

TOWN OF BERTHOUD
BOARD OF DIRECTORS
REGULAR MEETING
TUESDAY, APRIL 26, 2005
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The Board of Trustees for the Town of Berthoud met for a regular meeting on Tuesday, April 26, 2005 in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 7:04 p.m.

PRESENT: Mayor Milan Karspeck
Mayor Pro-Tem Don Ashcraft
Trustee Louis Gervasi
Trustee Peder Thorstensen
Trustee Glen Buckingham

ABSENT: Trustee Michael Patrick
Trustee David Gregg

STAFF PRESENT: Town Administrator Jim White
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 items presented by the audience.

REPORTS

Deputy Clerk Reed noted she is working to schedule interviews for the Library Board and will be contacting the participants to try to get these scheduled.

Mayor Pro-Tem Ashcraft noted he visited a town of less than 5,000 people in upstate New York, and residents of that town were grumbling about the School District leaving them behind with things such as pools, parks, etc. They had done a study on opening a recreation center, and it was not realistic with the economy of the town. In an effort to provide better services to the town, the YMCA, the town and the school district partnered together and were able to provide a recreation center for everyone. Mayor Pro-Tem Ashcraft noted the Town of Berthoud has the land for a recreation center and we have other resources that we could contribute, if we can find others to partner with us for a project of this type. He encouraged staff to look into other options for a program of this type.

Administrator White reported that Serenity Ridge received final approval from the State of Colorado Department of Health and Public Safety for their final design specs for a wastewater module with the design capacity of .022 mgd per day with peak hour flow of .07488 mgd. They currently have a temporary septic holding permit in place with Weld County until July 1, 2005.

Administrator White reported that we received formal notification that the Department of Health and Public Safety has issued a termination of permit to discharge effective January 26, 2005 for our old wastewater treatment plant.

Administrator White noted the Town received our Certificate of Membership for the Colorado Rural Water Association.

Administrator White reported that CML Executive Director Ken Bueche will be retiring in September 2005. Mr. Bueche has been with CML for 39 years, serving as director for the past 36 years. This will be a great loss to CML. He noted the CML Executive Board will begin their search for a replacement.

Administrator White noted we have a visitor, Mr. Elfenda Ananda, coming on Thursday, May 5, 2005. He is from Indonesia and will be here through the International Visitors Leadership Program, under the auspices of the U. S. State Department. Court Clerk Donna Sanchez has been arranging a schedule of activities for this visit, and we expect Mr. Ananda to arrive at Town Hall at 11:00 a.m. We will be having a luncheon at the Community Center, and Board members are invited to attend. We will have other appointments and a tour of the community, followed by a dinner at the Berthoud Bed and Breakfast between 5:00 p.m. and 7:00 p.m. that evening.

Deputy Clerk Reed was asked to provide information regarding our recent CIRSA Loss Control Survey. She noted we received a 94%, and explained the criteria used for the survey.

Mayor Karspeck revised the order of the agenda. He noted the Board will adjourn to an Executive Session after the meeting to review the Town Administrator's contract.

CONSENT AGENDA

The Consent agenda consisted of the minutes of the regular meeting on Tuesday, April 12, 2005, and the liquor license renewal for Kwik Korner.

Trustee Buckingham requested that the minutes be modified to include a paragraph regarding the discussion about the difference between the flow of permit fees between the existing annexation and development agreements.

Trustee Buckingham moved to approve the Consent Agenda with the minutes modified as requested. Second by Trustee Thorstensen. With no objections, the consent agenda was approved by unanimous consent.

COLORADO TRACTOR COMPANY SKETCH PLAN

Planner Reed noted John and Twila Brown of the Colorado Tractor Corporation are requesting that the Board of Trustees review and discuss a sketch plan for a proposed tractor implement dealership on a 75 acre tract of land within the I-25 growth management area. The property is located approximately 800 feet west of I-25 and is on the north side of Highway 56. Planner Reed presented a brief overview of the project, explaining that this applicant would be relocating from a site near Centerra in Loveland.

Planner Reed summarized the Staff Report, noting that the proposed development would represent an interim use of this property with a minimal impact on the land. He noted that the Colorado Tractor Corporation's proposal for the subject property is inconsistent with the Town's I-25 Sub-area Land Use Plan. However, staff is of the strong opinion that the Board should support this request, finding that the proposed businesses will not be an encumbrance to the long-term development of the property, given their minimal impact on the land.

Planner Reed noted this business would provide sales tax revenues to the Town, and the applicant has provided input regarding the anticipated revenues. He noted this might be a win/win situation for this business and for the Town. The applicant is representing that this represents their 10-15 years plan for this property. Planner Reed noted that the Board can establish a time limit so that at a specified date and time discussion can continue regarding the continuation of the business.

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Mayor Pro-Tem Ashcraft asked for clarification regarding whether tractors are subject to sales tax or use tax. If the sales are subject to use tax, the revenues would go to the municipality or county where the buyer lives. If the sales are subject to sales tax, the revenues would go to Berthoud. Attorney Fickel responded that tractor sales are not subject to use tax; they are subject to sales tax. Planner Reed clarified that a large portion of the equipment sold by this business is for agricultural use, and is therefore, not taxable. However, the sales tax on the remainder of the sales would come to Berthoud.

Trustee Buckingham noted that the potential for Berthoud to receive sales tax revenues from this business generates interest, and it is notable that not all sales generate sales tax revenues. He asked Planner Reed if he has an estimate regarding when the land uses planned in the Land Use Plan will be in place. Planner Reed noted it is difficult to anticipate when that will occur, but suggested that land use plans and their amendments usually project out at least twenty years in the future. He noted if you use the Wilson Ranch project as an example, we are looking at a minimum of twenty years, and the build out can take as long as 40 years.

Carey Salomonson of Centennial Bank of the West introduced John and Twila Brown and provided background regarding their prior relationship with Berthoud. He explained that the Browns were instrumental in bringing the Northern Colorado Water Conservancy District to Berthoud. They also bought and improved Berthoud Village Town homes. He noted there is already one Brown living in Berthoud, and the Town would be fortunate to have three Browns coming to the community and bringing an established business to the Town.

John Brown addressed the Board, introducing his wife, Twila, who works with the business and his son, Tim, who is the general manager at Colorado Tractor. He explained that Colorado Tractor was one of the first businesses located on Highway 34 east of Loveland, and they have seen tremendous growth in the area. Economics have changed, and the property along Highway 34 is too valuable to use for tractor sales. The property on Highway 56 is good for a tractor dealership in the short run, but eventually, it too will be too valuable to support tractor sales. Mr. Brown noted his view for this business at this location is for the next 10-15 years. He noted that in the long term, we can anticipate tremendous growth in Northern Colorado, and this property has the potential to be prime property in the future. Mr. Brown explained the structure of the business, noting that they do sell tractors for agricultural usage, but that they also sell tractors, implements, and backhoes, and they service tractors and can overhaul existing equipment. He noted this is good mix at the Highway 56 location and would work to meet their business goals and provide income to the Town of Berthoud.

Trustee Buckingham asked if Mr. Brown looked at property further to the west that would be more compatible with the I-25 Land Use Plan. Mr. Brown responded that this property was available and already had appropriate irrigation. It is close to I-25 and already had buildings on the property that can be used for start-up in the business. He noted this property will serve their purposes at this time, and when it is time for mixed use, the property will be ready to develop.

Mayor Karspeck noted the Town of Berthoud has a 3% sales tax, and asked Mr. Brown to estimate the amount of revenues that will be taxable for the Town. Mr. Brown noted they currently have sales from \$3M to \$4M that are taxable. When the business was initially established, sales were 98% agricultural. At the present time, approximately 20% of the sales are subject to retail tax.

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

Trustee Thorstensen noted this business has been successful in Loveland for the past fifteen years, and it would be a good addition to the businesses in Berthoud. He suggested it would be appropriate to identify a time to come back to the table in 10-15 years to see if it is time to do something else with the property.

Pro-Tem Ashcraft expressed concern that the Town would reach a point where the property can be developed according to the land use plan and the current owner is not ready to relocate to another location and allow this to go forward. He noted he would like to see an analysis of actual sales to get a handle on the financial benefit to the Town. He felt this temporary use would provide benefits to the Town until the land use plan becomes a reality. He commended Mr. Brown for having both a short and long term goal for the property and noted the benefit to the Town is clear.

Mayor Karspeck agreed that this is a good use of the property and the sales tax revenues would be appreciated. He noted the Board has a long term goal to protect the vision for this area and encouraged staff to work out a way to bring everyone back to the table in the future to protect the vision.

Trustee Buckingham noted if you use the higher sales figure, you are looking at approximately \$24,000 sales tax for the Town. This type of use is something that could be easily moved when the timing is appropriate, and the property could be easily developed once this business is moved. He recommended that the Town have a trigger mechanism to bring both parties to the table as we reach the time when the area is developing. He felt this is an opportunity for both parties to get creative and find a way to preserve the property rights of the owner and still allow the town to preserve the master plan.

Attorney Fickel noted this applicant is asking for something that is appropriate for an area that is primarily agricultural usage at this time. He suggested that it would be appropriate for the Town to rezone this to PUD, with a list of appropriate uses.

Mayor Karspeck noted there is strong support for this plan, and he hoped we can work out an arrangement that will benefit both parties.

GATEWAY PARK COMMERCIAL – ARCHITECTURAL ELEVATIONS

Planner Reed noted the Board previously approved architectural elevations for Tracts G and I on February 22, 2005. The applicant is here to seek approval of the final architectural elevations for Tract H. This tract will be occupied by Adams Bank and Trust. Planner Reed noted staff recommends approval of this request.

Mayor Pro-Tem Ashcraft noted the Town is trying to avoid development where everything is similar. Planner Reed noted this building will be stone veneer and the roof is not shingled, but will be metal. Mayor Pro-Tem Ashcraft noted he would prefer a more neutral roof color.

Trustee Buckingham noted the variation in roof color helps break up what would otherwise have been a sea of brown shingle roofs, and the proposed color is appropriate for our area.

Jeremy Rumph of Sholar Designs explained that Adams Bank and Trust is a family owned business out of Nebraska. His firm has been employed to develop branding aspects for all their Colorado branches. One branch has already been opened in Firestone with an appearance similar to the design proposed for this location.

Trustee Gervasi moved to approve the final architectural elevations for Tract H of the Gateway Park Subdivision. Second by Trustee Buckingham. With no objection, and by unanimous consent, the motion carried.

PUBLIC HEARING – WILSON RANCH SERVICE PLAN – METRO DISTRICT

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Mayor Karspeck opened the public hearing. Attorney Fickel noted this was advertised as a public hearing and the team that has been working on this agreement is present to answer any questions.

Attorney Bill Ankele of White, Bear, & Ankele, LLC, representing the Sage, McWhinney Property Group reviewed the formation of the service plan related to the metro district plan for the Wilson Ranch Development and provided background information regarding the process to this point. He explained that there have been extensive meetings with Town representatives, including Bruce Fickel, Attorney Calvin Hanson of Sherman and Howard, LLC, Andrea Dikeou, Vice President of Piper Jaffrey and Town Administrator James J. White. This has been an in depth process with changes negotiated on both sides. He noted that all the participants are satisfied with the changes that have been made and the document is being presented for approval.

Mayor Karspeck noted his biggest concern is any conflict between this agreement and the Town's IGA with Little Thompson. Attorney Fickel noted metro districts cannot be approved where it intersects or covers another existing district without that district's approval. He noted he is satisfied with the opportunities that are available for both the Town and Little Thompson Water District, and he does not feel there is a reason to withhold approval for that or any other issue.

Calvin Hanson of Sherman & Howard, LLC addressed the Board, noting that with the negotiations that have occurred, we have a much better project. He credited the Board for being persistent. He noted that while he was not involved in the agreement with Little Thompson, the door is still open to determine who will provide water in the area and he suggested economics will dictate who can provide water at the lowest cost.

Andrea Dikeou of Piper Jaffrey addressed the Board, noting she was consulted to review financial elements of the Service Plan on behalf of the Town. There were issues identified that had to be addressed, and after serious negotiations, those issues have been addressed. She suggested that those components have been resolved and the Town and the homeowners are more protected.

Trustee Buckingham noted there was a comment about which party would best serve the area in terms to water. He agreed that economics will bring in the better provider, but noted that in some cases contracts can preclude that from happening. Attorney Fickel noted the agreement with Little Thompson can be terminated with notice. At this point in time, the Town is not in a position to serve this area, and we do not know what impact this development will have on Mead or Del Camino. In the future, regional facilities will be needed to provide water for these larger developments, and it would be to our benefit to be able to work with Little Thompson as partners in the future. There is nothing in the agreement between the Town and Little Thompson as it is structured that will prevent us from working together. Our relationship at this time is positive and if this changes, we can reevaluate the opportunities available if the development goes as represented. There are tremendous opportunities for all the parties in this situation.

Trustee Buckingham noted there was some discussion about gaps between fees collected and fees remitted to Little Thompson Water District for capital allocations to the Town. Attorney Fickel noted there was a spread sheet provided to answer that question. Administrator White noted a study regarding current tap fees is on the agenda for an upcoming meeting.

Mayor Karspeck noted there is a blank line under raw water contribution. Attorney Fickel noted this water is provided through a master meter, and we are billed 115% of the water that goes through that meter. As we go forward with this development, we will ask them to provide us with a study regarding how much the development will use. Mayor Karspeck asked what happens if they are short in their calculations. Attorney Fickel noted we will have the option to go back to the engineers who provided the information and recalculate to get more accurate figures.

Trustee Buckingham noted this is really only an issue if the Town provides water to the location. Attorney Fickel noted it becomes an issue if the Town defines 1/6 acre per house and they use more. We can assess a fee to allow us to buy the water. We have sold, rented and purchased water on the market to allow us to do this. When you purchase water, you can typically purchase it on the market for the current price, and those can be made up in fees.

Mayor Pro-Tem Ashcraft noted one concern continues to involve non-potable water systems. We need to be sure that the faucet on the outside of the house that belongs to the non-potable system cannot be hooked to treated water. If we are giving credit for non-potable systems, we do not want treated water used outside.

Mayor Pro-Tem Ashcraft noted the press and the public need to understand this is a tool to make growth pay its way. With the metro district in place, this development will not be a burden to the Town. This is a separate entity and in the long run, the metro district will be fueling an economic engine that will bring relief to current residents.

Mayor Karspeck asked for an explanation of the water plan investment fee. The documents show a fee of \$4000 + \$2,250 with the town retaining \$4,000. He asked for a justification of this charge since the Town is not providing water. Planner Reed noted for this exercise, we used existing tap fees. The tap fees for this development will be established based on the cost to provide a wastewater plant in that area.

Mayor Karspeck opened the floor for public comment. There were no comments from the floor.

Mayor Karspeck read the title of the proposed resolution.

Trustee Gervasi moved to approve Resolution 2-05, a resolution approving the amended consolidated service plan for the SMPG Metropolitan District Nos. 1-6. Second by Mayor Pro-Tem Ashcraft. All members voted YES.

The Board recessed at 8:57 p.m. and reconvened at 9:10 p.m.

MARY'S FARM TRACT 1 FINAL PLAT EXTENSION

Planner Reed noted Cliff Anson, the property owner and applicant, is asking the Board of Trustees extend for one (1) year the period for which its final plat is valid. Planner Reed noted the Board has provided an extension of this type for the Safeway Project. This developer is actively involved in the development of Mary's Farm Tract A, and once that development has been sold, he will begin installing public improvements for Tract 1. Planner Reed noted staff is recommending approval, and noted the Board should consider if the developer has a realistic opportunity to complete this project within the one year period of the extension. He noted the applicant is making this request as a safeguard, in case there is a delay in completing the first phase of this project. He noted there is no downside to approving this request.

Mayor Karspeck noted this is the final extension for this development. Public improvements must be finished and approved during this time period. Planner Reed confirmed that information and noted the applicant must submit a letter of credit that has been approved by the Town. Once we receive that letter of credit, we will record the final development agreement and final plat. Planner Reed noted it is in our best interest to extend the final plat.

Mayor Pro-Tem Ashcraft reminded the Board that this developer participated in the prepurchase of taps when the Town was having problems meeting our bond obligations several years ago. The economy and other factors have slowed down this process and when you have more revenue generated from more building, you can afford to do infrastructural improvements.

Planner Reed noted when you consider final plat extensions, the distinction is that this developer has had his final plat approved and the final development plan approved. He will provide collateral and current plans demonstrate compliance with all regulations. The other part of the equation is whether the developer can perform within the one year period and this developer can do so. He noted this developer has completed all the steps to make this extension feasible.

Trustee Buckingham moved to grant a one (1) year extension to October 22, 2006 for the Mary's Farm Tract 1 Final Plat with the condition recommended by staff. Second by Trustee Thorstensen. With no objection, and by unanimous consent, the motion carried.

RESOLUTION/BERTHOUD & CDOT ROUNDABOUT

Administrator White noted this resolution is required as part of the regulatory process CDOT follows. An initial resolution was passed last year, 3-04, but the cost of the project has increased since that time. Administrator White suggested it would be appropriate to pass a revised resolution that reflects the revised cost of the project.

Mayor Pro-Tem Ashcraft asked if the Town will have any say in the design. Administrator White noted there will be extensive public hearings and discussions once the preliminary design work is done. He did confirm that CDOT is primary on this project since they are contributing 82.79% of the cost of the roundabout.

Trustee Gervasi asked if there will be repairs to the paving on 1st Street where it connects with Highway 287. Administrator White noted that CDOT is aware of the need for improvements in this area and it is anticipated this will be a separate project.

Trustee Thorstensen moved to approve resolution 3-05 to authorize the Town of Berthoud to enter into a contract with CDOT to build the Berthoud roundabout. Second by Trustee Buckingham. With no objection and by unanimous acclamation, the motion carried.

BERTHOUD 2005 TEMPORARY WATER CONVEYANCE CONTRACT

Administrator White presented the final draft for the Berthoud 2005 temporary water conveyance contract. He noted that the calculations for this agreement in 2004 were understated, and the cost this year includes an adjustment to that rate. This year's rate is \$56.51 per acre-foot, for a total of \$98,101.36, which will be delivered to Bureau of Reclamation.

Administrator White noted we are still pursuing a permanent agreement, but this temporary agreement will be effective tomorrow.

Board members discussed the discrepancy between the price quoted last year and this years cost. Administrator White noted our water attorney, Paul Zilis, had advised him that this rate could have been much worse. He also noted we need to take our concerns to the Bureau of Reclamation.

Trustee Buckingham moved to approve resolution 4-05, approving a temporary water conveyance contract for the Town of Berthoud, acting by and through its water utility enterprise, the Bureau of Reclamation and the Northern Colorado Water Conservancy District. Second by Trustee Gervasi. With no objection and by unanimous consent, the motion carried.

EXECUTIVE SESSION

Mayor Karspeck noted the Board should adjourn to an Executive Session to review the contract for the Town Administrator. The Board adjourned to Executive Session at 9:45 p.m.

The Board reconvened at 10:30 p.m. and with no further business to discuss, adjourned.

Mayor Milan Karspeck

Deputy Town Clerk Charlene Reed