

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
TUESDAY, JANUARY 27, 2004
Page 1 of 9

The Board of Trustees for the Town of Berthoud met for a regular meeting on Tuesday, January 27, 2004 in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 7:05 p.m.

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

MEMBERS ABSENT: Trustee Don Ashcraft
Trustee Michael Patrick

STAFF PRESENT: Town Administrator Jim White
Town Clerk Mary Cowdin
Public Works Director Bill George
Town Attorney Bruce Fickel
Deputy Town Clerk Charlene Reed

PLEDGE OF ALLEGIANCE

Mayor Karspeck led the Pledge of Allegiance.

CITIZEN PARTICIPATION

There were no items presented from the audience.

REPORTS

Administrator White announced that the Town has sold two building permits for the month of January 2004.

Administrator White congratulated Gary Maggi, who was honored as the Chamber of Commerce Citizen of the Year during the annual Chamber Banquet on Saturday, January 24, 2004.

Public Works Director George provided information on the completion of the raw water pipeline. The project came in \$76,000 under budget, and has been a great help in improving our quality of water, allowing us to decrease the amount of chemicals necessary to process our water.

Mayor Karspeck asked the status of the carriage agreement to allow us to run our water through the pipeline this year. Public Works Director George responded that he, Paul

Zilis and Jim White met with the Bureau of Reclamation on Monday, January 26, 2004, and they are waiting for a study from the U. S. Fish and Wildlife Department before going forward with the temporary agreement for this year. He noted our intent is to stay on top of this issue, as we hope to be running water through the pipeline by April 15, 2004.

Administrator White noted we are working on a permanent contract, which will generate affiliated costs. It is anticipated that the cost this year will be approximately \$50,000 and once we reach a tentative agreement, it will be forwarded to the Board for approval. He advised the Board that he has asked to have this cost divided into three payments, with the final payment being due in January, 2005, in an effort to soften the impact of these charges on this year's budget.

CONSENT AGENDA

The consent agenda consisted of 6a, the minutes of the regular meeting held on January 13, 2004, and the minutes of the special meeting held on January 20, 2004; 6b, the liquor license renewal for Conoco; and 6c, the liquor license renewal for the Carriage House.

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

ESTATES AT MATTHEWS FARM COLLATERAL

Mayor Karspeck noted this item has been removed from the agenda at the request of the applicant. It will be rescheduled at a future date.

EXECUTIVE SESSION

Mayor Karspeck noted the Board needs to adjourn to an Executive Session to discuss Serenity Ridge legal matters and the status of negotiations regarding the Wilson Ranch Annexation.

With no objections and by unanimous consent, the Board adjourned to Executive Session at 7:12 p.m. The Board reconvened at 7:47 p.m.

CONTINUATION OF PUBLIC HEARING – WILSON RANCH ANNEXATION AND REZONE

Administrator White announced that negotiations continued regarding the Wilson Ranch Annexation and Rezone. He noted a meeting was held with Attorney Fickel, Troy McWhinney and the McWhinney's attorney, Lucia Liley, to review the items discussed at

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
TUESDAY, JANUARY 27, 2004
Page 3 of 9

the last two Board meetings. He noted the primary focus of the meeting was the Density Transfer Fee, Sales Tax, and the Road Impact Fee.

Administrator White noted a tentative agreement was reached regarding sales tax. The Town presently sets aside 1% of our 3% for special projects. The remaining 2% is put into the General Fund, and McWhinney Enterprises agreed to accept half of the 2% sales taxes generated at I-25, pending Board approval.

Administrator White noted McWhinney Enterprises agreed to pay \$500 per home or \$2M collectively as a Density Transfer Fee.

Administrator White noted an agreement was reached to reduce the amount of the Road Impact Fee to be used at I-25 from 100% to 80%. The remaining 20% will be available for the Town to use on roads anywhere in the Town.

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

Planner Reed advised the Board that staff has completed the comparison of the Development Design Standards for the I-25 Corridor Plan and the Wilson Ranch ODP and Development Manual and he recommended these items be discussed following the discussion of the Annexation Agreement.

Troy McWhinney of McWhinney Enterprises, Loveland, CO advised the Board that a good meeting was held today addressing issues discussed at the last two Board meetings. During the meeting, an agreement was reached between McWhinney Enterprises and staff on the language to address these issues. He noted they hope to distribute revised redlines by the end of the week. He reviewed the specific items:

3.3.3 Review and Modification of Performance Standards, Section (b) – Mr. McWhinney noted McWhinney Enterprises has agreed to the language to allow the Town to pick five firms specializing in urban planning.

4.1. a. Limitation on Right to Disconnect, Section (a) - Mr. McWhinney noted they agreed to change the default language to include the word “material.”

4.1.b. Disconnection of Property – Mr. McWhinney noted they agreed that in the event there is a default, the only property that can be disconnected is property that has not received a building permit.

6.2.2 Level of Service Requirement – Mr. McWhinney noted discussion of this item has been postponed due to meetings scheduled this week with John Seyer, the Town’s Transportation Engineer.

6.2.3 I-25 Improvements – Mr. McWhinney advised the Board they agreed to revised language that states they agree to pay their pro-rata share of I-25/Highway 56 interchange improvements, based on an engineers certified cost estimate.

6.2.4 Road Impact Fee – Mr. McWhinney noted following a lengthy discussion, they have agreed to accept an 80/20 split for regional roadway improvements, including major arterials. Once McWhinney Enterprise has recovered the cost of the project, 100% of future fees will belong to the Town.

Attorney Fickel noted his understanding from this discussion is that the Town will get payment/costs incurred documentation from the developer regarding Park Development, Commercial Development and Streets. Once repayment is completed for any segment, payments will end.

8.8 Enterprise Obligations – Mr. McWhinney noted they agreed that if the Town is behind or in default, only the outstanding portion of the payments will be accelerated.

12.2.4a Mr. McWhinney noted language has also been changed in this section to include the word “material”.

12.4 Vesting Language – Mr. McWhinney noted there were no changes to the language regarding vesting.

14.2 Lawsuit Dismissal – Mr. McWhinney noted they have agreed to dismiss all lawsuits involving McWhinney Enterprises.

Mr. McWhinney noted there are three topics that remain to be discussed, and identified two for discussion at this meeting: Sales Tax and the Density Transfer Fee.

Sales Tax - Mr. McWhinney explained that he was initially unaware that of the 3% total sales tax collected the Town sets aside one third for special projects. The remaining two-thirds go into the General Fund. McWhinney Enterprises is willing to lower their request to half of the remaining two-thirds to make this fair and equitable for both parties.

Density Transfer Fee – Mr. McWhinney noted they have offered a Density Transfer Fee of \$500 per house. He noted they originally felt they should not be required to pay this fee, but after lengthy discussion, they feel the \$500 per house is a good compromise. He reminded the Board that they have a history of giving back to the communities where they are developing. In the past three to four years, Centerra has become cash positive, which has allowed them to donate 80 acres to youth athletic programs, and they have donated funds to McKee Medical Foundation for Loveland. Once Wilson Ranch

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
TUESDAY, JANUARY 27, 2004
Page 5 of 9

becomes cash flow positive, they will be able to sit down with the Town and look for projects that will benefit Berthoud.

Mayor Karspeck noted he is pleased that discussions are moving forward, and asked for clarification regarding the accelerated payments included in the agreement.

Attorney Fickel noted the Board has to decide each year in the budgeting process whether or how to allocate the sales tax revenues to this project. If funds are not allocated in the budget, this agreement gives them the ability to collect those funds through the Town's Enterprise Funds, since these funds are not subject to Tabor. The revision in the wording specifically allows them to recover funds that are in default and not the entire amount due over the life of the project.

Mayor Karspeck expressed concern regarding whether funds from the Enterprise Fund can be used for purposes other than for the utility. Attorney Fickel noted McWhinney Enterprise will be putting in infrastructure, and it would be possible to argue that the funds are being used for the water and sewer infrastructure in the area. Attorney Fickel noted another change in the agreement allows for semi-annual repayment of the fees. The original agreement required that the fees be repaid monthly, which would have required extensive paperwork and monitoring. He pointed out that McWhinney Enterprises has been very cooperative, and have been willing to work with the Town to reach an agreement that benefits everyone.

Mr. McWhinney noted one additional section has been added, Section 15.17, which addresses the billboard on the Wilson Property that currently has advertising for Johnson's Corner. This is an existing non-conforming sign located in what will be the mixed use portion of the property. This sign will be brought into conformance no later than 10 years from the signing of the annexation agreement. During that period, the sign will be used exclusively for the ODP, or the Town and its activities. This sign will be promoting Wilson Ranch or the Town, and he suggested it would be beneficial to share the sign. Their intent is to make the sign promote economic development in Berthoud.

Mayor Pro-Tem Foote agreed that we have come a long way toward reaching an agreement. She did express concern that we have taken our Density Transfer Fee from \$3,000 to \$500, since the purpose of that fee is to give the Town money to purchase open lands in the area.

Trustee Buckingham noted he would like the opportunity to look at this from an overall perspective. Both sides have done extensive negotiation and have done a good job of laying out their concerns and interests. He noted both the Developer and the Town have worked to find the best lines for compromise to reach an agreement that is good for everyone.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
TUESDAY, JANUARY 27, 2004
Page 6 of 9

Trustee Gregg thanked McWhinney Enterprise for their efforts, noting he is pleased with the discussions that have been held and the compromises that have been reached. This gives the Board the assurance that this development will be of the quality of Centerra.

Planner Reed noted John Seyer, Traffic Engineer, will be giving a presentation at the next Board meeting regarding his recommendations regarding level of service in the area. Staff and the applicant have been meeting to reach an agreement.

Trustee Gregg asked Planner Reed to have Mr. Seyer address the differences psychologically between the different levels of service, comparing C and D and D and E. He noted that if we are adding lanes of traffic, mild discomfort might not be an issue. If it is a matter of changing how the roads operate without additional concrete, than that change would be acceptable.

Mayor Karspeck asked where we are in regards to reaching the end of the public hearing. Administrator White suggested the Board address outstanding issues in the Development and Annexation Agreement next week, and address the Level of Service issues. The applicant will have their attorney present for this meeting. He suggested we might be able to move toward resolution of this issue at the first regular meeting in February, which will be February 10, 2004.

Mayor Karspeck suggested it would be appropriate at this point to publish a summary of this agreement to allow the public to know what the agreement is about.

Planner Reed presented a summary of the comparison between Wilson Ranch Development and Regional Design Standards, and distributed a copy of the completed comparison for further Board review.

Planner Reed noted the two plans are absolutely consistent with or have been modified to agree in 25 of 29 instances. He addressed each of the four items that are out of compliance.

Development Pattern and Site Layout, Item 1, Block Pattern.

This applicant does not agree with this regional baseline design standard. Planner Reed noted his intent is to discuss this item with the original participants in this study.

Trustee Buckingham pointed out that the applicant has presented strong arguments regarding why this standard is not acceptable. Planner Reed agreed, noting this would have prevented the Town from approving the Safeway site in the Town. Clearly this would prevent us from having larger retailers.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
TUESDAY, JANUARY 27, 2004
Page 7 of 9

Parking, Item 2, Parking Lot Location and Amount.

Planner Reed noted this requirement is appropriate to smaller developments of 10,000 units or less. If larger developments, where you have big box stores, such as Costco or Wal-Mart, it pushes the entryway to one end of that big box so that 50% of the parking area can be located along the side of the building. This can be done with one standalone big box store, but if you have more than one big box, you cannot meet this requirement.

Trustee Buckingham noted this item affects the layout of the lot, and not the number of parking spaces. He asked the purpose of the standard.

Planner Reed noted this requirement is here to diminish large unbroken parking areas. In the days before landscape medians, in many cases the only thing that broke up a parking lot was street lights. He noted there are other, more creative, ways to break up parking lots.

Building Form/Character Item 1, Roof Form: Building less than 10,000 sq. ft.

Planner Reed noted this standard requires a pitched roof for structures with a floor plan less than 10,000 square feet. The applicant argues that their non-residential architectural standards represent an equal or superior alternative approach to this standard. The applicant agrees that there will be instances where a pitched roof is appropriate, but they would like to be able to consider a flat roof where it is appropriate.

Trustee Buckingham noted when coming down the grade into this area, there is the potential to be looking at flat roofs. Planner Reed noted the applicant has addressed the visibility issue by requiring that all roof mounted mechanical equipment be concealed.

Mr. Schroyer noted it is impossible to put a pitched roof on some structures of this size. He noted they have included photos of buildings with flat roofs from other developments. He agreed they do intend to have some pitched roofs, but not for every building in the area.

Trustee Gregg noted this should be considered on a case by case basis. He pointed out it is not appropriate to mandate a "one size fits all" roof.

Landscaping, Item 3, Site Perimeter Landscaping along I-25 ROW

Planner Reed noted this item represents the biggest variation from the Baseline Design Standards. This standard requires 422 trees and 4000 shrubs along the I-25 Right-of-Way. This applicant is recommending 211 trees and 1,055 shrubs in the area and they are asking that their standards for trees and shrubs along I-25 be accepted as an alternative compliance.

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
TUESDAY, JANUARY 27, 2004
Page 8 of 9

Planner Reed summarized the staff position on all the standards. He noted the design standards were not intended to be a complete development manual. Their purpose was to present best practices for the area. The Wilson Ranch Development Manual is a complete package, and has over 400 specific policies that will be upheld by every development in Wilson Ranch. He asked the Board to agree that some of the goals and objectives in the Manual are consistent with DDS Plan to create a high quality development. The Wilson Ranch Development Manual has gone above and beyond what can be achieved by the design standards, and the Development Manual is a superior product. The manual is upholding 25 of 29 standards, and while we differ on 4, we are exceeding the quality we can obtain from the standards alone. Planner Reed noted staff supports the Development Manual, since the applicant has agreed to meet many of the standards.

Mayor Karspeck thanked Planner Reed for the analysis. He noted that while he supports staff's position, the Regional Baseline Design Standards were a serious effort to come up with acceptable standards for the area. He concurred that compliance with 25 of 29 items was significant.

Trustee Buckingham asked for clarification regarding the difference in the landscape standards. Planner Reed noted the design standards require 1 tree for every 40 feet, and the manual says 1 tree every 50 feet with five shrubs. He noted both standards far exceed those required in the Town.

Trustee Buckingham noted he is comfortable in omitting all four of the standards, since the applicant is in compliance with 25 of 29 standards.

Mayor Pro-Tem Foote noted she is comfortable with staff recommendation.

Trustee Gregg agreed, pointing out that we are talking about 75 mile per hour landscaping design. At that speed, it will not be noticeable if we have five more shrubs in the area. He noted he would rather see the funds spent on trees and shrubs on the streets within the development.

Planner Reed extended his thanks to Mr. Schroyer for his assistance in completing the comparison between the two plans.

Mayor Karspeck asked if the applicant would agree to break up the parking lots for smaller businesses. Mr. McWhinney noted they agree with the wording of the standards in many cases, however, when the wording makes them a requirement, it can create difficulties in meeting all the requirements that apply to the area. He suggested their DRC can address these issues and will hold them to higher design standards. He agreed they do not like large parking areas, but they would prefer to see "encouraged" or "shall"

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
TUESDAY, JANUARY 27, 2004
Page 9 of 9

in the wording of the requirements. He pointed out they have varied parking in Centerra, with Chili's and Compass Bank both having parking around the buildings.

Trustee Gregg asked if the regional standards addressing berming, suggested that would go much farther to soften the views along the interstate. Planner Reed noted berming is addressed; however, there are areas along the interstate where berming is not appropriate.

Planner Reed noted the Wilson Ranch Development Manual is not superceded by the Town of Berthoud Development Code. However, if an item is not addressed in the WRDM, the Town Code applies. The applicant intends to put together a fence and sign program for approval that will meet or exceed our standards.

Mayor Pro-Tem Foote noted this discussion has been beneficial and thanked staff for the thorough review.

Mayor Karspeck noted one problem with fences in the Town is that they are too close to the sidewalks. It appears that there is setback in the Wilson Ranch Development Manual between fences. Planner Reed noted the applicant has agreed to meet our standard in this area and included a 2' setback for sidewalks.

Mayor Karspeck opened the floor for public comment.

Karen Stockley, Larimer County, objected to the revision of the Density Transfer Fee, noting this sets a precedent for other developers coming into Town. She suggested allowing a 1% sales tax reimbursement for 25 years flies in the face of the adequate public facilities ordinance, which states that growth has to pay its own way.

There were no further comments. Mayor Karspeck closed the floor for public comment.

Trustee Buckingham moved to continue the Wilson Ranch Annexation, Rezoning, Overall Development Plan and Development Manual public hearing to February 3, 2004. Second by Trustee Gregg. All members voted YES.

With no further business before the Board, the meeting adjourned at 8:55 p.m.

Mayor Milan Karspeck

Deputy Town Clerk Charlene Reed