

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
DECEMBER 16, 2003
Page 1 of 8

The Board of Trustees for the Town of Berthoud met for a special meeting on Tuesday, December 16, 2003 in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 6:02 p.m.

MEMBERS PRESENT Mayor Milan Karspeck
 Trustee Glen Buckingham (Arrived 6:15 p.m.)
 Trustee David Gregg
 Trustee Michael Patrick
 Trustee Peder Thorstensen

MEMBERS ABSENT: Mayor Pro-Tem Jenny Foote
 Trustee Don Ashcraft

STAFF PRESENT Town Administrator Jim White
 Planner Wayne Reed
 Town Attorney Bruce Fickel
 Deputy Town Clerk Charlene Reed

EXECUTIVE SESSION

Mayor Karspeck noted the first item on the agenda is an Executive Session for negotiations. With no objection, by unanimous consent, the Board adjourned to an Executive Session at 6:08 p.m.

Trustee Buckingham arrived at 6:15 p.m. and went into Executive Session.

The Board reconvened from the Executive Session at 7:10 p.m.

REPORTS

Mayor Karspeck reported on the MPO meeting held on December 11, 2003.

Administrator White reported that the Town received a refund of \$49,475.41 from the Northern Colorado Water Conservancy District. These funds represent an overpayment for the vault, and will reduce the overall cost of the raw water pipeline. He reported that we anticipate a refund of approximately \$2,000 in March for the overpayment for our 2003 participation in Northern Integrated Supply Project (NISP).

Administrator White reported that the Masonic Lodge Building was designated a historic site at the last Historic Preservation meeting. This is the first such designation for the Town of Berthoud.

Administrator White reported the interim loan was approved yesterday. This approval gives us the capacity to pay ourselves back for the internal loan we made to pay Glacier, and also allows us to pay other current invoices.

CONSENT AGENDA

The consent agenda consists of 5a., the minutes of the regular meeting on December 9, 2003, and 5b., the financial statement for November 2003.

Trustee Buckingham noted he was not in attendance at the meeting, but he participated in the Executive Session by conference call. Attorney Fickel agreed he would be considered present at the Executive Session, but was not in attendance for the meeting. The minutes reflect attendance at the meeting.

Trustee Buckingham moved to approve the consent agenda as submitted. Second by Trustee Patrick. All members voted YES.

TOWN INITIATED REZONE OF COMMERCIAL AREA.

Planner Reed noted this item was continued by the Planning and Zoning Commission at their meeting on December 11, 2003 for consideration at their next regular meeting on January 8, 2004. He suggested the Board continue this item to the first regular meeting on January 13, 2004.

Trustee Gregg moved to continue the public hearing of the Town Initiated Rezoning from C-2 Commercial to PUD to January 13, 2004. Second by Trustee Patrick.

PUBLIC HEARING – YEAGER FARM REZONE AND OVERALL DEVELOPMENT PLAN

Mayor Karspeck opened the public hearing. Planner Reed noted M & K Investments is requesting to have 116.014 acres rezoned from T (Transitional) to PUD (Planned Unit Development) zoning for a mix of commercial land uses and for an ODP encompassing 110.607 acres for commercial land uses with a maximum of 880,000 square feet of floor area. He summarized the staff report and the conditions of approval from the Planning Commission.

Mayor Karspeck asked for clarification regarding where the sanitary sewer might be located, and asked for an explanation of the different uses allowed in C-1 and C-2. Planner Reed provided the information.

Mayor Karspeck asked whether Parcel B can be accessed by road. Planner Reed noted CDOT and the property owner have reached an agreement for a right-in right-out off of Highway 56.

Trustee Buckingham noted this plan restricts businesses over 10,000 square feet per acre from being located on the property. He asked if it is possible to eliminate the restriction, and require any business over 10,000 square feet to come before the Board for review. Planner Reed noted the Board has the ability to make that change when we get to the site specific planning stage. This restriction is acceptable to the property owner.

Mark Stroudtman with M & K Investments addressed the Board, noting their goal is to bring more tax dollars to the Town.

Mayor Karspeck noted the Town has not done master planning in this area, and suggested it might be beneficial to the applicant to be a part of this process. Mr. Stroudtman agreed, noting they would like to participate.

Trustee Buckingham noted the Town welcomes all Conservation Easements, and asked the basis of the decision to make a gift to the Town. The applicant's attorney, Cameron Grant, noted this was primarily a business decision for the applicant.

Mayor Karspeck read the proposed ordinance and opened the floor for public comment. There were no comments, so the item was returned to the Board for discussion.

Trustee Gregg moved to approve Ordinance 983 rezoning 110.607 acres from T (Transitional) to PUD zoning district classification , attaching all conditions recommended by the Planning and Zoning Commission as stated on the attached sheet, finding that it meets the eight (8) criteria for rezoning as identified on Pages 6-7 of the Staff Report.

Mayor Karpseck opened the floor for public comment regarding the Yeager Farm Overall Development Plan. There were no comments from the public so the item was returned to the Board for discussion.

Trustee Gregg moved to approve the overall development plan with two corrections, and attaching all conditions recommended by the Planning and Zoning Commission as stated on the attached sheet, finding that it meets the eight (8) criteria for a PUD as identified on Pages 6-7 of the Staff Report. Second by Trustee Buckingham. All members voted YES.

AGREEMENT OT MAKE GIFT & CONSERVATION EASEMENT YEAGER FARM.

Planner Reed distributed revisions and a map to the Agreement to Make Gift, noting this agreement allows the Town, at no cost, to preserve 65 acres on the west side of the 287 Bypass.

Attorney Fickel noted there are restrictions regarding what can be done with the property. This will be open space, which can not be used as parkland. This does not preclude the Town from having access in the future, but at this time, the property will not be developed and will provide a buffer between 287 and the properties to the West.

Cameron Grant of M & K Investments noted they are asking the Board to approve the Agreement to Make Gift. This property will be given to the Town in a series of conservation easements beginning in 2003, with the balance of the property, not previously donated, donated on or before June 1, 2006.

Mayor Karspeck asked if there is the potential for a trail to go through the property. Mr. Grant noted they are agreeable to working to locate a trail in this area.

Trustee Buckingham expressed concern that we are locking all of this property up in a conservation easement. This is prime property for development, and he suggested we make part of this property an easement for the Town.

Mr. Grant noted they have looked at many potential uses for this property, and have determined it is in their best interest to preserve this portion in a conservation easement.

Mayor Karspeck noted setting aside this area is consistent with the Town's long range plan for the Bypass area, and this gift allows us to maintain significant open space for this area.

Planner Reed noted there is still significant property available for commercial development, even without this piece of property. We have the potential for 400,000 square feet of commercial.

Trustee Patrick asked whether a conservation easement would prevent the owner and the Town from using this property for recreation. Mr. Grant noted allowable uses are defined in the easement.

Mayor Karspeck asked who will be responsible for maintaining the property. Planner Reed responded that the conservation easement provisions provide for maintenance to fall to the property owner. We do have the right to go onto the property to assure the usage is consistent with the agreement.

Trustee Gregg noted easements can be vacated and asked if that would be possible with this easement. Attorney Fickel noted this deed says in perpetuity, any changes in the uses allowed could affect the applicant's tax benefits.

Mr. Grant noted they are giving away their rights to the property in perpetuity. There is the potential for the easement to go away if the owner of the land and the owner of the property become the same. Their intent is for the easement to be preserved.

Mayor Karspeck moved to accept M & K Investment of Berthoud's agreement to make a gift and to authorize the Town Administrator to execute the agreement. Second by Trustee Gregg. Mayor

Karspeck and Trustees Thorstensen, Gregg and Patrick voted YES. Trustee Buckingham voted NO. The motion carried.

SET PUBLIC HEARING – COLE REZONE

Mayor Karspeck noted this applicant is requesting a change in zoning for 8.12 acres from Transitional (T) to PUD.

Trustee Gregg moved to set the public hearing for the Cole rezoning for January 13, 2003. Second by Trustee Thorstensen. All members voted YES and the motion carried.

**SET PUBLIC HEARING APPLICATION REIMBURSEMENT
& DEVELOPMENT REVIEW FEES**

Planner Reed explained that having researched the costs of typical expenditures incurred by the town in processing Development review applications, the Planning Department has determined the current fee structure is not adequate to pay for the cost of development review. Staff is proposing new submittal application fees, the revision of existing fees, and establishing hourly fees for Town personnel involved in development review. Mayor Karspeck read the title of the ordinance, and noted it will be available at Town Hall for review.

Trustee Buckingham moved to set a public hearing for an ordinance establishing new and/or revising existing fees as provided in the development code; establishing a development review fee deposit schedule, establishing an hourly fee for town personnel involved in development review, amending Section 30-10-104 of the development code; repealing ordinance 707 and all ordinances in conflict herewith; providing a severability clause, providing an applicability clause and providing for an effective date. Second by Trustee Thorstensen. All members voted YES.

LIBRARY BOARD MEMBERS

Trustee Thorstensen nominated Gwen Holly to serve as a rural representative for the Library Board for a 4 year term and Herb Meeker to serve as an in-town representative for a 4 years term. Mayor Karspeck noted with no further nominations and no objections, these appointments are approved by unanimous consent.

Mayor Karspeck called a recess at 8:32 p.m. The meeting reconvened at 8:43 p.m.

RESOLUTION RE WWTP ENGINEERING COST MODIFICATIONS

Attorney Fickel noted an agreement has been reached with Black and Veatch regarding issues identified in a letter from Administrator Jim White, which is incorporated into the resolution by reference.

Administrator White summarized the concerns addressed in his letter of May 28, 2003, which addressed specific financial and ethical concerns regarding the project.

Mayor Karspeck read the proposed resolution.

Trustee Buckingham moved to approve Resolution 21-03, authorizing the settlement of the Town of Berthoud's claims against the Black and Veatch Corporation. Second by Trustee Gregg. All members voted YES.

**CONTINUATION OF PUBLIC HEARING –
WILSON RANCH ANNEXATION AND REZONE**

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
DECEMBER 16, 2003
Page 5 of 8

Mayor Karspeck noted this public hearing was continued from the meeting held December 9, 2003. He opened the floor for public comment.

Karen Stockley, 316 Bothan Road, Larimer County distributed a letter to the Board and summarized her comments regarding open space, the Little Thompson River Corridor and wetlands, and the impact fee.

With no further comments, Mayor Karspeck returned the item to the Board for discussion.

Planner Reed noted following the last meeting, he and Steve Schroyer met with Shiloh Hatcher to review Section 8. Arborist Hatcher made suggestions, which are being incorporated into the Wilson Ranch Development Manual.

Mr. Schroyer summarized Section 9, which establishes the Design Review Committee and describes the variance process for revisions under 15%, and provides specific allowable variances.

Trustee Buckingham asked if 15% variances become permanent. Mr. Schroyer noted once a variance is approved, it does not have to be reviewed again. Mr. McWhinney noted the Town Administrator has the authority to approve variances. Mr. McWhinney noted this manual will be reviewed at least every 2-3 years, and he anticipates it will be reviewed annually.

Planner Reed noted other municipalities allow for the approval of minor variances, 15% or less, and the Commission agreed to allow that within this manual. He noted a variance can be approved for a lot within a subdivision, not for all lots within a subdivision. In order to make a change affecting all lots, the change will have to be considered by the Board of Adjustments, the Planning Commission and the Town Board.

Trustee Gregg cited an example where staff might approve a variance under 15%. Trees in a view corridor might be an example where you would approve less landscaping. He noted allowing administrative approval of minor variances takes the burden off staff, the Commission and the Board.

Attorney Fickel expressed concern that the Town is not allowed to have a voting member on the Design Review Committee. Mr. Schroyer noted this was considered in Loveland, and their Town Attorney recommended that the Town representative serve in an advisory capacity, as a non-voting member.

Board members discussed Section 8.

Mayor Karspeck asked how a hazardous tree would be handled in Wilson Ranch. Mr. McWhinney explained that they would handle the replacement of the tree, and would be liable for any damage caused by the tree. He noted he was unable to see a situation where they would not work with the Town to resolve problems. Mr. Schroyer noted Mr. Hatcher will have final approval on the landscaping plans.

Trustee Buckingham noted Section 8.2.6 discusses ownership, and states the developer can ask the Town to maintain arterial right-of-ways. He asked who would be financially responsible for that maintenance. Planner Reed noted when a municipality assumes responsibility for maintenance, the financial obligation goes to the Town. He noted Arvada maintains and assumes financial responsibility for their landscaped medians. If we wish to assume maintenance responsibility, the cost would come from the general fund.

Mr. McWhinney asked for direction from the Board regarding the open space definition that was handed out.

Trustee Buckingham expressed concern that we have active parkland within open lands, noting this allows a piece of land to be counted twice. He noted he would like to see 30% total open space, and that will not be accomplished if you count areas twice.

Mr. McWhinney noted they are asking that parkland inside the open space corridors be counted as open lands and parkland, noting some of the best parkland is within the open lands. He noted the current code requires 7% for active parkland, and they are giving up additional lands for open lands and open space. Trustee Thorstensen noted counting areas twice would allow the total amount of open space to drop below 30%.

Trustee Patrick noted the public believes that 30% means 30%. Public expectation is not that everything that is not concrete counts as open space. Now we are saying everything that is not concrete will be counted, and some areas will be counted twice. He agreed to allow parkland counted in open space, but noted he would like to see the open lands expanded to maintain the 30%.

Trustee Buckingham agreed he does not want to see double counting. He suggested it might be necessary to come up with an adjustment to the 30%, but all open space should only be counted once.

Trustee Patrick noted the Board has agreed to many of the areas they want to include in the definition, but that hinged on having 30% total. The Board has an expectation that when this project is complete, there will be 30% open space.

Mr. McWhinney suggested the percentages be adjusted to allow 13% open space, 5% parks and 12% development open space. With that reduction, they would still have trails in open lands, but would be willing to count the trail areas only once.

Trustee Thorstensen asked how a reduction from 7% to 5% would affect the size of the parks in the development. Mr. McWhinney noted they hope to have one large community park, open to the public, and there will be pocket parks in each of the individual neighborhoods.

Trustee Patrick noted he would be reluctant to approve a plan with less than 7% active parkland.

Trustee Gregg noted the current calculated percentage of active parkland in the Town of Berthoud is 2%. Planner Reed agreed, but noted our Development Code now requires 7% for any new development.

Trustee Patrick noted he would like to keep active parkland at 7%, and to eliminate any double counting.

Mr. McWhinney asked if the Board would consider a minimum of 30% with 10% open space, 7% active parkland and 13% development open space, with the qualifier that they will meet the 30% requirement.

Trustee Patrick expressed concern that the 13% development open space would not be accessible to the public. He noted at some point, you have to say that when you are finished, you end up with 30%.

Mr. McWhinney pointed out that it is not how dense you make a development, but how you make it dense. Percentages do not make a good project; other factors directly affect the quality of the development we achieve.

Mayor Milan expressed concern regarding transfer fee calculations, noting it would be a shame for Wilson Ranch to contribute less than the required amount to open space.

Trustee Buckingham suggested 30% open space, consisting of 13% open lands, 10% development open space and 7% parkland would be acceptable.

Trustee Gregg noted he would be in favor of the broader definition and a net open space of 30%. The more we try to define open space, the more we handcuff the developer. He noted you cannot legislate good taste, and percentages do not mean good design. It is better to maximize design results by setting the bar at 30% with no double counting and allow them the broader definition. Leave it up to the designers and staff to

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
DECEMBER 16, 2003
Page 7 of 8

make sure the area is divided in the best possible way. It is better to step backward and allow more flexibility. This development manual will be reviewed on an annual basis and the development can be monitored. The current Town inventory is 2%, we require 7%, and anyone would be hard pressed to identify the difference between 12 and 14%. What matters are the intangibles; quality, visibility, view corridors, and access.

Mr. McWhinney noted they are prepared to live with these revised definitions.

Trustee Patrick noted with the purpose of a development manual is to quantify, to a large degree, the kind of development we expect on the 1600 acres. He noted what is being asked for is a significantly greater level of trust than any other developer has ever received. They are asking for trust and that is acceptable. However, in this area, minimums are important, and once they are established, this gives the developer extraordinary flexibility.

Mr. McWhinney asked if the Board would consider 10% open lands, 7% active parklands, and 13% development open space, with the understanding that there will be a minimum of 30% of the net area which is 420 acres open space.

Trustee Buckingham asked if they would consider defining the open lands at 13% and the development open space at 10%. Mr. McWhinney agreed to try, but noted one solution was to put open space at the rear of the development. He noted that whatever definition is agreed upon, the final plan will encompass the quality development they proposed in the first place.

Mayor Karspeck expressed concern that the density transfer fee is not being considered for this development at this time.

Mr. McWhinney noted no one else is being asked to provide 13% open lands. He also pointed out that Berthoud's fees are higher than other areas in Northern Colorado.

Mayor Karspeck objected, noting the reason our fees appear higher is due to how our water dedication fees are being presented. We have looked at our fee structure, and the numbers are reasonable.

Planner Reed noted our fees are higher if a developer does not bring water, and leaves that obligation to each of the builders. Each builder is required to pay the equivalent of 1.43 shares, which is \$20,000. He pointed out there are other options that will allow the fees to be reduced.

Mayor Karspeck noted he would be opposed to not including a density transfer fee, and suggested he would like to see those calculations.

Mayor Karspeck noted Mayor Pro-Tem Foote left information with him regarding her concerns. She objected to including school yards in the definition and to counting properties twice. She is asking for a minimum of 30% real open space.

Mr. McWhinney suggested that instead of a density transfer fee, they would consider purchasing land for the benefit of the Town to locate a wastewater treatment module at I-25. He suggested this might be grounds for further negotiations.

Mr. McWhinney asked when the Board will be ready to discuss the annexation agreement Mayor Karspeck suggested the Board might be ready to consider the annexation agreement on the 13th of January.

Mr. McWhinney asked for comments regarding the annexation prior to the meeting on the 13th. Attorney Fickel noted he has requested comments from Board members by January 2, 2004. He is recommending an

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
DECEMBER 16, 2003
Page 8 of 8

Executive Session for January 6th, and the Board should be ready to discuss this topic at the meeting on January 13, 2004 or on January 20, 2004.

Mr. McWhinney noted he has a three year option on the Wilson property, and the agreement is scheduled to expire in April. He noted there is a lot of work to be done before they are ready to go forward with this project. He asked if the Board would be willing to set aside an evening to discuss the annexation agreement.

Administrator White suggested this could be discussed on January 6, 2004, and other topics planned for that evening could be postponed. He also asked if the Board wants to continue meeting at 7:00 p.m. and Board members agreed.

Mayor Karspeck opened the floor for public comment. There were no comments from the floor.

Trustee Buckingham moved to continue the Wilson Ranch Annexation, Rezoning, Overall Development Plan and Development Manual public hearing to Tuesday, January 6, 2004. Second by Trustee Patrick. All members voted YES.

With no further business before the Board of Trustees, the meeting adjourned at 11:05 p.m.

Mayor Milan Karspeck

Deputy Town Clerk Charlene Reed