

The Board of Trustees for the Town of Berthoud met for a regular meeting on Tuesday, July 27, 2004 in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 7:00 p.m.

MEMBERS PRESENT: Mayor Milan Karspeck
Mayor Pro-Tem Don Ashcraft
Trustee Glen Buckingham (arrived 7:03 p.m.)
Trustee Louis Gervasi
Trustee Michael Patrick (arrived 7:10 p.m.)
Trustee David Gregg

MEMBERS ABSENT: Trustee Peder Thorstensen

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

PLEDGE OF ALLEGIANCE

Mayor Karspeck led the pledge of allegiance.

Trustee Buckingham arrived at 7:03 p.m.

CITIZEN PARTICIPATION

Jody Reed of 1602 Willow Drive addressed the Board asking that the Town not support the fund raising event using the Carson and Barnes Circus which is scheduled for August 22, 2004. She read the letter from a former circus employee regarding the treatment of the animals, and noted there will be a group actively protesting the circus if it comes to Berthoud. This group will be notifying the FDA of any inappropriate handling of the animals.

REPORTS

Mayor Karspeck reported that Shiloh Hatcher, the Town Arborist, reported at the Tree Board Meeting that we will be taking down a diseased tree in Fickel Park.

Town Administrator White announced that Public Works Director Bill George has resigned effective July 30, 2004. He will be leaving for a temporary assignment in Europe.

Administrator White announced that the budget process is beginning with Department Head meetings. Once the preliminary budget is developed, Finance Committee meetings will be scheduled.

Administrator White reported that the Town of Berthoud requested and was approved to serve as a Passport Acceptance site. This allows us to process applications for passports for residents in the area.

Administrator White noted the Town received a request from the Department of Local Affairs to serve as a funding agency for small communities for projects. They have \$6,000 and have asked if we will assist them in the distribution of these funds. Board members agreed to consider this request again when more information is available.

Trustee Patrick arrived at 7:10 p.m.

Administrator White provided written information about the recent CML Conference and thanked the Board for supporting his attendance.

CONSENT AGENDA

The consent agenda consisted of 6a, the minutes of the regular meeting held on July 13, 2004, 6b, the financial statement for June 2004, and 6c. the special events liquor license permit for Wildfire.

Trustee Gervasi asked that item 6c be removed from the consent agenda.

Mayor Pro-Tem Ashcraft moved to approve items 6a and 6b of the consent agenda. Second by Trustee Gregg. With no objection and by unanimous consent, the consent agenda was approved.

Board members considered the special event liquor license permit for Wildfire. Trustee Gervasi expressed concern because there is no demarcation between the booth where liquor is being served and the area where children's activities are being held.

Elizabeth Kearney addressed the Board, explaining that the activities in the children's area are for small children who are accompanied by their parents. The event is not usually attended by older unaccompanied children. She also noted there are a large number of volunteers staffing this event, and they keep a close eye on everything that happens.

Trustee Buckingham moved to approve the special even liquor license permit for Wildfire. Second by Trustee Gervasi. Trustee Patrick abstained and with no other objections, the motion carried.

RESOLUTION FOR GOCO FOR HILLSDALE PARK

Administrator White noted that when this grant was brought before the Board for approval, we did not pass a resolution supporting the grant and that resolution must be submitted to GOCO with the grant paperwork.

Mayor Karspeck read the proposed resolution.

Mayor Pro-Tem Ashcraft moved to approve Resolution 9-04. Second by Trustee Patrick. All members voted YES.

GATEWAY PARK DEVELOPMENT AGREEMENT AMENDMENT (ALLEY ACCESS)

Planner Reed explained that Bob Revis, on behalf of Berthoud-Gateway Park LLP is requesting that the Board modify the time by which Berthoud-Gateway Park LLP must execute an access and maintenance agreement with the property owner adjacent to the North property line of the project for the shared use and maintenance of the private alley located along the North property line of Gateway Park provided such easement is limited to access to/from single-family residences only. Such easement and maintenance agreement shall be completed and a copy thereof provided to the Town prior to the issuance of the first building permit for a dwelling unit within Gateway Park.

Bob Revis of Roche Constructors explained that he has been working closely with representatives from Collins Park over the past two months and they are closer to reaching the required agreement. However, he is asking to be allowed to go forward with pulling permits while the final details of this agreement are resolved.

Trustee Patrick asked why there was a delay between the approval of the original development agreement on July 23, 2003, and today. He pointed out that both parties knew this was required and suggested this should have been resolved prior to the time to pull permits. Mr. Revis responded that there is no excuse for the delay, this was an oversight by the individuals working on the project. He noted once he became involved in the project two months ago, he has been working diligently to resolve this issue. He pointed out that this area is not affected until they begin construction in Phase 2 of Gateway. He noted that are not far apart in reaching a solution at the present time.

Trustee Buckingham noted this request is to allow an open ended date for resolution of this issue. He suggested there needs to be a deadline to encourage both parties to come to the table and resolve the issue. He also suggested mediation if both parties are unable to reach an agreement.

Mr. Revis noted they would be open to mediation, but he asked that they be allowed to pull 35 building permits and then no further permits until this issue is resolved.

Mayor Pro-Tem Ashcraft asked for comments from other property owner.

Karen Kittell of Park Engineering agreed that they have been talking with Bob Revis, but explained that they need the agreement in place to allow them to go forward with the alley construction. She noted if the Board grants this request, it takes away any incentive for Gateway to work with them to resolve this issue. She noted they are highly motivated to get this issue resolved and are not opposed to sitting down with all parties to look for a reasonable solution. She noted they would like to reach an agreement without incurring further legal costs.

Jack Collins noted it is important to his development that the two parties reach a quick clean conclusion. He asked that the Board not change the time frame. He noted he is willing to sit down and see if this can be resolved. He noted his intent is to provide a paved alley on the north side of his property and it will be

provided at no cost to the owner of that property. He noted if Board allows this delay, the lawyers will make a lot of money and this will not get resolved. He suggested postponing any Board action for two weeks to allow the issue to be resolved.

Trustee Patrick noted this issue will recur with contiguous subdivisions, and we need to find an equitable way to resolve this type issue. He suggested we table this for two weeks to give the parties incentive to resolve this issue within that time frame. If they are unable to resolve this issue among themselves, the Board should leave the agreement as it is written and allow litigation to go forward.

Trustee Patrick moved to table this request for two weeks. Second by Trustee Gervasi.

Trustee Gregg asked if this will be an issue on the eastern side of Gateway when that area develops. Planner Reed noted it is possible to require that an easement be put in place. He noted it is also common to link issues of this type to dates or building permits to insure that requirements are met. He noted the need for an alley along the northern edge of the east side of Gateway has not been addressed because that property owner is not developing the area at this time. In the future, if he elects to develop, he will have to work with Gateway Park to address this issue.

Attorney Fickel noted both parties are in the audience and are motivated to resolve this issue and he suggested they have the opportunity to discuss this at this time to see if it can be resolved.

Mr. Revis noted they would be willing to provide a no cost access easement provided they are allowed to build the alley in their timeline when they complete Phase 2.

Ms. Kittell noted that could be six months away, or longer, and would be agreeable if the Board would allow them to go forward with building out the rest of the Collins subdivision without completing the alley.

Mayor Karspeck noted the motion should be amended to table this issue until the meeting on August 10, 2004.

Trustee Patrick agreed to the revision of the motion. Second by Trustee Gervasi. With no objection, the motion carried.

Trustee Gregg asked if the parties are able to agree, would they be able to go forward with permits and Attorney Fickel agreed.

PUBLIC HEARING – COLLINS FINAL DEVELOPMENT PLAN

Planner Reed explained that Jack Collins is requesting that the Board consider the request for concurrent approval for Collins Park PUD Final Development Plan and Final Plat for 19.6 acres of a single-family residential PUD. He explained that Carrie McCool of McCool of McCool Development Solutions is the project planner for this PUD.

Ms. McCool presented background information regarding the project. She noted staff is recommending approval of the final development plan and final plat with the conditions presented.

Trustee Patrick expressed concern that this plan allows 50% lot coverage. Planner Reed noted that is consistent with the PDP.

Trustee Buckingham noted there is no water dedication included in this packet. Planner Reed noted they are not bringing water dedication. This will be done by fee payment when building permits are issued.

Planner Reed reviewed the preliminary development plan and noted it does provide for lot coverage of 50%. He noted even with the request for 50%, it will not occur on every lot. That is the general lot coverage requested and provides them with the ability to proceed with a variety of floor plans. He suggested the applicant could be required to meet the architectural guidelines adopted by the Town which require streetscape diversity.

Trustee Patrick asked the applicant if they would be willing to comply with the architectural guidelines adopted by the Town which require a variety of building plans per block. Architect Craig Bundy agreed to that request, noting it is in keeping with what is already planned.

Trustee Gervasi asked about the request to revise the setbacks. Planner Reed noted the applicant will have to justify that request.

Architect Bundy noted they originally asked for 5' setbacks. He noted their goal was not to have a development with alleys that look like those in Mary's Farm with 50' of concrete from garage to garage. He suggested with a three to four car garage in the alley, they can provide enough covered parking to accommodate most residents need, and suggested it would be possible to put an additional parking pad next to the garage. He agreed they would be willing to accept a 10' setback.

Mayor Pro-Tem Ashcraft agreed that when Mary's Farm was initially built there was visual space, but since that time, trees now break up the area.

Architect Bundy noted when alleys are 50' wide, they almost look like a street. He noted to avoid having that expanse of concrete, they would be happy to provide parking aprons on the side of the garages, rather than having cars parked on the street. He noted they anticipate that they will have some residents that want an attached garage, which would allow more distance between the garage and the alley. He suggested the Board consider two options, 5' or 15'. That would allow them the ability to accommodate each individual homeowners desires.

Trustee Patrick noted they have the ability to vary distances by attaching or detaching the garage. He expressed concern that changing from 15' to 5' is a major change this late in the process. Mr. Bundy noted the parking beside the garage would replace the 15' and he noted they are asking to offer diversity to individuals who are looking at homes in the area. He noted they do not anticipate having a large number of homes with 50% lot coverage.

Mayor Pro-Tem Ashcraft asked the basis of the selection of the mixture of grasses for the tree lawns and asked that this be reviewed by the Town Arborist. Planner Reed agreed and suggested that be added as a condition for approval.

Trustee Patrick moved to recommend approval of the Final Development Plan and Final Plat application for Collins Park PUD and attach the conditions suggested by staff beginning with conditions 1-9 with the following additions.

With respect to paragraph 5 add language to public recording of plat and covenant.

With respect to remainder of conditions, stand as written on document with the following additions.

10. That the applicant would comply with the residential development guidelines that were recently passed by the board and specifically with the streetscape diversity

11. **The rear setback would be to code at 15'**
12. **The Town arborist would be asked to review the grass mixture and determine if acceptable, or make modifications as necessary.**
13. **The notation or correction that the alleys are public, not private.**

Second by Trustee Buckingham.

Trustee Gregg noted there is merit for reducing setbacks for alley garages. He suggested the 10-15' setbacks are often unusable due to the size of the vehicles on the market today. He suggested a variation between 5' and 20' to prevent parking problems, and noted this would allow more flexibility. He suggested requiring a side apron next to the garage for those garages with the 5' setback.

Trustee Patrick agreed, but noted most cars will get almost if not all the way out of an alley with a 15' setback. If you put a one-car apron beside a 2-3 car garage, that will not resolve problem. A large number of families use their garages for storage and the end result is that the developer will use the 5' setback and we will have more cars on the streets, reducing the width of the street. He suggested the 15' setback, particularly when we are not presented with alternatives to get cars off the street, is the only reasonable solution at this point.

Mayor Pro-Tem Ashcraft suggested requiring that garages with a 5' setback have parking for two vehicles on the adjacent pad.

Planner Reed clarified the modification for item #7, which states that staff recommends by the 20th building permit, the applicant or developer has to go before the parks and open space board for approval of their park, and by the 30th building permit, the park has to be constructed.

Trustee Patrick amended his motion to correct the language under item #7.

Attorney Fickel noted the language in the staff recommendations is more finely tuned than the language from the recommendations of the Planning and Zoning Commission. Planner Reed agreed and noted staff removed recommendation #1, since the issues addressed in that recommendation have been resolved.

Trustee Patrick modified his motion to the recommendation of staff with the following additions:

9. **Compliance with street scape diversity...**
10. **Rear setback set to code 15' as included in residential design guidelines**
11. **Town arborist reviewing grass recommendations**
12. **Alleys are public and not private.**

Buckingham second.

Karspeck opened the floor for public comment.

Mr. Bundy explained that the alley in the rear already has a 15' setback from the edge of the alley to the property line. This increases the setback on the outermost 20 lots to 30'.

With no further comments, returned to the Board.

Trustee Patrick noted the intent is not to require double setbacks. To the extent that there is a setback in place, staff would be capable of giving solution to requirement for 15' setback. Planner Reed suggested an amendment to condition #10, to state except for lots in blocks 5 and 6, where a 15' apron is provided within the width of the alley.

Trustee Patrick modified his motion to include that recommendation. He also modified his motion to allow front loaded garages in block 7.

Buckingham second. Mayor Karspeck, Mayor Pro-Tem Ashcraft and Trustees Buckingham, Gervasi and Patrick voted YES. Trustee Gregg voted NO.

Board members recessed at 9:05 p.m. and reconvened at 9:25 p.m.

Planner Reed noted Jack Collins and Bob Revis have reached an agreement and asked the Board to consider the agreement.

Mr. Revis explained that an agreement has been reached and he asked that the Board release 78 permits for Gateway Park contingent on a written agreement which will be delivered in 30 days.

Mayor Karspeck suggested the language be modified to state that the agreement will be reached within 30 days of issuance of the first building permit. If no agreement is delivered, no further building permits will be issued.

Trustee Patrick moved to amend the language in Section 7 to state that "such easement and maintenance agreement shall be completed and a copy thereof provided to the Town within 30 days after issuance of the first building permit for a dwelling unit in Gateway Park. This amendment is condition upon a statement from both parties that this issue is resolved. Second by Trustee Buckingham. Mayor Karspeck, Mayor Pro-Tem Ashcraft and Trustees Gregg, Patrick and Buckingham voted YES. Trustee Gervasi voted NO.

MARY'S FARM TRACT 1 – PREPAID WATER TAPS

Planner Reed explained that this Developer, Clifton Anson, is asking that the pre-purchased sixteen (16) water taps be used at any time in either Tract 1 or Tract A of Mary's Farm.

Trustee Buckingham moved to approve the pre-paid water taps to be used in either Tract 1 or Tract A of Mary's Farm Subdivision at any time. Second by Ashcraft. All members voted YES.

O'MALLEY FARMS DEVELOPMENT ISSUES

Planner Reed explained that these applicants, Tony Fiest and Greg Streech, are requesting a forum with the Board of Trustees to discuss critical development issues before proceeding with forwarding the annexation petition for acceptance. Attorney Fickel noted it is acceptable to allow the presentation and for the Board to ask questions, but it is not appropriate for the Board to make any commitment to this developer at this time.

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Tony Fiest of Fiest and Associates addressed the Board, noting they have been working with the Town for over a year, and have submitted preliminary plans and do not have a site plan approved. He presented the proposed site plan, which includes 411 homes. He explained they have spent between \$150,000 and \$175,000, and anticipate the cost to engineer the project will be an additional \$400,000.

Mr. Fiest noted they have strong commitments from Richmond Homes, and they would like to bring in Centex Homes to join them in this project. This project includes a park and a school site, and they have met with CDOT and can do a collector street.

Mr. Fiest explained the potential benefits to the Town of Berthoud, explaining that they are hoping for a contract with King Soopers once their contract issues are resolved. He explained the potential increases in sales tax to the Town, anticipating an additional \$102,000 in new sales tax revenue.

Mr. Fiest explained that they are asking if this project is feasible. With the current fee structure for building permits, this project will not work. He asked the Board to consider a reduction in the required water dedication fees to reduce the total cost of a building permit to \$30,000, providing the basis for the change in the amount of water dedication that would reduce this cost.

Mayor Karspeck noted there are other options for meeting the raw water requirements besides using CBT water. He noted the ordinance does allow a developer to provide Handy Ditch with the CBT water to reduce costs. Mr. Fiest noted their builders do not want to be water providers, nor do they want to inventory water.

Mayor Karspeck noted the Town could be involved and help with the process, and that is something that can be considered. Mr. Fiest agreed they would be interested in looking at other options.

Trustee Ashcraft pointed out that other developers are working within the system, and suggested they look at the possibility of putting in a non-potable system. Such a system provided substantial breaks in the cost of water.

Mr. Fiest noted they are agreeable to looking at options, as long as they are not a water bank. He noted they are not looking for a long term commitment regarding the cost of permits, but are looking for a baseline to start this project. He asked if the Board feels it is possible to reduce the fees to \$30,000. Mayor Karspeck suggested with the option to use Handy water, and with the Town involved in the process, it should be possible.

Mr. Fiest noted he is asking for commitment from the Board. Trustee Patrick noted that the Board is not in a position at this time to make that kind of commitment. He noted that every developer would like to set a number to establish profit margins. He noted there are currently 1,000 lots plotted over the last three years and the developers of those lots are working within the same ground rules that would apply to this development. Safeway feels confident they can make a go of their store. Two developers were here this evening who have found ways to develop under the fee structure in place. He suggested we need to make sure we are looking at fees to make growth pay its fair share. At the same time, need to balance that with the recognition that there are people that are making this work.

Trustee Buckingham suggested bringing numbers to the Board and expecting them to solve problems is not a good approach. He noted it would be better for everyone to work together to resolve the issues that need to be addressed.

Mr. Fiest noted they asked for help with the fees when this was initially presented. They were advised to get a water study and that was done. He noted they are not asking the Board to solve their problem. They are willing to work in the system in any way possible and willing to buy Handy if that resolves the problem.

Mayor Karspeck noted staff has recommended that the Board look at water dedication fees and a study is ongoing at this time. The wheels are in motion, but there is no response available at this time.

Trustee Patrick noted the Board is looking for alternatives that would affect every developer, not just one specific development.

Trustee Buckingham noted that since this project is bringing commercial development, including a park and a school, there should be considerations, but this could be resolved in further negotiations.

Trustee Patrick agreed, noting that in negotiations with another larger development, other ways to reduce costs were considered.

Mr. Fiest noted they are at a point in their development where they need to move forward.

Mayor Karspeck noted they are welcome to introduce topics and give the Board the opportunity to explore suggestions. He suggested Mr. Fiest work with staff and the Town attorney and then get on the agenda for further discussions.

Mr. Fiest noted another concern is the number of building permits that will be allowed. With 411 dwellings in the plan, if you get ten sales each month, then you hope to have 100-120 units per year. He asked if they will be allowed to get 10 permits each month.

Trustee Ashcraft noted the Town no longer has laws regarding how many permits can be issued. There are options and currently have no restrictions in the law. Fiest asked if there is the potential to get 10 permits per month.

Trustee Patrick suggested the number of building permits should be an element of the negotiations. Staff has been involved in discussions of that type and can also consider that issue.

Trustee Ashcraft noted phasing has been used in the past to control the rate of growth. Whenever a larger development has been addressed, the amount of retail included has been considered, and retail is a substantial positive to this development.

Mayor Karspeck noted when the growth cap was in place it limited new growth to 100 homes per year. Since that cap has been overturned, there is still a very strong feeling of support to limit growth. He noted there would have to be significant paybacks to the Town to allow the Board to allow 120 homes per year for one development. One factor that could be considered would be sales tax revenues.

Trustee Patrick agreed, noting there could be other factors, including public parks or other amenities. The Board must look for balance and find an environment where additions fit into the town and integrate new citizens and provide economic stability. To the extent that those goals can be met, the Board is willing to allow the Town to grow. On the other hand, if all the developers that were interested in developing start building at once, there is a limit in what we can handle. The Board must make sure that we do this in a way that allows us to not slow down the developers, but still maintain the quality of the development and the benefits to the Town.

Mr. Fiest noted they are trying to determine if they are in the right place. With an investment of \$5,000,000 in infrastructure for 411 homes, they are trying to determine if the Town can support the development.

Trustee Ashcraft noted the best way to achieve this is not to give the Board demands, saying they have to have fees limited to \$30,000 and 10 permits per month. There are options here that can be considered, and

everyone must work together for compromise. He suggested Mr. Fiest look at the Wilson Ranch Annexation and Development Manual. Saying you have to have 10 permits a month and fees at \$30,000 is not the way to get this resolved.

Trustee Patrick noted every one of the aspects discussed this evening is dependent on the global package. The Board will not say "no" to any issue, but they are also not in a position to say "yes." The Board must see the big picture before considering any issue that is being discussed this evening. Without seeing all the factors, it is not easy to say "sure, this will work." He encouraged Mr. Fiest to develop the big picture with staff. Staff will work hard to work to develop a win-win solution for everyone.

Mr. Fiest thanked the Board for their time and input, noting there will be questions along the way that staff cannot answer.

EXECUTIVE SESSION – NEGOTIATIONS AND PERSONNEL ISSUES

Mayor Karspeck noted the Board needs to adjourn to an executive session to discuss negotiations and personnel issues. With no objections the Board adjourned to Executive Session at 11:00 p.m.

The Board reconvened at 11:30 p.m. and adjourned.

Mayor Milan Karspeck

Town Clerk Mary Cowdin