

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, FEBRUARY 3, 2004
Page 1 of 8

The Board of Trustees for the Town of Berthoud met for a special meeting on Tuesday, February 3, 2004 in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 7:35 p.m.

MEMBERS PRESENT: Mayor Milan Karspeck
Trustee Don Ashcraft
Trustee Glen Buckingham
Trustee David Gregg
Trustee Peder Thorstensen

MEMBERS ABSENT: Mayor Pro-Tem Jenny Foote
Trustee Michael Patrick

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

REPORTS

Administrator White announced Town has issued three building permits year to date.

Administrator White noted the first planning meeting for "June in Berthoud" planning is scheduled for Saturday, February 7, 2004 at the Jumping Bean.

Administrator White noted we received information from Xcel Energy regarding planned outages which are scheduled for February 10 and February 11, 2004, and we have put this information on our cable channel.

Administrator White reported we received the schedule for the Colorado Resources and Power Development Authority bond issuance for the spring. It is our hope to join in to override our current interim loan. He noted details will be provided as they become available.

CONTINUATION OF WILSON RANCH ANNEXATION AND REZONE

Mayor Karspeck opened the floor for public comment and there were no comments from the audience.

Planner Reed noted one outstanding issue identified at the last meeting regarding Transportation and identifying and clarifying the level of service for the I-25 area. Our traffic engineer, John Seyer of HDR Engineering, Inc., is present this evening to discuss

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, FEBRUARY 3, 2004
Page 2 of 8

this issue, and to provide recommendations based on meetings held with staff and also with staff and the applicant.

Mr. Seyer presented information regarding the elements which are considered when determining level of service, including time frame, facility type and area type.

Time frame – Mr. Seyer noted LOS can be measured on a daily or hourly perspective. Daily level of service measures how much traffic a road can handle during a 24 hour period. Hourly level of service generally looks at intersections to determine the amount of time required to get a vehicle through an intersection.

Facility type – Mr. Seyer noted LOS is measured differently between roadways or intersections. As an example, there are different conditions on I-25, as compared to Highway 56 or 4th Street.

Area Type – Mr. Seyer identified the three area types; rural, urban or suburban. When measuring LOS on a rural road, you are usually considering the daily usage. When you measure LOS for urban or suburban areas, you generally monitor at peak hours. He noted the theory in the industry is that if the LOS at peak hours is acceptable, then the LOS for the remainder of the day will also be acceptable.

Mr. Seyer advised the Board that when this is applied to Wilson Ranch and the I-25 sub-area, staff is recommending that we develop a master street plan for the entire area. Each of the individual developments will then be able to define roadways that comply with the requirements in this master street plan. Our goal in doing this is to make sure we are out in front of our capacity needs in this area, now and in the future.

Mr. Seyer noted once the master street plan is in place, we can then work with McWhinney Enterprises to define the streets within their development.

Mayor Karspeck asked Mr. Seyer to clarify the differences between LOS C and D. Mr. Seyer explained that Level A and B are stable flow and traffic demand is being met by the roadway and Level E and F would be I-25 at 5:00 p.m., with traffic at a standstill. LOS C and D are in the middle, with LOS C difficult to achieve during peak hours if you have a signalized intersection. The delay when comparing C and D, would be approximately 15-20 seconds, with the normal delay at LOS C at 35 seconds, and the delay at LOS D at 55 seconds.

Mayor Karspeck asked Mr. Seyer what LOS would apply to the intersection at CR 17 and Mountain Avenue. Mr. Seyer responded that is probably LOS C during the day, and at peak hours, it is probably a LOS D.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, FEBRUARY 3, 2004
Page 3 of 8

Trustee Ashcraft asked if development at I-25 and Highway 56 will have an impact on the intersection at 1st and Highway 287. Mr. Seyer noted the I-25 area is far enough away from that intersection to prevent it from being a factor. However, that intersection does have significant problems affecting level of service.

Trustee Ashcraft noted he would like suggestions regarding possible solutions regarding that intersection, noting there is no money earmarked for the Northern I-25 area, and in this case it is helpful to understand the difference between a LOS C and LOS D. He asked if there are other comparisons of roadways or intersections in the area that can be made.

Mayor Karspeck noted at peak hours, the Windsor exit off of I-25 backs up, and he asked if that would be a LOS D or lower. Mr. Seyer agreed, and noted that intersection would be very similar to the exit we are considering off of I-25 onto Highway 56.

Planner Reed asked the Board to allow Mr. Seyer to discuss the components of the master street plan since the applicant is agreeable to going forward with the master street plan.

Mayor Karspeck noted he would like further clarification regarding levels of service prior to going forward. He asked Mr. Seyer what changes could be made to the Windsor exit to resolve the situation. Mr. Seyer explained he has no knowledge of the design of that intersection, but there are many solutions that could be considered, including additional through lanes, left turn lanes, or even a roundabout.

Trustee Ashcraft noted it is important that the Board not adopt a restrictive level of service that cannot be achieved.

Mr. Seyer agreed and noted a master street plan can identify incremental improvements for the future. It is possible to identify changes that will need to be made in ten, twenty or thirty years. One element of the master street plan is a trip budget which helps to define areas needing improvement.

Trustee Gregg asked if there is a decrease in safety between LOS C and LOS D. Mr. Seyer noted there are two schools of thought regarding safety. More congestion leads to more accidents, indicating a safety issue. However, at slower speeds, accidents are less severe. He noted one of the key elements in promoting safety is the engineering that goes into an intersection.

Trustee Gregg asked what needs to be done to move up on the LOS scale. Mr. Seyer responded that finding ways to decrease demand or increasing lanes to provide more capacity are common solutions.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, FEBRUARY 3, 2004
Page 4 of 8

Mayor Karspeck asked how long the master plan might take. Mr. Seyer responded that it typically takes from three to four months to complete a study.

Mayor Karspeck asked about funding for the study. Planner Reed noted that would depend on the total cost of the project. McWhinney Enterprises has agreed to contribute approximately one-third, and the Town would have to come up with the remainder. We have started collecting funds for master planning, but at this time, these funds are inadequate to pay for the Town's part of the study. Planner Reed noted one possible source of funds would be from other property owners in the area. Letters will be sent out in the next month offering other property owners in the area the opportunity to participate in the study at \$35/acre. Several of these individuals have indicated they would be interested in participating.

Mr. McWhinney asked for clarification regarding what LOS the Board wants for the I-25 area. He pointed out that many streets can be a LOS C during normal hours, and a LOS D during peak hours, but that can fluctuate under unusual circumstances to a LOS E or lower. He asked for direction from the Board regarding what level of service is desired so they can come back with a plan. He noted they are willing to agree to meet LOS C on an average daily basis, but are asking to exempt peak hour movements. Their goal is to have smooth traffic, but if we have commercial growth in the area, there will be problems in the peak hours.

Mr. Seyer noted the Town's ordinance states that the LOS will be C on an average daily basis. He noted his recommendation is that the Town adopt a LOS D for peak hours and at intersections and a LOS C for roadway traffic.

Mayor Karspeck noted he would like to determine what level of service we would like to see in the area, and all the parties mutually agree to work toward that LOS, unless we are faced with a safety issue, which would have to be addressed.

Trustee Ashcraft agreed, noting there can be a specific event that can have a negative impact on level of service.

Trustee Buckingham agreed, but suggested there should be language to define the timeframe to resolve any significant problems.

Mr. McWhinney agreed, noting with good planning they will know in advance what and when improvements need to be made.

Trustee Gregg noted our goal is to achieve peak LOS D. He suggested that, in the future, if an anomaly causes problems, then everyone works together to resolve the problems.

Board members thanked Mr. Seyer his presentation.

Mayor Karspeck called a recess at 8:35 p.m and reconvened the meeting at 8:43 p.m.

Planner Reed distributed revised Section 8, explaining the revisions.

Planner Reed noted the Berthoud Fire District has reviewed and commented on the Wilson Ranch Annexation. The Town, the Fire District and the applicant are working together to find a way to provide adequate fire protection to the I-25 sub-area. Copies of the District's comments were distributed.

Administrator White advised the Board that we just received comments regarding the I-25 area from our water attorney, Paul Zilis, and he distributed copies of these comments for Board review. Attorney Fickel noted Mr. Zilis has been working with the applicant's water attorney, Steve Williamson.

Mayor Karspeck asked if the Fire District had major issues with the manual. Planner Reed noted they asked for wording that says that the Wilson Ranch Development Manual does not supercede the Fire Code, and if there is a conflict, the Fire Code prevails. The applicant is agreeable making this change.

Mayor Karspeck asked if Board members have further questions, concerns or comments regarding the Wilson Ranch Development Manual, and there were none.

Mayor Karspeck asked if there are further issues to be discussed regarding the annexation agreement.

Attorney Fickel noted the plan is to review the items addressed during the last meeting. Mr. McWhinney distributed the most recent revision, and Attorney Fickel asked McWhinney Enterprises' attorney, Lucia Liley, to discuss the changes that are being considered. He noted this document has also been reviewed by the Loveland City Attorney.

Attorney Liley explained the reason for the lengthy revisions to this document. As you get to the end of negotiations on a project of this magnitude, the attorneys for both parties review the documents closely to assure that all changes are consistent throughout the document. She noted there are several changes of substance, as follows:

Section 3.3.3 Review and Modification of Performance Standards - Attorney Liley noted this section originally listed specific firms for consideration. It has been revised to remove the names of firms, and instead it defines what qualifications firms must have to be considered by the Town.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, FEBRUARY 3, 2004
Page 6 of 8

4.2.4 Density Transfer Fee - Attorney Liley noted this section has been revised to require payment of a Density Transfer Fee of \$500 as a part of each residential building permit. She noted Attorney Fickel has asked that the wording be modified to allow the fee to be increased in the future, and that is being considered.

6.2.4. Road Impact Fee – Attorney Liley noted following extensive discussion, McWhinney Enterprises has agreed to accept 80% of each Road Impact Fee or any similar transportation capital fee. The remaining 20% can be used by the Town for other projects.

6.2.3 I-25 Improvements. Attorney Liley noted this item has been revised to say that the Developer agrees to contribute their proportionate share of costs to improve the I-25/Hwy 56 interchange based on an engineer's certified cost estimate, provided that there is an equitable regional cost sharing plan adopted and other parties are contributing their pro-rata share of the costs.

Section 8 Reimbursement to Development for Public Improvements Constructed – Attorney Liley noted there have been extensive discussions regarding what revenues the Town can use to reimburse McWhinney Enterprises for the infrastructure they will be putting in at I-25. This document allows for two sources of revenue available to repay for infrastructure, Fee Funds and Tax Revenue Funds.

Attorney Liley noted there are two Fee Funds listed in the agreement, the Park Fee Fund, and the Road Fee Fund and 80% of every fee collected within the ODP will be placed in separate accounts specific to the improvements. As the roads and parks are completed in the development, the Developer can be reimbursed for those improvements.

Attorney Liley explained that the Tax Revenue Fund is comprised of 1% of the sales tax and use tax collected within the ODP. These funds can be used for building and construction materials used in construction or modification of any retail development project and any non-retail, non-residential development project with a building size of at least thirty thousand square feet.

Attorney Liley explained that during the initial period, reimbursement from this fund will be equal to 33% of the reimbursement amount for each eligible improvement. This initial period will continue until the date that 50% of the ODP's gross land area has been built out or 25 years after final approval, whichever is earlier. After the initial period, the percentages will be adjusted to reflect the actual split between non-residential acreage compared to residential acreage within the development.

Attorney Liley noted the terms of these funds have been established by the agreement. The Fee funds will run for the life of the agreement. The Sales Tax Fee is set for 25

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, FEBRUARY 3, 2004
Page 7 of 8

years, and the use tax is set for 10 years, with the intent to renew at that time for an additional 15 years.

Attorney Liley noted the word "material" has been added when addressing default. She noted the agreement has also been modified to allow the Town the right to cure. Attorney Fickel has asked that wording be included to allow time for an election to allow the Town to take an issue before the voters if that is needed.

Attorney Liley explained that a damage section has been added to the agreement. She noted if there is a material default that cannot be resolved; McWhinney Enterprises wants to be able to collect damages. She noted their intent is never to seek damages if performance is available. She also noted the agreement has been modified to include a section that says if the Town pays the Developer for infrastructure, and the Developer can use that infrastructure, the Developer must reimburse the Town.

Attorney Liley noted a section has been added to the agreement regarding a non-conforming sign on the Wilson property. She explained that the agreement has to include a provision to allow the sign to remain on the property based on the underlying legal documents, which she has not received from the Wilson's attorney.

Attorney Fickel noted all parties are getting very close to an agreement. The goal of all involved is not to have an agreement that is so complicated that neither party understands what is included. The issue is that it is impossible to know what will happen ten to fifteen years down the road.

Attorney Liley agreed, noting this is a 40 year agreement, and another goal is for flexibility and fairness.

Trustee Buckingham questioned the basis of the 67/33% split on Tax Fund reimbursement.

Mr. McWhinney responded that this was agreed to as a starting point until you reached the point where there is actual development to consider.

Attorney Fickel agreed, noting this breakdown is only applicable to the initial period. Development costs are front loaded, and this gives the Developer a slight increase on the front end. Once half the permits are issued, we will have a sound basis to determine what is appropriate. He pointed out that even with this split, the developer is not paid more than they put in.

Mr. McWhinney noted this percentage only applies to the Sales Tax Fund, and if they are not generating sales tax, they will not get anything back.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, FEBRUARY 3, 2004
Page 8 of 8

Mayor Karspeck asked if it is appropriate to use an Enterprise Fund to reimburse in lieu of the Sales Tax fund. Attorney Fickel noted the intent is not to pay with the Enterprise Funds. He pointed out that if there are no sales tax funds generated on the property, there are no funds to collect.

Mayor Karspeck asked if it is appropriate to use general fund money to repay enterprise expenses. Attorney Fickel confirmed that is not a problem. Attorney Liley agreed, noting the reason the Enterprise Funds are listed is because they are not subject to TABOR and can be used to guarantee a multi-year allocation.

Planner Reed noted it is important that residents of Berthoud understand that we are not making special exceptions for McWhinney Enterprises and he explained the basis of the funds and the reasons behind the structure of reimbursement that has been defined by this agreement.

Mayor Karspeck asked for guidance regarding scheduling for this project for the public. Attorney Liley responded that their goal is to have the completed redlined draft to the Board no later than Tuesday, February 17, 2004. They are hoping this can be adopted at the Board meeting on Tuesday, February 24, 2004.

Mayor Karspeck opened the floor for public comments and there were none.

Trustee Gregg moved to continue the Wilson Ranch Annexation, Rezoning, Overall Development Plan and Development Manual public hearing to Tuesday, February 10, 2004. Second by Trustee Buckingham. All members voted YES.

EXECUTIVE SESSION

Mayor Karspeck noted the Board needs to adjourn to Executive Session to for negotiations for a water purchase and to discuss the Town's water attorney's comments regarding the Wilson Ranch Annexation. With no objections, the Board adjourned to an Executive Session at 9:40 p.m.

The Board reconvened from the Executive Session at 10:25 p.m. and with no further business before the Board, adjourned.

Mayor Milan Karspeck

Deputy Town Clerk Charlene Reed