches and smaller lots to encourage community.

Mr. Doyle addressed the Board's questions regarding drought tolerant landscaping. He noted they initially planned to purchase a water tap to provide water to the landscape areas. In an effort to control costs, they began looking at alternatives that would prevent the need for the additional tap. He noted they plan to use drought tolerant plants, and will have a landscaper involved in maintaining these plants for the first two years to allow them to get established. At that time, the responsibility for the care and watering of the plans will revert to the Homeowners Association.

Trustee Patrick expressed concern that this plan does not designate anyone responsible to care for the landscaping beyond the first two years. One option is to put in a permanent irrigation system, and another is to make landscape maintenance a permanent obligation of the homeowner association.

Rich Ball of RWB Enterprises, Inc. noted the plan is for the Homeowners Association to maintain the landscaping. They will have a professional landscaper involved during the first two years to get the landscaping established. The obligation for maintenance would be included in the homeowner covenants and the homeowner association will be responsible after the initial two year period.

Mayor Karspeck noted if the covenants are written to that affect, the Town becomes a third party and will have the ability to enforce the requirement.

Trustee Ashcraft asked where the water will be come from to maintain the landscape. The applicant noted the initial plan is to truck in water for the first two years. After that, it will be the homeowner's responsibility to run hoses from their properties, or continue with the landscaper.

Trustee Ashcraft noted trucking in water is difficult and expensive. He agreed that the cost of a tap is expensive, but felt it is important to guarantee the availability of water to the area. He suggested a drip system would be a cost effective solution to this problem

Trustee Buckingham suggested if the Board agrees to allow drought resistant plants, it needs to be stipulated that the Homeowners Association is responsible to replace any

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plants that die. As an alternative to purchasing a water tap specifically for the tree lawns, he suggested the Homeowners Association could run a line from one of the homes in the development, and then pay for any excess water used by that homeowner. Mr. Doyle thanked Trustee Buckingham for that suggestion and noted that would be a possible source for water to the property.

Mr. Doyle noted they came up with the idea to modify the setback for the garages, due to the designs for Lots 2 and 5. The setback would be difficult for those two lots, so it was decided to allow all homes to have the same layout. By allowing this on lots 1 and 6, the homes will blend with the character of the home on the corner of 5<sup>th</sup> and Capital.

Trustee Gregg restated his concern regarding placing a sewer line across private property, the size of the easement, and the mixing of wet and dry utilities. Mr. Doyle noted the sanitary sewer on the lots was discussed extensively, with the private sewer easement on lots 6, 5, 1 and 2 as the best plan available. Reed Braun of Landmark Engineering addressed the sewer lines, noting they will not be deep, which will allow access within the 10 foot utility easement. Because of the depth of the sewer line, these homes will not have gravity sewer. If the homeowners want to put a bathroom in the basement, they will need a small lift station to pump waste into the gravity line. They looked at several options, but wanted to be able to tie in to the existing Town sewer line, and he noted they will be replacing that line. One option still under discussion is to sleeve the sewer line, but that would probably not be done unless they decide to utilize a lift station.

Trustee Patrick asked if it would be cost prohibitive to sleeve the line, and suggested since these lines are not going to be deep, that might provide more protection. He suggested another option would be to put in a central lift station to service all the homes. Mr. Doyle agreed that would be an option.

Mr. Doyle noted he does not have information regarding the mixing of wet and dry utilities. There is the potential on the property to front load the dry utilities to prevent problems, but that will need to be addressed with the utility providers.

Trustee Buckingham asked about garbage service. Mr. Doyle noted these residents will leave their trash on the curb, and it will be picked up from that location.

Trustee Buckingham asked if it is typical to approve an FDP without specific home styles. Planner Reed noted the Town of Berthoud does not require specific elevations for approval for any subdivisions. The Town does not, as a matter of practice or policy, require elevations and models to be finalized at FDP.

Trustee Patrick noted the Board has eliminated proposed elevations from other developments. He expressed concern that we are waiving architectural requirements, which then allows the applicant to pretty much build anything. He asked what we can do

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to insure quality elevations that will be appropriate to the area. Planner Reed suggested the Board could attach a condition that states Staff will work with the builders to ensure that the elevations proposed for the area meet the guidelines provided by the FDP.

Trustee Ashcraft noted the applicant has provided information regarding the type of structure they intend for this property. They are encouraging traditional Craftsman dwellings. The applicant agreed, noting architectural design is addressed in their FDP.

Trustee Patrick asked if the applicant would be agreeable to working with the Planning Staff in developing the final elevations for the development. The applicant agreed.

Mayor Pro-Tem Foote noted there are already different homes in the area, and felt it would be appropriate to have at least three plans. It would be less desirable if all the homes in the development were the same. She noted the applicant has established guidelines in the FDP, and the homes in the area must meet those guidelines.

Planner Reed suggested a simple solution would be to have Staff review the building permits to ensure that the plans comply with the architectural standards defined in the FDP. This would still allow flexibility in design, but staff would have ability to assure that guidelines are met.

Mayor Karspeck opened the floor for public comment.

Tom Torres of 1907 Denver Drive, Loveland asked about the proposed width of the extension of 5<sup>th</sup> Street. The applicant noted they plan to stay with the existing curb and gutter. Mr. Torres noted if they extend the existing curb and gutter, the width of the street will be significantly reduced. The applicant agreed, but noted their intent is to meet the required 36 foot width.

Auvenago Vigil, Jr. of 1035 4<sup>th</sup> Street addressed the Board, noting he has lived at his address for 29 years with no sewer back-ups. He asked who will be responsible if this change results in problems with his sewer line. Mr. Doyle noted this change should improve the sewer in the area, since they are replacing the old pipe with PVC. Trustee Patrick noted the Town would own the line, but responsibility for repairs would depend on the circumstances, and would be considered on a case by case basis.

Torres asked if access in the area would be adequate for emergency vehicles. Planner Reed noted the Fire Department has confirmed that the space available is adequate for their needs.

Mayor Karspeck closed the public comments session and return the item to the Board for discussion. He read the title of the ordinance to change the zoning from R2 to PUD.

**Trustee Buckingham moved to recommend approval of the rezoning of approximately 1.342 acres from R2 (Limited Multi-family) to PUD (Planned Unit Development), finding that it meets the approval criteria stated on pages 4 and 5 of the Staff Report. Second by Trustee Gregg. All members voted YES.**

**PDP/FDP/Final Plat**

Mayor Karspeck opened the floor for public comments. There were none, so he returned this item to the Board for discussion.

Trustee Buckingham asked if it is appropriate to attach the conditions discussed to the motion. Attorney Fickel noted that while the Board is free to negotiate, if they meet the standards in our development code that is all that is required. If this development meets those standards, the Board is obligated to approve the development. They are offering to be cooperative, but the Board must approve or deny the plan on its merits.

**Trustee Buckingham moved to recommend approval of the final plat, finding that it is in compliance with Subdivision Regulations, Section 30-6-107, with the stipulation that watering be provided to the landscape area and that watering be the responsibility of the homeowners association and that staff work with the developer regarding elevations and including conditions 1-2 from the Planning Commission. Second by Mayor Karspeck.**

Trustee Gregg asked if covenants and homeowner association documents are reviewed by the Board. Attorney Fickel noted this can be requested by the Board; however, the only control the Board has is what is legislated in the development code. If they are in compliance with our development code, the Board has no authority to require anything more.

Trustee Buckingham noted we are within our right to stipulate in the motion to require landscaped areas to be watered. Attorney Fickel agreed, and noted it is appropriate to direct staff to work with the developers and builders. He pointed out, however, that the Town Board does not have the authority to dictate the styles of the elevations.

Trustee Patrick interpreted the motion to state that Staff will review the elevations to determine if they meet the architectural details included in the FDP.

**All members voted YES.**

Planner Reed noted he will be bringing the development agreement for this development for Board approval at a later date. The applicant thanked the Board for their consideration.

**WILSON RANCH**

Planner Reed noted the applicant is not prepared for a public hearing on this annexation at this date. They are requesting that this be continued to the second meeting in May, which is scheduled for May 27, 2003. Prior to that time, the Planning Department will determine whether we have adequate and appropriate information to bring to the Board.

**Trustee Gregg moved to continue the public hearing for the Wilson Ranch Annexation to the May 27, 2003 meeting. Second by Trustee Thorstensen.**

Mayor Pro-Tem Foote asked if this can come before the Board prior to that date. Planner Reed noted the formal application for annexation was received in March. The first submittal of the ODP was March 24, 2003. The applicant is not ready to submit the completed application, and at this point, Staff is not ready to bring this before the Board or the Planning Commission. This is not a typical proposal, and will require significant review and discussion prior to having a document ready for Board consideration. He noted the ODP is made up of 12 chapters, and includes a development code. At this time, Staff is working to determine the relationship between this proposed development code and the development code already in place in the Town of Berthoud.

Trustee Buckingham asked whether the Board wants to be in the position of having not seen the documents until after the corrections have been made. He suggested it would be more appropriate to allow Board members to be involved in the review process. Planner Reed noted there are two sides to the answer. The annexation will be available shortly, and Board members are welcome to begin their review when it is available. The ODP, on the other hand, should be reviewed by staff prior to bringing it before the Board. There are some provisions in this document the applicant is adamant about, and it would be helpful if Staff had the opportunity to understand and summarize these items after a thorough review to provide a complete staff report to assist the Board in their review. Trustee Buckingham cautioned staff to ensure that they are not negotiating terms on behalf of the Board. Planner Reed referred this to legal counsel, but noted any items that need to be negotiated will be brought before the Board.

Attorney Fickel noted the applicants are still negotiating among themselves. They continue to work out details, and the ODP is not ready for Board consideration. He encouraged the Board to get involved, but at the present time, there is nothing to be involved in. This process is different from what we went through with the Erickson Rezone and Annexation. With the Wilson Development, they are requesting freedom to develop based on the ODP/PDP, without further Board review. The positive thing is that the Board can appoint representatives to the Design Review Committee to be sure they follow the guidelines. He noted one concern is that our development guidelines are 25 years old. He suggested the Board meet with representatives from Loveland to discuss their experience and how they handled their project with this developer. He noted this is

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a huge project that will extend over 25 years. Our concern should be that we do it right. The Board can provide input, but this developer knows very well that we have no ability to negotiate. Mayor Karspeck noted the Board would like to provide feedback, and he asked if a month would be enough time

Attorney Fickel noted if the developers are not happy with the ODP, they will withdraw and we will be back at the drawing board. Loveland took more than a year and spent significant funds in this process. Planner Reed noted a large part of the funds were spent on the Development Code that was part of the submission. The development code they took to the City of Loveland met or exceeded the development code Loveland was operating under at that time.

Trustee Buckingham noted it is critical that the Board's key points be met.

Mayor Pro-Tem Foote asked if the information can be distributed with lead time to allow for more extensive review prior to discussing this plans. Planner Reed agreed.

Trustee Patrick noted Trustees Gregg and Buckingham were added to the group doing the initial review of this project, and each has talents and backgrounds that will be valuable in this process. He encouraged them to get involved at this stage. He pointed out this developer is building vested property rights in this plan. If this Board approves the ODP and design guidelines, future Boards will not be able to make revisions. This is a strong reason to make haste slowly and look at every portion of the plan.

Mayor Karspeck noted the Board needs to adjourn to an Executive Session to negotiate the Wilson Ranch Development Agreement and to discuss plans for the wastewater treatment plant. Administrator White asked if the Board would like to include Planner Reed in the meeting to discuss the Development Agreement. Board members agreed and with no objection, adjourned to an Executive Session at 9:34 p.m.

The Board reconvened and with no further business adjourned at 11:15 p.m.

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Milan Karspeck, Mayor

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Charlene Reed, Deputy Town Clerk