

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, APRIL 27, 2004  
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The Board of Trustees for the Town of Berthoud met for a regular meeting on Tuesday, April 27, 2004 in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 7:03 p.m.

MEMBERS PRESENT: Mayor Milan Karspeck  
Mayor Pro-Tem Don Ashcraft  
Trustee Glen Buckingham (arrived 7:05 p.m.)  
Trustee David Gregg  
Trustee Louis Gervasi  
Trustee Thorstensen (arrived 7:05 p.m.)

MEMBERS ABSENT: Trustee Michael Patrick

STAFF PRESENT: Town Administrator Jim White  
Town Attorney Bruce Fickel  
Public Works Director Bill George  
Town Planner Wayne Reed  
Planning Intern Cindee LaCourse-Blum  
Deputy Town Clerk Charlene Reed

**PLEDGE OF ALLEGIANCE**

Mayor Karspeck led the pledge of allegiance.

**Trustees Buckingham and Thorstensen arrived at 7:05 p.m.**

**CITIZEN PARTICIPATION**

There were no topics from the audience.

**REPORTS**

Mayor Pro-Tem Ashcraft reported that Larimer County has been looking at taking over the marina at Carter Lake, but according to a newspaper article, they are now looking at a partnership with the individuals already involved in the marina. This proposal will not be final until it is approved by the Larimer County Commissioners.

Mayor Karspeck reported on the Arbor Day Celebration which was held April 17, 2004.

Mayor Karspeck reported on the meeting of the Historic Trails Group which was held on Saturday, April 17, 2004. The group visited the possible site of the Overland Trail, and will be doing research to determine the exact location of that trail and others in the area.

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Mayor Karspeck noted the MPO is considering weighted voting based on population. He continues to feel that this will be detrimental to the Town, and he asked for input from other Board members regarding this possibility.

Mayor Karspeck requested a change in voting protocol for all future Board meetings. Previously, we have had a poll of members for every vote, but beginning with this meeting, he asked for voice votes for minor matters, and poll votes for resolutions, ordinances, or monetary expenditures. There were no objections to this suggestion.

Trustee Buckingham reported that Dan Corson, the Intergovernmental Services Director for the Colorado Historical Society was in Berthoud on Wednesday, April 21, 2004 to complete a Certified Local Government evaluation and to present educational materials at the Historical Preservation Commission meeting.

Trustee Buckingham announced that Berthoud will host the workshop for the Certified Local Government Commissions in Northern Colorado in August 2004 with a luncheon at the Community Center and a walking tour of Berthoud hosted by Tom Vaughan.

Administrator White reported we received thanks from the Town of Mead. Police Chief Bill Wegener attended the Mead Board meeting to offer information regarding how to provide police coverage for a community event.

Administrator White reported the annual Bob Turner Classic 5K Walk/Run is scheduled for Saturday, May 1, 2004, beginning at 8:00 a.m. from Turner Middle School.

Attorney Fickel reported that we received a fax from an attorney representing a client who is protesting Judge Easley's decision not to allow her to withdraw her plea of guilty in a dog bite case in Berthoud Municipal Court. They have filed a proceeding asking Larimer County District Court to review the constitutionality of Berthoud's dog ordinance and to allow her to withdraw her plea of guilty. This brings the Town into District Court litigation.

Attorney Fickel reported that a conference was held with the attorneys representing Clarkson Land and their intent is to file to have the \$40,000 retained by the Court, rather than be given to the Town.

**CONSENT AGENDA**

The Consent Agenda consisted of 6a, the minutes of the regular meeting held on April 13, 2004 and a special event liquor license permit for an event planned by BAHA on June 5, 2004.

**Mayor Pro-Tem Ashcraft moved to approve the consent agenda as submitted. Second by Trustee Gregg. With no objection, the motion passed.**

**COMMISSION/COMMITTEE/BOARD APPOINTMENTS**

Cynthia LaCourse-Blum presented information regarding six candidates for the Parks, Open Space, Recreation and Trails (PORT) Master Plan Community Advisory Committee. The candidates are: Larry Bebo, Jim Birdsall, Bill Markham, Wendy Nandrea and Eden Welker. She asked for Board approval for the proposed candidates.

Trustee Buckingham noted we have not allowed other members of the Committee to have alternates and he did not feel it appropriate to include John Manes as an alternate.

Planner Reed explained that Mr. Bebo has asked that Mr. Manes be allowed to serve in his absence since his expertise includes an understanding of the construction of trails and other recreational amenities.

Mayor Pro-Tem Ashcraft noted there is no question regarding the contribution John Manes would bring to the Committee, but allowing alternates has not worked in the past.

**Trustee Buckingham moved to appoint Larry Bebo, Jim Birdsall, Bill Markham, Wendy Nandrea and Eden Welker to the Community Advisory Committee. With no objections, the appointments were approved.**

Mayor Karspeck nominated the following Board members to serve as liaisons:

Library Board – Peder Thorstensen  
Parks and Open Space Board – David Gregg  
Planning and Zoning Commission – David Gregg  
Tree Board – Milan Karspeck  
Historic Preservation Commission – Glen Buckingham  
Transportation Board – Louis Gervasi  
Port Master Plan Community Advisory Commission – David Gregg

With no objections and by unanimous consent, the appointments were approved.

Mayor Karspeck nominated Mayor Pro-Tem Ashcraft, Trustee Buckingham and Trustee Patrick to serve with him on the Finance Committee. With no objections and by unanimous consent, the appointments were approved.

Mayor Karspeck nominated Town Administrator White to serve on the CDOT I-25 Environmental Impact Study. With no objections and by unanimous consent, the appointment was approved.

Administrator White asked for a response to the request for Planning and Zoning Chairman Chris Thorne to be allowed to miss five consecutive meetings this summer. Mayor Karspeck noted Chairman Thorne has been doing an excellent job, and he would like to see him continue to serve. Mayor Pro-Tem Ashcraft agreed and suggested David Baker, the Vice Chairman, fill in during his absence.

**APPEAL OF STAFF DECISION – COTTAGES AT BERTHOUD VILLAGE**

Mayor Karspeck reminded the Trustees that this is a quasi-judicial matter and the decision should be made based on the information presented.

Public Works Director Bill George explained that the proposed development will be composed of 35 units that will be individually owned. The Condominium Association will be responsible for the common area and payment of water and sewer charges. Under the proposed development, the Town would maintain the water and sewer mains. He explained that this plan is in direct conflict with Town Municipal Code 6.12 and 6.13. These codes state that all units are to be “supplied from one tap” and that “no consumer shall be permitted to conduct water pipes across lots or buildings to adjoining premises without the permission of the Water Superintendent.” He explained that staff is recommending that all units have individual water and sewer taps as per the Town Code. He explained that Staff did offer the applicant an option to install a master unit to the development that includes fire protection and water service. The developer and owner would be responsible for all water and sewer maintenance beyond the master meter. The development agreement should include the language that water and sewer maintenance are the responsibility of the Condominium Association/Owner, and in addition, this declaration should be recorded with the plat.

Dave Sitzman, President of Sitzman-Mitchell and Company addressed the Board as the developer on the project. He explained that when they started this project and presented the proposed drawings, they were not aware that this plan was in conflict with the code. He noted the Town Code is fairly silent regarding condos and suggested that regardless of the result of this hearing, that the Board look at revisions to address condominiums.

Mr. Sitzman explained that this property is zoned R-3, Multi Family. This project consists of 15 duplex buildings and five single units, with the Condominium Association as the owner of all the taps. He agreed that in a normal single family setting, you will have problems if you have two property owners sharing a tap. In this setting all of the taps are owned by the Condo Association, and they will be responsible for paying the cost of the services and collecting the funds from the owners of the properties. He explained that they worked on the design of this system with TEC, representing the Town, and TEC sent a letter in support of this design. They later rescinded the letter of support, after learning that this plan may be in conflict with municipal code.

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Mr. Sitzman noted their goal is to provide the best system for the Town and for future owners. He agreed that cost is also an issue. He explained that following the most recent meeting with Building Official Buckley, Planner Reed, and Public Works Director George, there were some changes explained in landscaping and the costs for underground pipe, materials and taps that make cost less of a factor. However, the bigger issue is that what they are proposing would be better for everyone involved in the long run.

Mr. Sitzman explained that they have considered an option if a homeowner wants to take a condo out of the Condominium Association. The Town could require the owner to subdivide and provide an additional tap.

Mr. Sitzman suggested that they feel they are in compliance with the requirement regarding sewer taps. The code requires one tap per premises, and one lot would be a premises. He agreed that the requirement is more unclear when looking at water taps. The Code says each premises must be served by a separate water tap. The code does not include a definition of premises. In any circumstances, a premise could be defined as a legal parcel, a building or a unit. If you consider each building as a premise, in this instance, each building has a separate service line. In order to violate code, they would have to go through one lot to reach another. He asked that the Board look at the proposed design and consider the premises as one legal lot, in full compliance with code.

Mike Overlander of Northstar Design addressed the Board explaining that he was the designer on this project. He explained that their goal in this design was to minimize the number of pipes needed to service this property. He contacted several surrounding towns, and was advised that in Loveland, Greeley and others, this setup would be acceptable for condos. He pointed out that even under Berthoud's code, if this was an apartment building, one tap would be acceptable. He encouraged the Board to approve this appeal and then work to change the code to address the issue of condominiums.

Trustee Gregg asked whether the ten taps will be for domestic use or for irrigation. Mr. Sitzman explained that ten taps would be adequate for 40 units. Since they are only going to have 35 units, they planned to utilize three of the ten taps to service one building and provide water for landscaping.

Trustee Buckingham asked how billing will be handled. Mr. Sitzman explained that they will establish a budget which will include an estimate for water costs. They will collect that amount from the owners of the properties and will make adjustments annually.

Trustee Buckingham noted that TEC originally wrote a letter supporting the plan and then rescinded that letter. He asked if TEC thought what was presented was the best plan. Mr. Overlander pointed out in their letter they did state that this was the best option out of those offered.

Trustee Gervasi asked the applicant to respond to the suggestion from Public Works Director George that this setup would create blockages and backups in the sewer lines. Mr. Overlander pointed out that blockages can happen in a unit with a single tap, or on a line that has two units. He suggested it is the responsibility of the Condominium Association to maintain insurance to provide protection if such an incident occurs.

Trustee Gervasi asked if covenants have been prepared for this development. Mr. Sitzman responded that they are waiting until this issue is resolved before going ahead with the covenants. He pointed out that the Town is not a party to the covenants; they are between the Association and the homeowners. He suggested that any issues the Town wishes to address be included in the Development Agreement.

Mayor Pro-Tem Ashcraft suggested the Board needs to stay focused on what is being considered here. The Board is addressing an appeal of a staff decision. It is up to the staff to interpret our code. He noted it is unfortunate that TEC had a different interpretation in this situation. One important factor in this situation is that the water dedication fee is the same, regardless of how this property is metered.

Trustee Gregg agreed that the Board is here to address the appeal of our staff's interpretation of code. He thanked staff for bringing this issue to the Board's attention, and explained that he has personal knowledge of condominium units where single lots are on separate meters such as what is proposed here. He suggested Berthoud's Code may have been written prior to the passage of laws that govern condos. He suggested TEC may have accepted this plan based on their general knowledge of how these units are best served, and then retracted that approval because of the Town's code. With condos there are many ways to configure service. There are single family detached condos with individual units on common property. He pointed out that there are condo units in Westminster, Longmont, Erie, Loveland and Boulder that have multiple dwelling units served from a single tap and service. He suggested there is code in force that needs to be rewritten. It is very common to have multiple units on single tap.

Trustee Thorstensen agreed with Trustee Gregg and felt this is a grey area. He suggested the Board rectify this problem and then address the necessary changes to code.

Trustee Buckingham agreed, noting our code is silent regarding this type of development. He commended staff for looking at the code and recognizing that there is a problem. At the same time, the Board's primary concern is the quality of the project and the product. He suggested that the lines to the project will be handled the same as every other water and sewer line within the Town.

Mayor Karspeck noted the two codes, 6.12 and 6.13, do not address condominiums, and have not been revised in many years. He suggested it is in our best interest to approve this appeal and then address the problems we have identified with our code.

Attorney Fickel pointed out that under the condo act, property is treated and taxed as separate parcels of real property. The Board has the discretion to interpret premises as each individual unit or as the premises as a whole. He pointed out that if we were talking about Townhouses, we would require separate taps for each unit. He agreed it is nice in theory to say the condominium association will be responsible for problems, but pointed out that the Town will be involved.

Trustee Ashcraft agreed that the Town will be involved in any issues. Many municipalities require property owner to be responsible from curb stop to meter. Our code reads that the homeowner is responsible from the main water line to the property.

**Trustee Gregg moved to approve the appeal by the developer, Sitzman-Mitchell and Company. Second by Trustee Buckingham. Mayor Karspeck and Trustees Gregg, Thorstensen and Buckingham voted YES. Mayor Pro-Tem Ashcraft and Trustee Gervasi voted NO. The motion carried.**

Recess 8:45 p.m.

Reconvene 9:00 p.m.

### **WATER FORECAST**

Public Works Director George reported that the Town has enough water in storage to maintain irrigation and domestic use through May 15, 2004. With the temporary conveyance agreement with the BUREC and NCWCD, the Town should have enough water to get through this year's irrigation season and to carry us into 2005.

Public Works Director George recommended the following:

- maintain the current water rates and continue to restrict watering during the hours of 10:00 a.m. to 6:00 p.m.;
- make a concerted effort to convert agricultural water shares to municipal use;
- add Home Supply water to the portfolio as the Lonetree reservoir has the first filing right in the water year and is in close proximity to the Town. A water plant could be constructed close to Lone Tree and Welch Reservoirs;
- consider adding Sunny Slope and Bacon Lake reservoirs for non-potable water; with development contributing to this plan. The Town could consider adding a pressured non-potable system to answer the early and late needs of the irrigation season;

- continue to add CBT units to our water portfolio until a sufficient amount of agricultural water is converted to municipal use;
- develop an independent water supply for the I-25 Development area.

Trustee Gregg agreed it is important to keep rates and restrictions in place to be good stewards. He noted the Board indicated that we would revisit the issue of the high charges for water for the residents of the County that came before the Board last year.

Mayor Karspeck noted that the surcharges that were in place at that time have been modified.

Mayor Pro-Tem Ashcraft noted many of those residents were using over 80,000 gallons of water each month. In a drought year, that is irresponsible and he suggested we should not make further modifications to encourage that level of usage.

Trustee Buckingham agreed, noting there was a question regarding whether sufficient water was dedicated in that area.

Mayor Karspeck noted it is critical that the Town not run out of water. He suggested an alternative for those residents would be to look at a nonpotable system to water their lots. That would be preferable to using treated water for this purpose. Mayor Pro-Tem Ashcraft agreed and suggested the Town look at partnering with those residents to develop a nonpotable system to service that area.

### **BUREC WATER CONVEYANCE CONTRACT**

Public Works Director George explained that this is the second year the Town of Berthoud has asked the Bureau of Reclamation for a temporary water conveyance contract to move CBT water through the Town's raw water pipeline. This agreement was accepted in January and we have been waiting to find out how much we are to pay the Fish and Wildlife Foundation, \$3,434.47. He asked that the Board approve the resolution to accept the terms of the temporary conveyance agreement.

Administrator White noted our water attorney, Paul Zilis, confirmed that the \$3,434.47 is cumulative and represents both years. The fee for the temporary contract to the Bureau of Reclamation is \$68,641.44, and the collective total is less than the budgeted amount of \$75,000. However, we already spent \$20,000 toward a permanent agreement with the Bureau and anticipate an additional payment of \$15,000 in 2004. The final scheduled payment toward the permanent agreement is scheduled for 2005.

Mayor Karspeck read the proposed resolution.

**Trustee Thorstensen moved to approve resolution #5-04 to accept the terms of the temporary conveyance agreement. Second by Trustee Gregg. All members voted YES.**

### **RESIDENTIAL – ARCHITECTURAL GUIDELINES**

Planner Reed presented the revised residential architectural guidelines, as requested by the Board at the study session last week.

Mayor Karspeck noted the initial paragraph needs to be revised to state that Berthoud has historic residential dwellings constructed in the early 20<sup>th</sup> Century.

Trustee Buckingham asked that paragraph 1.2 be revised to state that this provision is intended to further the flexibility of guidelines and should be pursued in circumstances in which an alternative approach would provide an architecture that is equal to or superior to that which would be achieved by adhering to the guideline(s) in this document.

Trustee Gregg asked that the last sentence in paragraph 1.2.1 Review Criteria be modified to say that economic considerations should not be the sole basis for alternative compliance.

Trustee Gervasi questioned the value of these guidelines since they are not going to be law but are merely suggestions. Planner Reed explained that these are guidelines for developers in the Town, and changes in the guidelines will be incorporated into the Development Code as we go forward. Trustee Gervasi noted he would like to see the Development Code amended, rather than adopting Guidelines that have no teeth.

Mayor Pro-Tem Ashcraft responded that we will have buildings constructed over the next six months, which generates a sense of urgency. These guidelines reflect what we would like to see for Berthoud and will provide guidelines as we modify the Development Code.

Mayor Karspeck noted this will serve as a guiding document, but it needs more work before it is ready to become a part of the development code.

Planner Reed noted this document represents that the Town believes that good architecture increases value to the community. The single purpose for doing guidelines is to inform the Development Community that the Town is going to be serious about standards. This allows us to put something in place and allows the development community to be involved in the process.

Trustees Gregg and Buckingham asked that the first line of the paragraph that was removed from 1.2.1 be added into the introduction following the sentence that was modified to reflect the 20<sup>th</sup> Century and that sentence be modified to say, “Architects,

builders, and homeowners should be sensitive to past Colorado and Berthoud architecture, where inherited and borrowed styles such as, but not limited to, Craftsman, Prairie/Four Square, Farmhouse, Victorian, Ranch and others have been successfully blended with deep rooted local traditions and indigenous building materials.”

Mayor Karspeck read the proposed resolution.

**Trustee Buckingham moved to approve resolution #6-04 adopting the residential architectural guidelines. Second by Mayor Pro-Tem Ashcraft. Mayor Karspeck, Mayor Pro-Tem Ashcraft and Trustees Buckingham and Gregg voted YES. Trustees Gervasi and Thorstensen voted NO. The motion carried.**

**PUBLIC HEARING ORDINANCE RE: WATER LOAN AGREEMENT**

Mayor Karspeck opened the public hearing.

Attorney Fickel explained that this public hearing is to approve the resolution and ordinance allowing the Town to proceed with the refinancing of the 2003 Interim Loan between the Town and the Colorado Water Resources and Power Development Authority. He noted this is an emergency ordinance and requires a unanimous vote.

Mayor Karspeck asked what would happen if we failed to approve this document. Attorney Fickel explained that our temporary financing would continue, but the Town would have to look for permanent financing on our own. We would not have the borrowing capacity and reputation of the Power Authority and would be unable to find funding that would be as favorable. He pointed out that it is in our best interest to work with the Authority.

Administrator White noted the rate on the current 2003 loan is 4.75%. The projected rate on the 2004 loan is anticipated in the range of 3.5-4.5%.

Trustee Gregg noted it is important that everyone understand that the Board is not adding debt, we are just refinancing our existing loan, at a lower interest rate.

Karspeck opened the floor for public comment and there was none.

Mayor Karspeck read the proposed resolution by title.

**Trustee Thorstensen moved to approve resolution 7-04 authorizing the Town of Berthoud to use available net revenues to support the payment of a loan between CWRPDA and the Town. Second by Trustee Gregg. All members voted YES.**

Mayor Karspeck read the proposed ordinance by title.

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**Trustee Thorstensen moved to approve Ordinance 993 approving a loan between CWRPDA and the Town of Berthoud for the purpose of refinancing the 2003 interim loan between the Town and the Authority. Second by Trustee Ashcraft. All members voted YES.**

With no further business before the Board, the meeting adjourned at 10:26 p.m.

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Mayor Milan Karspeck

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Deputy Clerk Charlene Reed