

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
TUESDAY, JUNE 22, 2004
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The Board of Trustees for the Town of Berthoud met for a regular meeting on Tuesday, June 22, 2004 in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 7:02 p.m.

MEMBERS PRESENT: Mayor Milan Karspeck
Trustee Glen Buckingham
Trustee Louis Gervasi
Trustee David Gregg
Trustee Michael Patrick (arrived 7:04 p.m.)
Trustee Peder Thorstensen (arrived 7:04 p.m.)

MEMBERS ABESNT: Mayor Pro-Tem Don Ashcraft

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

PLEDGE OF ALLEGIANCE

Mayor Karspeck led the pledge of allegiance.

Trustee Patrick and Trustee Thorstensen arrived at 7:04 p.m.

CITIZEN PARTICIPATION

There were no topics from the audience.

REPORTS

Trustee Gervasi reported on the Transportation Meeting held this week. BATS is looking for a replacement vehicle for the van that was wrecked. Administrator White reported that BATS has purchased a 1997 Dodge Van for \$5,300 using funds from the insurance settlement and a donation from Golden Links.

Trustee Buckingham announced that there is a Historic Preservation Commission meeting scheduled for Wednesday, June 23, 2004 at 7:00 p.m. in the Board Room.

Administrator White announced that we received confirmation from Great Outdoors Colorado that the Town was selected to receive a grant in the amount of \$187,235 for Hillsdale Park. Dana Ortiz, Civil Resources, LLC, wrote the grant application and she will be invited to meet with the Board to discuss the grant.

Administrator White reported that Mayor Pro-Tem Don Ashcraft is attending the Colorado Municipal League conference representing the Board of Trustees.

Administrator White announced that the Chamber of Commerce donated a framed copy of the Berthoud Day 2004 poster, signed by the artist, Peggy Keagle. The framed copy signifies the 50th Berthoud Day celebration sponsored by the Chamber of Commerce.

Administrator White asked for direction in resolving the problem with the recycling area at 3rd and Mountain. He suggested that staff contact the local waste management companies to see if there is interest in setting up a franchise agreement with one company to provide recycling services to the Town. Mayor

Karspeck felt it would be beneficial to see if there is any interest among the local companies. This would provide a valuable service to our residents and be beneficial to the Town. With no objection from the Board, Administrator White will assign staff to go forward with this project.

Administrator White noted there was a meeting between Town staff and the Chamber of Commerce Board, resulting in a good exchange of dialogue. The Chamber Board would like to have a similar meeting with Board members at 5:30 p.m. prior to the study session on July 20, 2004. Board members agreed.

Administrator White advised the Board that following discussion with the Public Works Department regarding the need for full time coverage on weekend days, the work schedule has been modified to allow the on-call person to have Monday and Tuesday off and work from Wednesday through the weekend. This has eliminated the need to pay overtime for weekend call, resulting in a significant savings to the Town.

Public Works Director George reported that water conditions have improved in the river and the rain we have received has improved our outlook for the remainder of the year. He suggested we have more than enough water to last through the year and asked for direction from the Board to get rid of the doubling of rates for usage over 24,000 gallons. The current rate structure is adequate and he suggested residents of Berthoud will use water expeditiously. He asked for direction to proceed with the modification of the ordinance establishing water rates.

Trustee Patrick noted he would not be interested in modifying the rate structures without information from our rate consultants regarding how this would affect our financial condition. Board members agreed.

CONSENT AGENDA

The consent agenda consisted of minutes of the regular meeting on June 8, 2004, the financial statement for May, 2004 and liquor license renewals for Hayes Market, the Derby Grill, Log Cabin Liquor and the Wayside Inn.

Trustee Buckingham moved to approve the Consent Agenda as submitted. Second by Trustee Gregg. Trustee Patrick abstained regarding the liquor license applications. With no objections, and the noted abstention, the consent agenda was approved as submitted.

PUBLIC HEARING – ORDINANCE RE FIREWORKS AND FIRE BAN

Mayor Karspeck opened the public hearing to discuss the ordinance regarding fireworks and a proposed fire ban.

Administrator White noted Larimer County and Fort Collins have instituted a fire ban; the City of Loveland has not. The Berthoud Fire Protection District is not issuing any permits for open fires, or for the selling of fireworks.

Mayor Karspeck summarized the proposed ordinance, which will be in effect immediately upon approval and will remain in force until October 1, 2004. He opened the floor for public comment.

Mike and Mary Ann SanFilippo of 730 Douglas Place addressed the Board, noting they have sold fireworks in Berthoud for sixteen years. Mr. San Filippo noted they bought their state license to sell fireworks 30 days ago, and had to order their fireworks at that time. He asked that they be allowed to sell in Berthoud.

With no further comments from the floor, Mayor Karspeck returned this item to the Board for discussion.

Trustee Gregg asked if there has been a change in the status of the Larimer County ban due to the wetter weather. Administrator White noted we have not been advised of any modifications.

Trustee Buckingham suggested the use of fireworks for entertainment should be distinguished from setting deliberate fires. He noted this proposed ordinance contemplates a ban through October 1st, and the County ban ends August 1, 2004. He noted the current weather forecast is for more rain this week, and questioned the necessity of this ban.

Trustee Gregg noted in light of the amount of rain we have had over the last few days, it may be appropriate to allow the sale of fireworks at the present time. The Board would have the option to reconsider this ban if the weather changes.

Trustee Patrick agreed, noting it might be acceptable to allow fireworks over the 4th of July.

Rick Eason of 330 8th Street, addressed the Board, asking why they are considering a ban on fireworks.

Mayor Karspeck explained that the Board is considering the proposed ordinance and will take action based on the decision reached by the Board.

Trustee Buckingham moved to table this item until July 13, 2004. Second by Trustee Gregg. All members voted YES.

Mr. San Filippo thanked the Board and noted they will encourage their customers to be responsible when using fireworks.

AWARD BID – 36TH STREET SANITATION IMPROVEMENT PROJECT

Public Works Director George noted the purpose of this project is to replace a problem sewer main on 36th Street. The bid is below the engineer's estimate and the contractor submitted references who indicated he has performed quality work in the past. He asked for approval to go forward with this project.

Trustee Patrick noted the low bidder came in much lower than the other contractors and asked Public Works Director George if he felt the project could be completed for the low bid. Public Works Director George noted he discussed this with the low bidder and he stood by the bid.

Trustee Gervase moved to approve the contract to Dirt Doctors in the amount of \$128,750.00 and issue a notice to proceed. Second by Trustee Buckingham. All members voted YES.

GATEWAY PARK IRRIGATION WATER (POTABLE)

Public Works Director explained that some of the ditch companies are having problems delivering water from the river because of the low flows, and as a result, Gateway Park and Mathews Farm are unable to get water to their nonpotable systems. The two developments have asked to be allowed to connect to the Town system and use potable Town water for their nonpotable systems. He explained that his original recommendation to charge \$4.62 per thousand gallons was based on the fact that the developments were not going to provide water to replace the water used. Both Gateway and Mathews Farm have agreed to provide CBT shares to replace the water, and the Town should charge a rate based on the cost to process and deliver the water, not including the cost of the water.

Mayor Karspeck asked if the developers are looking for a permanent solution to this problem. Public Works Director noted at this time they are looking for a solution to their problem for this season only.

Trustee Patrick suggested we establish a charge for this water that will cover the cost for treatment and conveyance and not include the cost of the water.

Trustee Gervasi noted he has no objection to the proposal, but asked what happened to the source of water for these developments.

Bob Revis of Roche Construction and Richard Bartells, one of the partners in the project, addressed the Board. Mr. Revis noted that when this project was designed, it was determined that Loveland Lake and Ditch was the closest source of water to the project, since their line runs parallel to the property. After the design was in place, it was determined that Loveland Lake and Ditch has not delivered water for the past two years for various reasons. At that time, it was also determined that they have a structural problem with their dam and are not ready to allow water discharge through that structure. He explained that they asked for a meeting with Loveland Lake and Ditch and proposed a temporary bypass system to allow them to get their water. This was acceptable to the State Dam Inspector and to Loveland Lake and Ditch, but they were advised that Handy Ditch will not deliver the water because there is agreement between Handy and Loveland Lake and Ditch and Handy does not feel it is fair to allow them to get their water that way. He noted they have legal recourse, but they have been advised they must get their water by July 15, 2004 or they will not be able to get their water this year.

Mr. Bartels noted they have tried everything they can to get the water they purchased from Loveland Lake and Ditch to the project. They are working to get the landscaping in place, but without water, they will be unable to go forward. He asked the Board for assistance.

Trustee Patrick expressed concern that they are using potable water to replace nonpotable water. If the problems continue with Loveland Lake and Ditch, and we are again faced with a drought situation, the cost of water will increase. The Town does not have the capacity to help with this problem unless there is water available to replace what is used. This agreement needs to be made on the condition that they replace all water used. He also noted there was a significant reduction in fees for this development based on their providing a nonpotable system. If this is not resolved, and the Town provides potable water to the system, the Board needs to consider whether the reduction in fees will continue. He also expressed concern that using potable water to supply water to a nonpotable system will bring forward the time when the Town maximizes the capacity of our current water treatment plant, and encouraged staff to monitor this closely to prevent the need to go forward with construction of a plant in the near future.

Trustee Buckingham noted this developer had a water supply identified, and it is in the best interest of the Town and the developer for the Town to assist them in resolving this problem for this season. He noted problems of this type are the reason he does not advocate the use of non-potable water systems, noting problems are not uncommon.

Trustee Patrick suggested this problem needs to be resolved for the long term before the developer begins to pull permits for this project. There was a significant reduction in fees, 40%, and if the non-potable system is not going to be available, the reduction should no longer apply.

Trustee Patrick asked if the same situation applies to Mathews Farm. Public Works Director George noted Ken Weibel was advised by Welch Lateral Ditch that effective July 15, 2004, they would no longer deliver ditch water to the project. He noted Mathews Farm has also agreed to convey water to our system to replace the water they use.

Trustee Buckingham moved to approve the recommendation to assist the developers at Gateway Park and Mathews Farm by flowing town water in exchange for 10 acre feet of CBT water as a temporary solution to water issues for those two projects until November 1, 2004.

Trustee Patrick suggested the motion be amended to state that the water be replaced on a gallon per gallon basis to be sure we get back all of our water.

Trustee Buckingham modified the motion to replace the water on up to 10 acre feet on a net gallon per gallon basis. Second by Mayor Karspeck.

Trustee Patrick suggested the Board establish a minimum rate and then leave the actual rate determination to Staff. Attorney Fickel suggested that the Town Administrator has the ability to establish a fair rate under special circumstances and suggested that is appropriate in this case.

All members voted YES.

Mayor Karspeck called a recess at 8:20 p.m. The meeting reconvened at 8:35.

MOTORIZED SCOOTERS

Mayor Karspeck noted scooters were discussed at the last Board meeting and it was determined that the Town has ordinances in place and those ordinances need to be enforced. Attorney Fickel agreed.

PUBLIC HEARING RE: GATEWAY PARK AMENDMENT TO FINAL DEVELOPMENT PLAN

Mayor Karspeck opened the public hearing regarding the amendment to the Gateway Park Final Development Plan.

Planner Reed noted this item was continued from the regular meeting on June 8, 2004. He explained that when this project was approved in 2001, there was no mention of area and bulk regulations. He explained that this development is flexible in design and he suggested the Board consider the entire development, and not just look at this amendment request. Board members asked for specifics regarding the maximum lot coverage for all lots, and asked for findings that would support allowing this modification. He suggested staff should have caught the lack of area and bulk requirements on this plan when it was initially approved.

Mr. Revis distributed an analysis of the proposed area and bulk regulations, and explained that two of the lots are approaching 50% because of changes in the easements. He reaffirmed that they are not trying to achieve 50% on all lots, and summarized the breakdown. He noted at staff's recommendation, they are agreeable to allowing Town staff to monitor the percentages as the development progresses.

Trustee Patrick expressed concern that the detail indicates that the developer is asking for 40% or greater lot coverage for all but five lots.

Mr. Revis explained that the variation in lot coverage has to do with which house you put on which lot. Any one of the five models will fit on any lot, and lot coverage will be vary according to which house is selected. The percentages in the recommendation reflect the maximum lot coverage on every lot, but noted they are required to put a combination of the homes on the lots.

Trustee Gregg noted the spread sheet indicates what the maximum area coverage would be if you placed the largest home on every lot. The largest plan will not be repeated on every lot. The subdivision average for lot coverage should be approximately 40.7%.

Mr. Revis agreed, noting they are required to use all five models in the development. These numbers represent the maximum area coverage with the largest model on every lot. He pointed out there is no way to know which model will be on which lot until you are ready to build homes for prospective buyers.

Trustee Buckingham noted the Board asked the developer to provide an analysis of maximum lot coverage. He acknowledged that the Development Agreement does not allow him to put the largest home on every lot, and as long as he is willing to uphold that part of the agreement, this revision is acceptable.

Planner Reed noted the development agreement calls for a variety of models in the subdivision. The applicant has seen the residential guidelines, which addresses streetscape diversity and requires a variety of models. The applicant is agreeable to these provisions, and Planner Reed suggested the applicant be required to comply with Section 1.3 of the residential guidelines.

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

Trustee Gregg suggested this lot coverage was contemplated by the previous Board, and it should have been stated in the development agreement at that time. This is a housekeeping matter and should be approved. He noted the market will determine the average for the project once homes are sold and until that time, it is impossible to compute the true average lot coverage for the development.

Trustee Buckingham suggested the Board provide an explanation regarding why this change is being made. If this is approved, we are exempting this developer from Town Code and there needs to be a reason stated.

Trustee Gregg suggested it be stated that in a review of the previous approval, graphic representations were made, but the lot coverage was not stated. This revision is to clear up that issue. He asked if there are any other developments in Berthoud with 4,000 square foot lots. Planner Reed noted the patio homes in Fickel Farm are the same size. Trustee Gregg asked if they stated lot coverage when they were approved, and Planner Reed confirmed that was done.

Trustee Buckingham noted that another developer came in with a request to increase lot coverage and that request was denied. We are now considering a similar request and need to have justification for approval. He noted that in this case, Planner Reed has indicated that this development has a mixture of uses and Board has acknowledged there is value in that mixture.

Mayor Karspeck noted in the prior request, there were objections from surrounding residents. He pointed out that Gateway Park is a PUD, and when the PUD is silent, we impose the restrictions of the zoning district that is most similar to the PUD. This is not required by our code. Planner Reed confirmed that the Development Code does not establish maximum or minimum lot coverage in a PUD, and the conservative approach is to impose the most similar standard.

Mayor Karspeck noted when this was originally approved, the Board understood that this development would be dense, but nothing was specifically stated.

Trustee Patrick asked for assurances from the developer that at least 40% of the homes will be smaller and more affordable. He suggested without that assurance, the Developer will be more apt to maximize lot coverage to maximize profit.

Mr. Bartels explained that home builders are more interested in smaller homes in the current market, because there are more buyers in that range. There is a potential for increased interest rates in the near future and builders are aware that lower end homes are more desirable at this time.

Trustee Buckingham suggested the developer will seek to provide a balanced mixture of makes and models. Mr. Bartels reiterated that builders are interested in smaller products because there are more qualified buyers in that market.

Trustee Gregg moved to approve the amendment to the Gateway Park FDP as requested by the applicant, revising the front yard setback from 13'-6" to 14'-0", establishing a rear yard setback of 15'-0" for alley loaded garages and primary structures, and creating a maximum lot coverage range of 50% for 28 lots, 48% for 85 lots, 45% for 62 lots and 40% for 5 lots, and to include Section 1.3 of the residential guidelines, paragraphs A & B, making the suggested language the required language.

Trustee Buckingham requested that language be added to the motion indicating the reason for the exception.

Trustee Gregg amended the motion to state that this change is being made to clarify the graphic representation that was presented in the original FDP, by stating the numerical coverages which were not included in that presentation. Second by Trustee Thorstensen. All members voted YES.

ARCHITECTURAL STANDARDS SUBCOMMITTEE APPOINTMENTS

Planner Reed presented information on three applicants who applied to serve on the Architectural Standards sub-committee. The three applicants were Michelle Jacobs, Ann Sullivan Wolter and Jim Strovas. He asked the Board to appoint these individuals to the Committee to allow meetings to begin.

Mayor Karspeck expressed disappointment that there were no applications from Town residents.

Trustee Buckingham agreed and suggested instead of forming a separate sub-committee, that we utilize standing committees such as the Historic Preservation Commission and the Planning and Zoning Commission to review these standards.

Trustee Patrick suggested asking these individuals to submit their recommendations for standards, and then consider these suggestions in public hearings to develop these standards without forming a sub-committee.

Planner Reed agreed, noting in the past revisions to the development code have been done without utilizing a sub-committee and felt this could be handled through standing committees.

EXECUTIVE SESSION FOR LEGAL ADVISE AND PERSONNEL ISSUES

Mayor Karspeck noted Board members are adjourning to an Executive Session for legal advise and to review personnel issues. Administrator White asked that Town Clerk Cowdin be allowed to attend for the personnel issues. With no objection, the Board adjourned to an Executive Session at 9:37 p.m.

The Board reconvened from the Executive Session at 9:55 p.m. and immediately adjourned.

Mayor Milan Karspeck

Deputy Town Clerk Charlene Reed