

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, NOVEMBER 4, 2003
Page 1 of 9

The Board of Trustees for the Town of Berthoud met for a special meeting on Tuesday, November 4, 2003, in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 7:30 p.m.

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

MEMBERS ABSENT: Trustee Michael Patrick

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

Administrator White noted he received notice for the Northern Colorado Water Conservancy District that we will start our 2004 water flow at 50% of our quota. The NCWCD's Annual Fall User's Meeting is scheduled for tomorrow, November 5, 2003, from 8:00 a.m. to 12:00 Noon at the Holiday Inn on Prospect in Fort Collins, Colorado. He further noted NCWDC has again offered to provide tours for any Board members who have not had the opportunity to tour the facility.

Administrator White noted that representatives of the Colorado Community Revitalization Association will be in Berthoud for meetings on Wednesday and Thursday, November 12th and 13th.

Administrator White thanked the Board for arriving early and allowing us to start this evening's meeting at 7:00 p.m. He recommended that all future meetings for the remainder of 2003 be held at 7:00 p.m.

Administrator White noted the process of the interim loan for the wastewater treatment plant has been delayed, due to Tabor issues that surfaced. The anticipated approval date is at the December 5th Board meeting of the Colorado Water and Power Authority. He indicated that further details will be provided as they are available.

Attorney Fickel noted the Colorado Water and Power Authority have agreed to assist us with this problem in spite of its policy not to enter into long term fund indebtedness. We are in this position because they did not sell the bonds that were to have funded this loan. They have committed to recommend that they give us long term financing at 4.75% regardless of what happens with bonding. If we are faced with rates higher than the

4.75%, we would be in a bad position and would be required to go back to the voters for approval of the higher rate. We have already signed an agreement with the Water and Power Authority that they can charge us up to 12%. They are committing to give us permanent long term financing at 4.75 even if the rates go up above that rate. Previously they were not giving us a commitment to the interest rate.

Administrator White noted Tom Vaughn, Little Thompson Pioneer Museum Director, created a poster for the 2004 Farm Calendar Fly In which is scheduled for Sunday, November 9, 2003, at Waggener's Farm near County Road 5 and County Road 46. The farm calendars that will be flown in will be on sale at designated locations in Town, including Town Hall.

CONTINUATION OF PUBLIC HEARING FOR WILSON RANCH
ANNEXATION,
REZONE AND OVERALL DEVELOPMENT PLAN

Mayor Karspeck noted this public hearing has been continued from October 28, 2003. He noted we have not had public comment regarding this annexation to date.

Planner Reed noted all Board members were asked to review Sections 1-4 for this meeting. He suggested that the Board allow for public comment at the beginning of the future meetings to allow the public to leave early if they do not want to stay for the entire meeting. This meeting will be continued and there will be future opportunities available for public comment.

Mayor Karspeck opened the floor for public comment.

Molly Sommerville with Krug and Sobel, LLC, Attorneys at Law, 1700 Broadway, Suite 508, Denver, CO representing Anadarko E & P Company LP ("Anadarko E&P), formerly known as Union Pacific Resources Company and Anadarko Land Corporation, formerly known as Union Pacific Land Resources Corporation with respect to the Application. Anadarko Land owns all the coal that underlies Section 23, and Anadarko Land and Anadarko E&P together own all of the minerals that underlie the west ½ of Section 25.

Attorney Sommerville noted the Anadarko entities wish to give notice to the Town of the mineral interests that they own under the Property and made the Town aware that any subsequent approval by the Town of a final plat application and subsequent construction on the ground may prevent or interfere with the prospective development of the oil and gas that underlies the Property.

She noted the Anadarko entities do not object to the annexation of the Property; however, they do object to the approval by the Town of a final plat for all or any portion of the

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, NOVEMBER 4, 2003
Page 3 of 9

Property unless and until an agreement on surface use with respect to oil and gas is reached among the Anadarko entities and the Applicant.

She noted that Anadarko Land does not at this time object to the Application because of the coal and other hard rock mineral interests that it owns in either Section 23 or Section 25. This objection is limited to the oil and gas interests that the Anadarko entities own in the Property.

Attorney Sommerville noted discussions are ongoing with Mr. Schroyer of McWhinney Enterprises, and Lucia Liley, the attorney for McWhinney Enterprises, and they would like to have an agreement in place before the final plat is approved. She noted they have formally filed notice and an objection letter with the Board.

Mayor Karspeck thanked Attorney Sommerville for her comments. There were no other comments from the floor, so Mayor Karspeck returned the discussion to the Board.

Troy McWhinney and Steve Schroyer, McWhinney Enterprises, addressed the Board and led the discussions regarding sections 1-4.

Mr. Schroyer distributed reviewed maps as requested by the Town Board.

Board members reviewed and discussed Section 1, Introduction – Allowable Uses/Districts.

Trustee Buckingham expressed concern regarding the maximum density and the number of ancillary units which will be in addition to the 4,000 allowed under this plan. Mr. Schroyer noted that would be semi-attached or attached units, and those are generally unique dwelling that share a water tap and utility service as a specific house.

Trustee Buckingham felt the changes in the Table 1-1 regarding Uses by Right and those uses requiring a special review were well done. He asked for the mix contemplated for the mix use area when comparing residential versus non-residential. Mr. McWhinney noted that will be determined by the market. There are specific areas that will be commercial only, which will include 259 acres. Mr. Schroyer noted another determining factor in the area is the topography of the area. They are asking for flexibility based on the demand, in determining where the commercial and residential properties will be. He noted they would prefer more commercial usage in the mixed use, since that is the focus of their company. However, at this time, it is hard to predict what the demand will be in the future.

Mr. McWhinney noted they would prefer to limit the residential usage in the mixed use areas, because they are limited in the amount of retail space they have in the area. The retail space generates sales tax dollars, and they would like to maximize that usage.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, NOVEMBER 4, 2003
Page 4 of 9

Trustee Buckingham asked how phasing was determined in Centera. Mr. McWhinney noted the City left the phasing up to them and their consultants.

Trustee Gregg requested clarification regarding Section 1.3.5 which states that the Town of Berthoud will be the provider for Water and Sewer. He noted there may be interim solutions in place while this project is under construction until the Town can provide services. He noted the way this is worded at this point, the first day of occupancy, there would have to be a new sewer treatment plant on location. Mr. McWhinney agreed to make the revision.

Attorney Fickel suggested clarification of appeals. The Manual states that appeals of the Town Administrator's decisions will go to the Planning Commission or come before the Board. Mr. Schroyer noted this will be addressed in Section 9, Regulatory Procedures. Attorney Fickel suggested minor revisions to wording.

Attorney Fickel noted Section 1.3.2 does not designate a ratio or percent required between the amounts of multi-family attached or single family detached products, which allow them to meet the market. Trustee Gregg noted the maximum unit cap will prevent any abuse in this area. If they build more multi-family units, that will leave more areas open. Attorney Fickel noted this wording prevents the Board from requiring specific types of units, because it will be left up to McWhinney Enterprises. Mr. McWhinney noted their goal is to bring all of the different types of units to the area. Mayor Karspeck asked if that can be included in the goals for the area. Mr. Schroyer noted the mix is also clarified in Section 5, which designates what must be included in each area. There are specific requirements for different products within each of the segments. Trustee Buckingham asked that they include specific intent language in the introductory portion of the manual, which would indicate what they are hoping to achieve in the area, with a specific statement that says they reserve the right to be flexible to meet the needs of the future.

Board members reviewed and discussed Section 2, Non-Residential Site Planning Criteria.

Mayor Karspeck expressed concern about the 25' buffer zone, versus the I-25 Design Standards. Mr. Schroyer noted these standards require a 100' setback from wetlands, including irrigation ditches. He noted some of the highest quality of wetlands in the State, in Summit County, only requires 25' setbacks, if there are no endangered species. On the Little Thompson River Corridor was chanelized in the 1960's, and the Wilson's are farming to the top of the banks. Designating 100' or 200' or even 400' would not be preserving anything. He noted they must stay out of the 100 year flood plain, which will preserve much more than 100'. Mayor Karspeck noted there is one major feature in the area, and that is the Little Thompson River Corridor and he stressed that area must be

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, NOVEMBER 4, 2003
Page 5 of 9

preserved. Mr. Schroyer suggested they might want to take a small portion of the river corridor area and create something similar to Estes Park. With that, the majority of the corridor would be kept natural. In order to make changes of that type, they will need Army Corp approval. Mr. McWhinney noted if you don't allow people areas to get to the water, they will trespass to reach the water. Mayor Karspeck agreed and felt that would be a good plan for the area.

Trustee Buckingham noted the Estes Park river area is lengthy and well done. Mr. McWhinney noted their length of river frontage is minimal, but with several of the adjacent property owners and the Town, an area can be planned and developed to be similar to what is in the Estes Park area.

Trustee Ashcraft felt this is an excellent opportunity to reclaim the Little Thompson River Corridor and development around the area should support that plan as we go forward.

Mayor Karspeck noted the berming included in 2.10.1 may be in conflict with the I-25 Design Standards. He felt we should avoid berming that makes you feel you are going through a valley. Mr. Schroyer agreed, noting in many areas they many not want any berm. Mayor Karspeck felt this should be a pleasing place to drive by, as well as to be in.

Trustee Buckingham asked why it was necessary to include the statement which says the ODP will supercede the I-25 Corridor Design Guidelines. Mr. McWhinney noted they want to make sure it is clear that the ODP will be the governing document for this development. Trustee Buckingham noted it makes it appear that the two documents are at odds. Mr. McWhinney noted there may be areas where the documents do not agree. Trustee Buckingham noted that the ODP will be approved or disapproved, regardless of other documents that affect the area. Mr. McWhinney noted this will be a legal document when it is approved, and when there are multiple documents governing an area, one must be acknowledged as the principal document.

Mayor Pro-Tem Foote suggested it is important that this plan agree with the I-25 Corridor Plan since that was adopted as an ordinance and it can not be ignored. She noted it is the obligation of McWhinney Enterprises to meet the plan. Mr. Schroyer noted the I-25 Corridor Plan wants high density residential. Mr. McWhinney noted if the Board wants high density residential, that will take away from the sales tax that can be generated in the area. Trustee Buckingham noted the Board has the ability to make exceptions to the I-25 Corridor Design Standards. Mayor Karspeck noted the Board adopted the baseline standards, but these standards can be modified. These were adopted as standards for the area.

Mayor Karspeck noted Planner Reed is preparing a matrix that will identify any deviations in the standards. That will be the first step and then any issues that are

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, NOVEMBER 4, 2003
Page 6 of 9

identified can be resolved. He suggested once we have determined the variations, we can decide if this statement needs to be removed.

Trustee Gregg expressed concern with allowing trash receptacles in the setback areas. Mr. Schroyer noted the manual offers specific guidelines for these items when they are included. Planner Reed suggested the item be modified to refer to the specific guidelines.

Trustee Gregg suggested 2.8.2 be modified to state that vertical siding respond to the natural grade. Mr. McWhinney noted in most cases the sites that require the most modification are those for the larger retail sites that the Town wants to encourage. Mr. Schroyer noted there are guidelines already in place to limit the height of retaining walls, but agreed to include the wording.

Trustee Gregg asked if the document requires underground power lines. Attorney Fickel noted that is required prior to the issuance of a certificate of occupancy. Mr. McWhinney noted there are some lines that will not be underground, but that will be power lines outside of their control.

Trustee Gregg asked if there will be a master fence design for the property. Mr. McWhinney noted fencing and signage will probably vary from village by village. There will be fencing and signage design guidelines.

Mayor Karspeck noted one issue in town is that fences are too close to sidewalks and recommended setbacks to allow more usable walkways. Mr. McWhinney noted that is not usually so much of an issue when the fence is only four feet tall. Mayor Karspeck noted a setback of one foot would make the fence more pedestrian friendly.

Attorney Fickel expressed concern regarding allowing landscaping in the easements and rights-of-way. He also asked that the language be clarified regarding easements and rights-of-way. Mr. McWhinney noted there have been issues in Loveland because the DRC wants trees in the rights-of-way, and the Water Department says no trees because of the water lines. He noted the abundance of landscaping is what makes a project attractive. Mr. Schroyer noted the standard in most municipalities is 10 feet. In some special instances, the restriction is 5 feet. Attorney Fickel noted he is more worried about trees. Landscaping can be done with shrubs and that will not cause a problem.

Trustee Ashcraft noted other areas are having problems with landscaping being placed over infrastructure. He suggested this needs to be addressed when the infrastructure is put in. Engineers do not think about the landscaping when they are designing the location of the infrastructure. Mr. McWhinney noted that is part of their master planning for the development once approval is put in place. They actually look at landscaping and engineering to prevent problems in the future.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, NOVEMBER 4, 2003
Page 7 of 9

Attorney Fickel recommended language that says the landscaping would significantly impact the maintenance and repair or replacement of underground utility infrastructure, those items will take place over the landscaping and landscaping and replacement landscaping will be installed at the owner's expense, and it will not be the Town's obligation to replace driveways and sidewalks. Mr. Schroyer suggested further discussion regarding this issue.

Board members reviewed and discussed Section 3, Non-Residential Architectural Standards

Trustee Gregg expressed concern about 3.4.1, the second paragraph, which states, "With the exception of windows, building materials shall be natural/indigenous in character." He suggested a qualifier to allow more variation in the materials that would be acceptable.

Trustee Gregg questioned the statement under 3.5.1 which states "A single, large, dominant mass shall be avoided. Following discussion, it was decided to say "shall be allowed, if mitigated by the following."

Trustee Gregg noted under section 3.13.1, Variations in massing, item C allows one change in horizontal plane of at least eight inches. He noted in a building that exceeds 50' in length, a variation that slight will be difficult to see.

Trustee Ashcraft asked for a definition of "timeless design." Mr. Schroyer noted if you take 50 people you would get 50 different definitions. Mr. McWhinney noted they are trying to achieve design that is not a fad. It is hard to put criteria to the definition, but it is important that the development be timeless. Trustee Ashcraft agreed that is appropriate, but noted in the Development Code, under commercial architectural design guidelines, the opening paragraph states, "Although the main goal is quality architecture, the use of major elements of Berthoud's historical downtown commercial architecture as shown in the photo provided by Little Thompson Pioneer Museum is encouraged." He suggested he would like to see that extend to the Wilson Manual.

Trustee Gregg noted extending the historical development to I-25 would take away from Downtown Berthoud.

Trustee Ashcraft agreed, but noted he would like to see historical elements in the area that enhance the Downtown area. This area should be a reflection of Berthoud.

Trustee Buckingham agreed and asked for language in the manual that would say where possible, there would be an attempt to make connections between Downtown Berthoud.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, NOVEMBER 4, 2003
Page 8 of 9

Trustee Gregg suggested the wording that historical elements should be drawn upon, where possible.

He suggested the wording of Section 3.2, Paragraph A be modified, as follows, "Create a timeless design that has enduring forms and qualities, and draws from Berthoud's historical character."

Trustee Buckingham asked that the applicant bring proposed wording that would make these changes.

Planner Reed noted the Development Manual, when approved by the Board, will supercede the Town of Berthoud Development Code. They provide more specific standards, and we have a matrix that compares the manual and that code.

Mayor Karspeck called a recess at 9:45 p.m.

The meeting reconvened at 9:50 p.m., and the Board reviewed and discussed Section 4.

Mayor Karspeck suggested residential in the CR Zone with the area expanded. Mr. McWhinney noted they are hoping to limit that area to shopping and no residential. He clarified the plans for the area.

Trustee Ashcraft asked how they categorize pedestrian movement. Mr. Schroyer noted that is one of the most important aspects of the development and they want all areas within the development to be linked.

Trustee Ashcraft noted Section 4 includes roundabouts, and asked if they are going to draw from problems from the past. Mr. McWhinney noted they will be presenting alternatives and getting public input before making decision regarding this type of structure.

Trustee Gregg asked the reason for including compact car spaces away from the front of the building. Mr. McWhinney noted many of their businesses may require a specific number of parking spaces, and including compact spaces helps them achieve this requirement.

Trustee Gregg asked if these guidelines meet the requirements of the Fire Department. This was confirmed.

Trustee Ashcraft noted there is a matrix that defines areas where this Development Manual complies with, or is not in compliance with our Development Code. Mr. McWhinney noted once approved, this Development Manual will be the prevailing document for the development, taking precedence over the Town of Berthoud Development Code.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, NOVEMBER 4, 2003
Page 9 of 9

Planner Reed agreed to provide a copy of this document, and noted for items specifically addressed by this document, this document will take precedence. For areas where this document is silent, the Town Code will take precedence.

Mayor Karspeck opened the floor for further comments. There were no further comments from the audience.

Planner Reed asked the Board to focus on Chapters 5-8 for the next meeting. He noted he will provide the matrix discussed this evening and a further matrix that defines the I-25 Baseline Design Standards to the standards in the Wilson Development Manual.

Attorney Fickel provided an update on the status of the annexation agreement. A meeting will be held with Lucia Liley, the attorney for McWhinney Enterprises, to continue negotiations. He noted this is an extensive document, and he will provide a summary of the information when the document is ready to come before the Board.

Administrator White noted we have requested input from K-Lynn Cameron from the Larimer County Open Lands Board regarding the Wilson property and Tom Keith from EDAW. Staff will be taking these individuals on a tour on Friday morning, and we hope to have their input for the next meeting.

Attorney Fickel reminded the Board that this is a public hearing and a quasi judicial hearing. He encouraged the Board to refrain from discussing this development outside chambers, noting he would hate to see anyone disqualified from voting, or see the entire Board disqualified from voting, when the hearings are over. He encouraged Board Members to refrain from discussing this hearing outside the Board Room.

Mayor Karspeck asked if the Board would agree to hold the remaining meetings in 2003 at 7:00 p.m. Board members agreed.

Trustee Gregg moved to continue the Wilson Ranch Annexation, Rezoning, Overall Development Plan and Development Manual public hearing to November 11, 2003. Second by Trustee Buckingham. All members voted YES.

With no further business before the Board, the meeting adjourned at 10:20 p.m.

Mayor Milan Karspeck

Deputy Clerk Charlene Reed