

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 1 of 14

The Board of Trustees for the Town of Berthoud met for a regular meeting on Tuesday, February 24, 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 Jenny Foote  
Trustee Don Ashcraft  
Trustee Glen Buckingham (Arrived 7:08 p.m.)  
Trustee David Gregg  
Trustee Michael Patrick  
Trustee Peder Thorstensen (Left 10:20 p.m.)

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

**PLEDGE OF ALLEGIANCE**

Mayor Karspeck led the pledge of allegiance.

**CITIZEN PARTICIPATION**

There were no comments from the audience.

**REPORTS**

There were no reports.

**CONSENT AGENDA**

The consent agenda consisted of minutes from the regular meeting held on February 10, 2004 and the special meeting held on February 17, 2004.

**Trustee Ashcraft moved to approve the consent agenda as submitted. Second by Trustee Gregg. All members voted YES.**

**PUBLIC HEARING – AMENDMENT TO THE  
DEVELOPMENT CODE – EXCEPTIONS TO CODE**

Planner Reed explained that this ordinance amends Section 30-3-109 of the Town of Berthoud's Development Code permitting the granting of exceptions. It allows for

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 2 of 14

exceptions to be initiated by the Town or by a property owner, restricts the frequency of applications for rezoning, and establishes criteria to evaluate such requests, allowing for conditions to be attached that will substantially secure the objectives of the regulations from which the exceptions are granted. He noted virtually every PUD the Board has considered over the past five years has involved exceptions or variances. By codifying these exceptions, we are establishing criteria for this process, and allowing the Board to attach conditions.

**Trustee Buckingham arrived at 7:08 p.m.**

Trustee Patrick pointed out that routine exceptions language does not encompass a self-imposed need for a variance. For example, if a person buys a piece of property smaller than the minimum building size, they cannot come in and say that is not self-imposed.

Planner Reed noted that would involve a request for a variance, and variances would generally be more attractive for individual property owners, since exceptions would involve larger fees, and a longer hearing process, usually more suitable for larger developments.

Trustee Patrick pointed out this has been accomplished in the past using modifications to the Final Development Plans. Planner Reed agreed.

Mayor Karspeck read paragraph D. Exceptions, noting this establishes guidelines for the approval of exceptions.

Attorney Fickel noted variances are generally initiated by the applicant, and exceptions are initiated by the Board. When the Board reviews a PUD and wishes to modify the terms, an exception would be used.

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

Planner Reed cited the example of the waiver that was granted to Safeway for continuous parking stalls. That was acceptable because they are providing larger landscape medians. The Development Code regulates orderly development, and provides minimum standards. He noted the Board is already granting exceptions, but without criteria.

Trustee Patrick asked if the wording of the first line could be modified to state that, "The Town Board may initiate, and in its discretion, grant exceptions..." Board members agreed.

**Trustee Buckingham moved to adopt Ordinance 986, amending Section 30-3-109 of the Development Code to permit the granting of exceptions as amended. Second by Trustee Ashcraft. All members voted YES.**

**PUBLIC HEARING – AMENDMENT TO THE  
DEVELOPMENT CODE – VESTED RIGHTS**

Planner Reed noted this ordinance amends Sections 30-4-102 and 30-4-105 of the Development Code, amending the vested rights provision by identifying a development agreement as a site specific development plan, and allowing for an extended period of vesting beyond three (3) years.

Mayor Karspeck read the ordinance by title, and opened the floor for public comment.

Elizabeth Kearney, 549 4<sup>th</sup> Street, expressed concern, noting the development agreement does not define what will be located on a property. When the Board is looking at a PUD or final site plans, they can see what is planned. Amending the Development Code to allow vesting to be granted based on a development agreement is opening the door for problems. She noted the State statute that allows vested rights also has a three year time limit, which can be extended with extenuating circumstances.

Attorney Lucia Liley of Liley Rogers and Martell, LLC addressed the Board representing McWhinney Enterprise. She agreed that state law does establish a three year vesting period for a typical development; however, there is a separate section that allows a municipality to exceed that three year period on the basis of certain findings, which include, but are not limited to the life and size of a development.

There were no further comments from the audience.

Attorney Fickel noted the extended vesting period is for the overall development, while the three year vesting continues to apply to the individual developments within Wilson Ranch. Attorney Liley confirmed that is their understanding.

Mrs. Kearney noted she would be more comfortable if the Board was looking at a site specific plan. In this instance, in her opinion, the Board is rubber stamping a 40 year development.

Attorney Liley noted if all they were doing is vesting a development agreement and asking for a blank check, that would be worthy of objection. This plan includes an annexation agreement, the ODP, and the Wilson Ranch Development Manual, and all of those elements are collectively being considered in this request for vested rights.

Attorney Fickel pointed out that the agreements being reviewed here establish rules for the project, and the project is vested for 40 years. Individual developments within the project have the same rules as any other development in the Town.

Trustee Ashcraft explained that, in many cases, the Wilson Ranch Development Manual has higher standards than we have in our Development Code, and the Board will be looking at upgrading that document to include some of those standards.

Trustee Gregg noted this action is necessary because of the time required to build out this project. The Board is vesting the prescriptive requirements that this development will follow, and establishing vesting rules.

Trustee Buckingham noted the intent is not to disregard Berthoud's Development Code. For elements of the project not addressed in the Wilson Ranch Development Manual, the Development Code will still be the governing document. We are not doing away with Town standards, we are enhancing those standards.

**Trustee Gregg moved to adopt Ordinance 987, amending Sections 30-4-102 and 30-4-105 of the Development Code, identifying a development agreement as a site specific development plan and permitting an extended period of vesting beyond three (3) years pursuant to the terms of the development agreement. Second by Trustee Patrick. All members voted YES.**

#### **EXECUTIVE SESSION**

Mayor Karspeck explained that the Board will adjourn to an Executive Session to continue negotiations regarding the annexation agreement. With no objection and by unanimous consent, the Board adjourned to an Executive Session at 7:40 p.m. They reconvened at 8:33 p.m.

#### **WILSON RANCH REZONING, OVERALL DEVELOPMENT PLAN AND DEVELOPMENT MANUAL**

Mayor Karspeck reopened the public hearing for the Wilson Ranch Rezoning, Overall Development Plan and Development Manual.

Planner Reed provided the history of this development, describing the meetings that were held by the Planning and Zoning Commission and the Town Board, noting that on 31 separate occasions, including Planning and Zoning, Town Board and at least one neighborhood meeting, the public had opportunities to hear or comment on this development. The Board has looked at the exceptions being requested for this specific development. These exceptions have been compared to the Development Code and to the Development Design Standards for the I-25 area, which were adopted by the Board. Staff provided a matrix comparing what exceptions were requested, and the applicant provided justification for these exceptions.

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 5 of 14

Mayor Karspeck asked Planner Reed to summarize the contents of the Wilson Ranch Development Manual. Planner Reed summarized the contents of the manual, comparing it to the Town of Berthoud Development Code, explaining where the codes differ and where the Wilson Ranch Development Manual exceeds the requirements of the Development Code.

Mayor Karspeck noted the other document being considered is the annexation agreement. Attorney Fickel summarized this agreement, which establishes rules for this Development for the next 40 years, covering items such as water rights, development guidelines, and open space. He noted this agreement reduces the Density Transfer Fee to \$500 per house. This reduction has been reviewed by Colorado Open Lands, and they feel this is appropriate. This agreement also addresses level of service for traffic in the area, and includes a commitment from the Developer to participate in improvements to the I-25/Highway 56 intersection when it becomes necessary.

Administrator White commended the people involved in this process. He applauded the Board for the effort this has required and the intensive review involved to provide a package that will be agreeable to and in the best interest of the Town. He thanked Attorney Fickel for his role-in negotiations and Planner Reed for his efforts working on the development manual.

Planner Reed noted the Board was given copies of letters from two residents who were unable to attend this meeting. One letter was from Thomas E. Honn, in support of the Development, and the other was from Cindy Berg, presenting objections.

Troy McWhinney of McWhinney Enterprises asked Attorney Liley to address the concerns that were identified by the Board during the Executive Session.

Attorney Liley noted the Board was concerned that the Annexation and Development Agreement provides for the option of formation of an Urban Renewal Authority, and stated it would be acceptable to remove this from the agreement in its entirety.

Attorney Liley addressed a question regarding section 8.5.2, Tax Reimbursement, which is the section that provides for reimbursement of eligible general fund and utility improvements in the development. She noted they have been asked to provide an addendum that will clarify this process, and that will be done.

Attorney Liley noted they have requested current title work to verify ownership of all properties included in the development, and she asked that they be allowed to make minor changes in the documents tomorrow to be sure all the entities named are correct.

Mayor Karspeck opened the floor for public comment.

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 6 of 14

Elizabeth Kearney of 549 4<sup>th</sup> Street had several questions for the Board regarding the documents being considered.

- 1) What is the cost to provide water, wastewater, streets, snow removal and police protection for this area?
- 2) What are the substantial economic benefits the Town will receive from this development?
- 3) Do we have water to service the I-25 area and do we have enough water to supply the development today?
- 4) What is the Berthoud Water Enterprise?
- 5) Our current Density Transfer Fee is \$3,000. She requested information regarding the basis for the reduction to \$500 per house and she asked how much the last developer to come before the Board paid.
- 6) Under Section 15.2, in the event of litigation relating to or arising out of this agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees. Ms. Kearney expressed concern that this will prevent the municipality from enforcing this agreement, and suggested in a more conservative agreement each party would agree to pay their own fees.
- 8) Ms. Kearney expressed concern that the Wilson Ranch Development Manual supercedes all current regulations of the Town of Berthoud.
- 9) Ms. Kearney asked who decides under administrative review whether something is up to code?
- 10) Ms. Kearney expressed concern that the Town is giving up control regarding what parks will be built, where they will be, and what they will look like. By allowing the Wilson Ranch Development Manual to be the guiding document, it appeared to have removed the authority and discretion from the Town and given it to the Developer.

Planner Reed noted it is difficult at this point to measure the cost of services for a development that is not in place. To project these costs, we obtained a fiscal impact study which looks at anticipated costs, based on the build out of this project. BBC met with staff to determine the cost of our services, and based on current costs, we can anticipate a positive revenue stream to the Town. However, if residential development precedes commercial development, there is the potential for a negative revenue stream until commercial development occurs. He noted this study was done in 2003, and has been reviewed extensively.

Attorney Fickel addressed water for the area, noting that the Town's water attorney and the developer's water attorney have been negotiating an agreement that is acceptable to both sides. The Town requires developers to bring water to the Town. In this instance, water that would normally go down the river will be "loaned" to this developer while the shares they are providing are in water court. He noted for this development, we have an agreement with Little Thompson to provide water to the I-25 area. He also explained that

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 7 of 14

the Berthoud Water Enterprise is a separate entity and operates independently from the Town to provide water to the residents of the Town.

Attorney Fickel noted the reason the agreement indicates that prevailing parties will be entitled to receive attorney's fees is to give people a reason to work together to resolve issues and stay out of court.

Planner Reed explained that park fees will be collected from residents purchasing homes in Wilson Ranch and those fees will be used to provide parks within the development. He pointed out that it is not uncommon for the Town to waive park fees if a Developer is going to dedicate land for, put in and maintain parks. In this development, the applicant is dedicating land for parks, building and maintaining those parks, and allowing the Town to keep 20% of the fees they collect because they anticipate there will be an impact on the parks within the Town.

Planner Reed explained that the Density Transfer Fee starts at \$3,000 and is reduced based on specific criteria. Fees paid by the last few developments ranged from \$2,600 to nothing. Based on our current calculations, the fee for Wilson Ranch would be approximately \$2,100 per household.

Attorney Fickel noted this fee is being modified and Wilson Ranch happened to be the first development reviewed after it was determined that a reduction is appropriate. We have been advised by Colorado Open Lands that the fee charged must be proportionate and fair to each development, and we cannot collect more than the impact merits.

Planner Reed noted that we are requiring 30% open space at the I-25 area, and this development is meeting that requirement. In the past, developments in the Town have not been required to provide anything close to that amount of open space. The Town of Berthoud is beginning an \$85,000 Parks, Open Space, Recreation and Trails study to review this issue, working with Christine Early of Colorado Open Lands to evaluate how much land we want to preserve and to determine how we will achieve that goal.

Alison Berry of Krug and Sobel, LLC addressed the Board, representing her clients Anadarko E & P Company, LP ("Anadarko E & P") formerly known as Union Pacific Land Resources Company, and Anadarko Land Corporation, formerly known as Union Pacific Land Resources Corporation with regards to the McWhinney Enterprises/Wilson Ranch Development Plan to preserve their clients rights in the negotiations regarding mineral rights.

Karen Stockley of 316 Bothan Road, Larimer County addressed the Board, outlining her concerns regarding this development. She noted the resolution adopted by the Board regarding the I-25 area required 30-40% open space, not including school yards, campuses, or landscape medians. She expressed concern with the change in the Density

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 8 of 14

Transfer Fee, noting this limits the amount of land we can preserve. She noted no one has addressed the sales tax sharing included in the agreement, suggesting that is not growth paying its own way, and she pointed out that the 4,000 homes in the area will not generate sales tax revenue. Ms. Stockley expressed concern that this development will not be phased, and we have no guarantee that there will be commercial in the area. She noted with 4,000 homes in the area, traffic will be a nightmare with LOS C overall and LOS D at the intersections.

Patricia Thacker of 1001 Navajo Place, advised the Board that she has had the privilege of working at Centerra in Loveland. She noted McWhinney Enterprise is a quality organization that takes stock in and gives back to the communities where they are located. She pointed out that there are many communities that would love to change places with Berthoud and welcome McWhinney Enterprises.

Jolinda Wilson of 4350 WCR 44 noted the Wilson family has been a part of Berthoud for 131 years. They are proud of their partnership with McWhinney Enterprises, and feel they can develop their legacy. She thanked the Board for their efforts and expressed a hope that the relationship between Berthoud and the Wilson family will improve.

Ms. Kearney reiterated that 40 years is a long time commitment for the Town, and she suggested the reason we are willing to do this is to prevent McWhinney Enterprises from going to Johnstown or Milliken. She suggested if the Town wants to keep downtown the center of the community, pursuing development at I-25 and Highway 56 will not accomplish that goal. She asked the Board to consider a ten year vesting period, and if everything is going well at the end of that time, the agreement can be renewed. She also pointed out that if McWhinney disconnects from the Town, the Town will be obligated to continue to provide services to the area.

Attorney Fickel restated that we are not vesting individual subdivisions; we are vesting procedural standards. The Town is contemplating a long relationship with this development. The area we are discussing is not going to stay agricultural, and if something is going to happen at the intersection of I-25 and Highway 56, it is in the Town's best interest to have control over what comes into the area. He agreed that the Town would be required to provide utility service to the area. If you provide any services in that general area, you are required by law to provide services to this development. Our water and wastewater enterprises cannot be restricted to the Town; we are required to provide services to areas outside the Town limits.

Attorney Fickel noted that sales tax revenue sharing is important. If there is commercial development in the area, the Town will collect a 2% sales tax and McWhinney Enterprise will collect a 1% sales tax. At this point, we are not getting any money at all. Getting 2% of something is better than 3% of nothing. He acknowledged that there are people who would like to see the area remain farmland, but that is not going to happen.

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 9 of 14

Mayor Karspeck returned the item to the Board for discussion.

Trustee Ashcraft complimented the Board on the compromises reached through this process, noting that many of the questions raised this evening have been discussed in depth during this process.

Trustee Patrick acknowledged that the Board has had mixed feelings about this process and they have spent time working with the applicant to resolve issues, such as the definition of open space, which has resulted in a dramatically higher amount of open space for a project than anything we have reviewed previously. One key concern for the Board has been to protect the current residents from increased costs due to this development. The Board believes that growth should pay its own way. This development is bringing water to the table, with the only distinction that we are trading water until their water is converted through water court. The Town uses approximately half our water on irrigation, and we have excess water than can be used to complete this process. He noted there is an expectation that this property will develop with or without Berthoud. The option is not to leave this land undeveloped; it is to develop this property with growth paying its way and to protect our access to the I-25/Highway 56 intersection.

Trustee Gregg observed that parkland is being handled in this development in the same way it is handled in all developments in Berthoud; the development is required to provide parkland or pay fees. In this case, through negotiations, the Town is being allowed to keep 20% of these fees collected to improve the parks in Town. He noted another concern is sales tax reimbursement, and pointed out that sales tax reimbursements are not given unless sales tax is collected. These are no funds paid out of Town coffers; these are funds collected within the development that are set aside to reimburse the developer for public improvements in the area.

Trustee Gregg pointed out that we have required this developer to set aside 30% open space. The current requirement within the Town is for 7% parkland, and the total of the Town's current developed parkland is 3%. We are raising the bar for open space and parklands during these negotiations. He commended the Board, the Planning and Zoning Commission and staff for their tireless and persistent efforts through this negotiation. He also commended McWhinney Enterprises for negotiating in good faith and in a spirit of cooperation, and noted he is proud to be able to vote in favor of this development.

Mayor Pro-Tem Foote acknowledged that she is one of the people who would like I-25 to remain farmland, but agreed that is not going to happen. As an elected official, she is obligated to set aside personal feelings and do what is best for Berthoud. She thanked staff and hoped for a good working relationship with the Wilson family and McWhinney Enterprises in the future.

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 10 of 14

Trustee Buckingham offered complements to McWhinney Enterprises for treating the Town with honor and respect throughout the thousands of hours of negotiations. He noted negotiations are never one-sided, but throughout this process we have been dealing with a mature, professional development company and both parties have worked to reach an agreement that is best for the Town and for the development. This development is at a crossroads for the Town and represents a transportation solution for Berthoud. Today, the freeway is the reason for communities to exist, and we are putting our fingerprint on an area that is of strategic importance to the community.

Trustee Ashcraft pointed out that Johnstown made the first move to develop the intersection at I-25 and Highway 56 when they annexed the southwest corner. By annexing this area into the Berthoud, we are protecting ourselves from development by other municipalities that do not have our guidelines and restrictions.

Mayor Karspeck stressed the importance for Berthoud to protect our gateway and encourage economic development. We are also providing for quality development in the area. Economic development is something we can set the stage for, and using the incentives provided, it is up to the developer to make it possible for retail to come in. He noted one goal was find a balance between growth and rural character. The Town has shown through support of the Main Street Enhancement Committee and the Historic Preservation Commission that the Board wants to keep downtown the center of our community; however, it is also important to address the development that will come to the I-25 area. Mayor Karspeck thanked McWhinney Enterprises for their honest negotiations.

Mayor Karspeck read the title of proposed resolution 2-04, the Findings of Fact regarding Wilson Ranch.

**Trustee Ashcraft moved to approve Resolution 2-04, the Findings of Fact regarding Wilson Ranch. Second by Trustee Gregg. All members voted YES.**

Mayor Karspeck read the title of proposed Ordinance 988, an ordinance approving the annexation and zoning of the Wilson Ranch Annexation and opened the floor for public comment. There were no comments, and the item was returned to the Board.

**Trustee Buckingham moved to approve Ordinance 988, annexing and zoning the Wilson Ranch Annexation. Second by Trustee Patrick. All members voted YES.**

Mayor Karspeck read the title of proposed Ordinance 990, an ordinance rezoning the Wilson Ranch Annexation from T-Transitional to PUD and opened the floor for public comment. There were no comments and the item was returned to the Board.

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 11 of 14

**Trustee Gregg moved to adopt Ordinance 990, an ordinance rezoning the Wilson Ranch Annexation from T-Transitional to PUD. Second by Trustee Buckingham. All members voted YES.**

Mayor Karspeck acknowledged that this has been a long process, but we are finally able to welcome Wilson Ranch and McWhinney Enterprises to the Town of Berthoud.

Mr. McWhinney thanked the Board for their unanimous support. He thanked Administrator White, Planner Reed and Attorney Fickel for their efforts, and the Wilson family for their support and trust. He commended Karen Stockley for her commitment to this process, and thanked Attorney Liley and Steve Schroyer for their efforts on behalf of McWhinney Enterprises.

Mayor Karspeck called at recess at 10:20 p.m. The meeting reconvened at 10:37 p.m.

**CONTINUATION OF PUBLIC HEARING OF TOWN  
INITIATED REZONE OF COMERCIAL AREA**

Planner Reed noted the Board is seeking to rezone the area west of 10<sup>th</sup> Street on the south side of Mountain Avenue from C-2 to PUD. This was reviewed by the Planning and Zoning Commission and they have recommended denial of this request.

John Clarkson of Clarkson Land asked that the Board accept the recommendation of the Planning and Zoning Commission and deny the rezone of this property. He suggested any concerns can be addressed through the development agreement.

Billy McDivit of Clarkson Land noted they are poised and ready to move forward with the Berthoud Commons Center to provide necessary commercial services that the Town needs. He suggested rezoning this property to PUD would lengthen the process and require them to redo a lot of work they have already done, and he noted that this development does not fit the intent of a PUD. They are not asking for mixed use, or seeking alternatives to compliance with conventional zoning requirements. He pointed out that what Berthoud needs is commercial growth, and as soon as their development agreement is complete, they plan to bring commercial services to the Town this year.

Mayor Karspeck opened the floor for public comment and there was none. He returned the item to the Board for discussion.

Mayor Karspeck asked Planner Reed to summarize what extra work will be involved in a resubmittal. Planner Reed responded that the most important factor would be the additional time required. It would take a minimum of two months to take this item through Planning and Zoning and then bring it back before the Board.

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 12 of 14

Trustee Patrick asked if Planner Reed has a preference or concern that would affect the Board's decision. Planner Reed noted that regardless of whether this is handled administratively or by the Board as a PUD, the regulations in place will be upheld. However, the one component missing if this is done administratively is Board input.

Trustee Ashcraft asked at what stage in the process architectural design guidelines would be applied. Planner Reed noted you would have two actions occurring simultaneously, a site plan going through the process and architectural standards being approved. It would be up to legal council to advise the Board if the new regulations would apply to all projects not approved or to all new submittals.

Trustee Buckingham asked if plans are reviewed administratively, and do not violate Town code, then they will be approved, regardless of what is being proposed. Planner Reed agreed.

Mayor Karspeck asked what would happen if the property is rezoned as a PUD. Planner Reed noted the Board could require stronger standards and would have input into what is done with this area. Mayor Karspeck noted he is not comfortable leaving this property zoned C-2.

Trustee Ashcraft noted the Board is very interested in economic development. However, they would also like to have a say in what is put in this very visible location. He noted we are in the process of developing architectural standards, and we would like to see those followed in this area.

Trustee Patrick asked if this remains C-2, would the applicant consent to work with staff to meet the architectural standards the Board is considering.

Mr. McDivitt noted they are prepared to work with staff to meet these architectural standards. He acknowledged that for the next five to ten years, this property will be the gateway to Berthoud from the west.

Trustee Buckingham noted it would be a win-win situation if the applicant will work with staff to meet the guidelines and bring this before the Board as a PUD. The Board wants the opportunity to be sure this development fits into the community.

Attorney Fickel suggested the Board rezone this property PUD, but instruct staff to expedite this process. We have passed legislation this evening that allows the Board to use exceptions where appropriate, and that will allow us to move this project forward.

Trustee Gregg stated that given the advanced stage of this project, and our confidence in staff, he does not feel compelled to rezone this property. He pointed out that one of the Board's priorities is to have an aggressive business development posture. Midstream

changes of this type can give a town a reputation that is not encouraging for commercial development.

Mayor Pro-Tem Foote asked what is allowed on a property zoned C-2 and Planner Reed provided the information. She noted there is nothing in the list that would be inappropriate, and as long as the applicant is willing to adhere to guidelines, there is no compelling reason to rezone this property.

Trustee Patrick agreed the Board is interested in economic development, but noted if this area is done to the Town's satisfaction it will be a special place for the next 40-50 years. He suggested if the Board wants to evaluate this as a PUD, it would be appropriate to expedite the process.

Mayor Karspeck agreed he would like to see formal plans, and would like the Board to have an opportunity to review what is proposed for the area.

Mr. McDivitt pointed out that they have already spent more than \$125,000 to get to this point, and the change to a PUD will increase their costs. This could make this project economically unviable. He noted the only thing they are waiting for to go ahead with this development is a signed development agreement. If zoning changes to PUD, they will lose the businesses that are waiting for the development to go forward.

Trustee Gregg asked if there are architectural drawings available from the interested retailers. Mr. McDivitt responded that these drawings cannot be shared until a contract is signed, and if the zoning changes, they will lose their anchor and the development will go away.

Mayor Karspeck asked why the potential user would be hesitant to allow their drawings to be shown. Mr. McDivitt responded that contractually they are not allowed to reveal any information about the potential users until they are under contract.

**Trustee Buckingham moved to approve Ordinance 922, rezoning this property from C-2 to PUD, with instructions to staff to expedite the processing of the PUD. Second by Trustee Ashcraft. Mayor Karspeck and Trustees Patrick, Ashcraft and Buckingham voted YES. Mayor Pro-Tem Foote and Trustee Gregg voted NO. The motion carried.**

**PUBLIC HEARING RE: NCWCD CANCELLATION OF  
TEMPORARY USE PERMITS**

Administrator White explained that we are being asked to comply with NCWCD's request for cancellation of Temporary Use Permits, and to pass an Ordinance to apply and contract for beneficial use of water on behalf of the Town of Berthoud, and

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, FEBRUARY 24, 2004  
Page 14 of 14

prescribing the terms for application for an allocation of the right to use CBT project water to the Town by the Northern Colorado Water Conservancy District. In a letter from NCWCD, we were advised that this must be done by March 1, 2004.

Mayor Karspeck read the title of the ordinance and opened the floor for public comment. There were no comments.

**Trustee Buckingham moved to approve Ordinance 991, as an emergency ordinance, to apply and contract for beneficial use of water on behalf of the Town of Berthoud, and prescribing the terms for application for an allocation of the right to use CBT project water to said Town by Northern Colorado Water Conservancy District. Second by Trustee Ashcraft. All members voted YES.**

Planner Reed announced changes for the Planning Department to allow them to be more efficient. We have been interviewing planning consultants, and have selected Mike Randall and McCool Developmental Solutions to provide assistance to staff. He also announced that the Parks, Open Lands, Recreation and Trails (PORT) project is ongoing. Staff received eight proposals for this project and interviews are planned for this week. We hope to have a firm selected to go forward with this study by the first week of March.

With no further business before the Board adjourned at 11:37 pm.

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Mayor Milan Karspeck

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Deputy Town Clerk Charlene Reed