

The Board of Trustees for the Town of Berthoud met for a regular meeting on Tuesday, February 22, 2005 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
Mayor Pro-Tem Don Ashcraft
Trustee Louis Gervasi
Trustee Michael Patrick
Trustee Glen Buckingham (arrived 7:05 p.m.)
Trustee Peder Thorstensen

MEMBER ABSENT: Trustee David Gregg

STAFF PRESENT: Town Clerk Mary K. Cowdin
Public Works Director Rich Elliott
Town Planner Wayne Reed
Police Chief Bill Wegener
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

Trustee Thorstensen presented a video tape of the 9 News report on the eagles nesting near Berthoud.

Trustee Buckingham arrived at 7:05 p.m.

Mayor Pro-Tem Ashcraft reported that he received a request from our local newspaper to provide biographical information. He encouraged all of the Trustees to provide this information when asked.

CONSENT AGENDA

The Consent Agenda consisted of the minutes of the regular meeting held on February 8, 2005 and the financial statement for December, 2004.

Trustee Buckingham moved to approve the consent agenda as submitted. Second by Trustee Gervasi. With no objection, the consent agenda passed by unanimous consent.

PROCLAMATION – FIVE STONES YOUTH CENTER.

Mayor Karspeck read the proclamation in recognition of Five Stones Youth Center. Five Stones is a subsidiary of Grace Place Church, but is providing an academic and recreational center to serve the youth in Berthoud, without any religious affiliation required.

REQUEST FOR WAIVER OF APPLICATION FEE FOR VARIANCE REQUEST

Planner Reed noted the applicant is not present for this meeting. Mayor Karspeck noted the Board will consider other items on the agenda and consider this item if the applicant arrives.

PUBLIC HEARING – WASTEWATER RATE CHANGE

Mayor Karspeck opened the public hearing and explained that John Gallagher of Black and Veatch completed the rate study requested during the meeting on January 25, 2005 to consider the need for an additional rate increase for wastewater.

Mr. Gallagher explained that staff reviewed the Capital Improvement Plan and after the review, we reduced the total increase to 12.7% instead of the original proposal of 16.7%. He recommended that the Board adopt the revised 12.7% in place of the 9% that was approved in January. He explained that this increase is for 2005, and the Board will need to pass additional increases over the next four years.

Trustee Buckingham asked the basis for these rates. Mr. Gallagher explained that these numbers are based on the assumption of 40 permits for 2005. Trustee Buckingham asked if the Town issues more than 45 permits, it would be acceptable to reduce future increases. Mr. Gallagher indicated this would be an option, but did not feel it would be appropriate to assume more permits at this time due to our recent history. He noted the 40 permits being projected exceed the total permits for the Town for the last four years, but expressed hope that the Town will begin to recover from the slower growth we have had in the past.

Trustee Buckingham suggested the conservative way to handle this increase is to go ahead and pass the 12.7% and then if we have better than expected growth, we can reduce the increase, possibly to the 9% that was passed in January.

Trustee Patrick recognized that the proposal is a compound rate increase of 12.7% annually over the next five years. That increase will have significant effect on the residents of Berthoud and he hoped we will have the growth to allow us to reduce the rate in the future. He noted that significant projects were removed from the five year capital improvement budget to allow us to reduce the increase from the 16.7% to the 12.7%. The four projects that were removed focused on new growth, rather than on the existing sewer system. The Town has an adequate public facilities ordinance that requires new development to pay its way.

Mayor Karspeck read the ordinance and opened the floor for public comment.

Karla Bradley of 809 Douglas Place addressed the Board, and thanked them for considering the reduction from 16.7% to 12.7%. She expressed concern that there were other possibilities outlined in a recent article that should be considered such as contracting out service, reducing personnel or selling assets. She suggested that raising the rates will be a burden to the residents of Berthoud and will have a negative impact on residents that have lower or fixed incomes. She asked the Board to allow her to set up a schedule to allow her family to come to their homes to do laundry and take showers since her family cannot afford any further increases. She suggested that the Town may be forcing the fixed income and lower income residents to move elsewhere.

There were no further comments from the audience and Mayor Karspeck returned the item to the Board for discussion. He explained that the wastewater expansion was started in 1998, and at that point, no one realized that the cost of the new plant would be approximately \$9M. The plant was more expensive than anticipated due to changes in the requirements from the Colorado Public Health and the Environment (CDPHE). Our goal here is not to cause hardship to our residents, but the Town has to pay for the new plant. He noted defaulting on a bond is one of the worst things the Town can do.

Mayor Pro-Tem Ashcraft noted the Board has looked at contracting out the maintenance of our plant. He pointed out that the only quote in the paper was from the gentleman who owned the contracting business, and there were no facts backing up his projections. The Town only has three employees in the Wastewater Department. He expressed concern that the savings projected would not offset the cost of putting three families out of work, and he suggested he personally would be willing to pay an additional \$4.80 each month to prevent the loss of staff that has served the Town for a long time.

Mayor Pro-Tem Ashcraft noted that selling Town assets is not an option. You cannot sell assets from other departments and use them to reduce debt in the Wastewater fund. This is an enterprise fund and must be self-supporting. According to the laws of Colorado, you are only allowed to transfer funds in and out of the wastewater fund if they are directly related to the Wastewater fund.

Trustee Patrick noted that if we contract with a service to manage our plant, that service will be in business to make a profit. He agreed that anytime the Board is faced with increases we look for ways to reduce those increases. The Town did not have the option to continue using the old sewer plant. The State of Colorado required us to upgrade, and if we failed to comply, we would have been faced with significant fines. We have completed the new plant, and the cost of the plant must be paid. He noted that many of the suggestions that were made in the newspaper article were not realistic solutions for the Board to consider.

Trustee Thorstensen suggested that residents should be aware that wastewater rates are set based upon water usage in January and February. The best way to reduce the cost is to be conservative during those two months. That will result in a lower sewer charge for the remainder of the year.

Trustee Buckingham noted that when the Town went through our "drought" in development, funds that should have been generated were not realized. This set the Town up for higher rates to pay for the new plant. The Board hopes that we are on our way to stronger years and a better outlook, but we cannot go back and capture growth that did not occur.

Trustee Gervasi noted he knows the gentleman who was interviewed in the article, Bob Alberts, and he suggested that Mr. Alberts would not be in business if he was unable to save money for the towns he is working with. Trustee Gervasi suggested it is short sighted to dismiss a suggestion without giving careful consideration to that suggestion. He suggested that comparing the viability of a town with the protection of the employment of three employees is a heart tugging argument, but is not sound business. Trustee Gervasi noted it is also hard to understand how the cost of the plant increased to \$9M when we initially anticipated the cost would be less, and he stated he will be unable to support this rate increase.

Mayor Karspeck noted the proposed ordinance includes an emergency clause and requires six votes to pass. With Trustee Gregg out for a death in the family, this ordinance must be passed with a unanimous vote, or the emergency clause will have to be removed.

Mayor Pro-Tem Ashcraft noted the Board has researched the outsourcing idea, and he agreed that it is not acceptable to approve a rate increase without considering all options. He explained that he served on the Board of Trustees Finance Committee, and many alternatives were considered to offset increases before the increases themselves were considered.

Trustee Patrick noted there is a long history with the development of the wastewater treatment plant and changes required by the State Health Department were instrumental in the increased cost of the plant. He shared the concerns regarding the cost of the plant, but pointed out that the money has been borrowed and spent, and Board members must face the fact that the Town must meet our bond commitments. He asked Trustee Gervasi how the bond payments will be made if we do not increase the rates.

Trustee Gervasi noted we already have 10 permits this year and if this continues, we will not need further rate increases to meet our obligations. He asked why funds are being transferred from the Wastewater fund

to the General Fund. Attorney Fickel noted both wastewater and water transfer funds to the General fund to repay administrative costs that are appropriate. We can discontinue that practice, but then we will have to find a way to replace the funds in the General Fund. He noted selling assets is not a viable option, because you cannot use assets from other funds to support your enterprise fund. He noted the current budget is spending down reserves to keep the increases as low as they are, and he pointed out that this is not an option for the future, because there will not be reserves available if we spend everything we have.

Trustee Patrick suggested that if the Board does not make this small increase now, and the optimistic growth does not occur, we will be forced to dramatically increase rates down the road to offset any further funds we do not receive. The Board has been put in the position to put in a surcharge to meet our bond obligations, and we were fortunate that developers in the area came in a prepaid tap fees to eliminate our need for the surcharge. If we have more permits than the 40 projected this year, then we can reduce the increase due to that change in circumstances. He pointed out that making up a shortage at the end of the year is far more difficult than have a small rate increase now and allowing the funds to build throughout the year. He noted this is the only reasonable and conservative method to meet our financial obligations.

Trustee Buckingham moved to approve rate adjustments in the wastewater fund of 12.7%, as determined by the Town Board, to achieve the fiscal demands of the Wastewater Enterprise Fund and to meet the Town's long-term debt requirements under Ordinance 1008 which includes an emergency clause. Second by Trustee Patrick. All members voted YES.

PUBLIC HEARING ON FICKEL FARM 2ND REZONING, OVERALL DEVELOPMENT PLAN AND PRELIMINARY DEVELOPMENT PLAN

Planner Reed explained that this applicant is requesting concurrent approval of a rezoning and combined overall/preliminary development plan for property south of Highway 56 and east of the existing Fickel Farm development, north of Pioneer Park. This applicant is requesting a rezone from AG to PUD. He summarized the information presented regarding this development.

Mayor Pro-Tem Ashcraft noted this development includes commercial development and asked how this will be considered under the ODP. Planner Reed noted at this stage the applicant is asking permission for commercial usage in the future. The definition of what will be allowed will be considered when the PDP is approved at a future meeting.

Board members discussed options regarding access into this neighborhood as it continues to develop and looked at options including access from 3rd Street and access to Highway 56. Planner Reed noted this will have to be discussed with CDOT before any decisions are made.

Board members also discussed the park dedication. Planner Reed noted the Town received a \$50,000 payment in 2001 per the terms of the 1996 Parkland Dedication/Park Development Agreement. Those funds were used for the initial development of Pioneer Park. Mayor Pro-Tem Ashcraft suggested that in the future, the Board should require developments that are sitting idle to meet the current requirements when they begin to develop, rather than allowing them to pay fees in advance.

Trustee Thorstensen asked if the pond on the plan will be used for drainage or if it will be year-round wet pond. Planner Reed noted the intent is for it to be year-round. Trustee Thorstensen asked if the Town will be allowed to have access to the pond and to put a trail around it. Planner Reed agreed to present that request to the developer.

Mayor Karspeck opened the floor for public comment.

Bill Hergenreter of 405 E. County Road 8 addressed the Board regarding the irrigation ditch that is a part of this property. He suggested in order to make this a year-round pond, it will be necessary to get water from

Loveland Lake. The minimum they require is 25 inches and he suggested there will be problems keeping water in the pond.

Dan DeGroat of 533 E. CR 8 explained that his property is east of the border of this development, and he explained that the ditch being discussed irrigates his property and he has water rights to the ditch. He expressed concern that this development will negatively impact his access to the water he has paid for, and he noted he wants to keep the agricultural zoning on his property.

Mayor Pro-Tem Ashcraft noted the law prevents the Board from taking water rights or from preventing farming and he assured Mr. DeGroat that the Town will work with him regarding these issues. Planner Reed suggested a meeting be arranged between Mr. DeGroat and the ditch company to discuss these issues and agreed to provide the property owner with additional information regarding this development.

Steve Vandewinkle of 109 East Indiana addressed the Board regarding what type of commercial development will be acceptable for this development. Planner Reed suggested that the Board limit this to C-1 Commercial zoning.

Derek Helm of 318 East Michigan addressed the Board commending Doc Fickel for his efforts in developing this area, noting that his legacy is to build something he can be proud of.

Mayor Karspeck returned this item to the Board for discussion.

Trustee Buckingham noted he would be in favor of limiting the commercial development to that allowed under the C-1 zoning for the area along Highway 56.

Trustee Patrick suggested it would be appropriate to have a traffic study for this area since each of these exits has the potential to be problematic. He noted these roads are currently overloaded with existing traffic and an additional access route would be helpful.

Mayor Karspeck read the title of the proposed ordinance.

Trustee Buckingham moved to approve Ordinance 1009, rezoning 40 acres from AG (Agricultural) to PUD zoning district for single-family residential with a maximum gross density of 2.75 DU/AC and neighborhood commercial. Second by Trustee Thorstensen. All members voted YES.

Trustee Patrick moved to approve the Fickel Farm 2nd PUD combined Overall/Preliminary Development Plan (ODP/PDP), attaching all conditions recommended by the Planning and Zoning Commission, plus an additional condition that the property owner dedicate to the Town approximately two acres for parkland (Pioneer Park) at the time of approval of a final plat for all or any portion of the property, consistent with Parkland Dedication/Parkland Development Agreement, dated August 26, 1996, and prior to approval of the FDP, there are irrigation easements to the satisfaction of the Town and Staff and general water issues addressed to the satisfaction of Town and Staff, that the Commercial Neighborhood Center Development be restricted to C-1 and that multi-family be excluded from the C-1 designation, that the Town continue to explore and encourage the owner of the Development to keep the pond and a path around it open to the public and that a traffic study be required to assure that the existing streets will be adequate. Second by Trustee Buckingham. All members voted YES.

The Board recessed at 9:00 p.m. and reconvened at 9:13 p.m.

WILSON RANCH SERVICE PLAN

Calvin Hanson, attorney, of Sherman & Howard, LLC, represented the Town of Berthoud's interest in negotiations with Bill Ankele, White, Bear & Ankele, LLC, representing the Sage, McWhinney Property Group's interest in the formation of a service plan related to the formation of a Metro District plan for the Wilson Ranch Development. Both parties have included Town Attorney, Bruce Fickel, in their collective discussions. Attorney Fickel asked Attorney Hanson to provide his analysis and evaluation of the proposed Service Plan. Attorney Fickel noted that sometime within the next several weeks, someone from the City of Loveland will be present to discuss this with the Board.

Attorney Hanson presented a summary of information regarding the Service Plan for the SMPG Metro District, noting that this was approved on a preliminary basis last fall. He explained that there have been negotiated changes to the plan.

Trustee Buckingham expressed concern regarding what to do in cases where the objectives of the two boards differ. Attorney Hanson agreed that the Town is creating another governmental entity and he suggested there must be communication between the Boards over time. He suggested it would be valuable for the Board to limit the services the other Board can provide and the amount of debt they can assume. Otherwise, issues must be negotiated on an ongoing basis. He also noted that any material modifications to the plan must be returned to the Town Board for approval.

Attorney Ankele addressed the Board representing the applicant for the service plan. He characterized what the entities will do, explaining they will be actively involved in the development of the utility infrastructure for the area. They provide access to tax exempt financing which allows the developer to make a good project better. He explained that at the point in time when all debts are paid, the district can dissolve through a court administered process.

Attorney Ankele offered to provide an overview of the district for Board consideration and asked for concerns from Board members which can be addressed.

Mayor Karspeck asked for information regarding the financing of the project. Attorney Ankele noted this plan has a total debt cap of \$75,000,000.00. The area is divided into districts and each district has the capacity within its boundaries to finance up to \$20,000,000. He noted it is hard to determine at this time where the debt will be issued. East district will have the ability to issue General Obligations Bonds not to exceed 50 mils, which is standard on the front range. As development approvals occur, that will drive the infrastructure needs for each area. He noted the developer takes the risk in this type of financing.

Trustee Buckingham asked if the Loveland Metro District Agreement Service plan will be provided to the Board for review. Attorney Fickel suggested that might be something we could request from the Loveland representative.

Trustee Patrick suggested the purpose of completing this type arrangement is to roll the cost of the initial infrastructure into the initial cost of the lots, as opposed to carrying the cost over time. Attorney Ankele noted this allows homeowners to pay for the improvements that serve them and provides a funding mechanism to delivery more and better enhancements.

Trustee Patrick noted his concern is balancing the benefit that would accrue to the developer and the residents with the concern regarding public votes on mil levies. The existing community could have needs which would require an increase in mil levies and the other area could be feeling pushed to pay the mil levies that are a result of the metro district. It could be difficult to achieve the increases needed to service the existing community. Attorney Ankele agreed this is a legitimate concern, but noted this can be managed by defining the value of the service provided. He also noted that by putting a cap on the amount of debt that can be incurred, this prevents runaway mil levies.

Mayor Karspeck thanked the attorneys for their input and consideration.

ROUNDABOUT DESIGN CONTRACT

Public Works Director Rich Elliott asked the Board to approve the contract with Muller Engineering for design services and construction management of the roundabout project. He noted Item 1.3 Bidding and Negotiation will not be a part of Muller's contract, since we have asked TEC to perform that portion of the work. Mr. Elliott asked for approval of the projected budget of \$296,919, which includes a contingency of 8%. The 2005 approved budget includes an amount of \$300,000 for this project, which will be augmented by State and Federal funds.

Brian Zick of TEC addressed the Board, noting he was asked to help with the selection of an engineer for this project. He summarized information regarding projects that Muller Engineering has worked on with CDOT, explaining that Muller has vast experience in working with CDOT and is familiar with the specific requirements they have for this type project.

Trustee Buckingham moved to approve the contract with Muller Engineering for design services and construction management of the roundabout project, with the exclusion of Section 1.3 as noted by staff and to approve the current contract amount of \$274,925, with a contingency to increase up to \$296,919. Second by Trustee Patrick. All members voted YES.

REQUEST FOR WAIVER OF APPLICATION FEE FOR VARIANCE REQUEST.

Planner Reed noted Mr. John Bevins of 202 E. Nebraska is requesting the Board of Trustees waive the \$100 application fee for a variance. Mr. Bevins plans to pursue a variance from this setback requirement.

Mr. Bevins explained that his economic situation has changed over the past two years and he asked the Board to waive the \$100 fee for his variance request. He explained that when he planned to construct this carport, he was told that no permits were required.

Mayor Pro-Tem asked what the fee is used for, and Planner Reed explained that we mail information to adjacent property owners and publish information in the newspaper regarding the variance request. This is a nominal fee and does not cover the cost of staff time.

Mayor Karspeck asked Mr. Bevins if he would be willing to pay the actual cost for the mailing and publications. Mike Wailes of the Berthoud Recorder, the Town's paper of record, offered to waive the publication fee for this variance request.

Trustee Patrick noted he is typically opposed to waiving fees for variances. In this instance, there was some difference of opinion regarding whether this is a building. Under the circumstances, he noted it is acceptable to make this distinction and be agreeable to waive the fee.

Trustee Patrick moved to limit the chargeable costs of the Town, less staff time, not to exceed \$100. Second by Mayor Pro-Tem Ashcraft. With no objection, the motion passed by unanimous consent.

PUBLIC HEARING – GATEWAY PARK COMMERCIAL ARCHITECTURAL ELEVATIONS

Mayor Karspeck opened the public hearing to consider the Gateway Park Commercial Architectural Standards.

Planner Reed explained that this public hearing is for the final architectural elevations for Tract G and I of the Gateway Park Subdivision.

Phil Vantona representing Gateway asked the Board to approve this as minimum architectural guidelines for the development as a whole and allow the developer to enforce these requirements. The renderings presented would be the first two buildings in the area.

Mayor Pro-Tem Ashcraft expressed concern that all the roofs appear to be the same color. He noted the Town's Architectural Guidelines require diversity of color. The intent is to reflect old Berthoud and keep the old town feel, and having diversity of color is important.

Trustee Buckingham agreed and noted the quality of the roof materials is also an issue. Mr. Vantona noted there is a flat roof on one structure. He asked the Board for direction regarding what they want to see in this area. He also asked that they be given the flexibility to make these decisions, as long as they meet the guidelines defined by the Board.

Trustee Patrick noted the overriding consideration is that these buildings are going to be on a major intersection. He suggested it would be nice if these particular buildings reflect that kind of building quality that the Town requires. He acknowledged that prospective purchasers will have desires regarding how their buildings look, but he noted that one of these renderings shows a lot of roof.

Mayor Karspeck noted the applicant is asking for approval to go forward with the rest of the part with administrative approval, working with staff, without coming back before the Board for each building. He suggested the applicant get these two buildings under their belt and then address that request.

Trustee Buckingham noted it would be helpful to have a look at the other buildings that are proposed before granting that authority to the developer.

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

Trustee Patrick moved to approve the final architectural elevations for Tract G & I of the Gateway Park Subdivision. Second by Trustee Buckingham. With no objections the motion was approved by unanimous consent.

IGA – LARIMER COUNTY EMERGENCY MANAGEMENT

Chief of Police Bill Wegener explained that the attached IGA has to do with disaster emergency services in Larimer County. It provides for the combining of services and resources throughout the County in the event of a disaster. This allows Berthoud to call other agencies for assistance in a situation where we do not have the manpower, or resources, to deal with the problem. This agreement allows us to receive, at no cost, seven (7) portable hand-held radios in the 800 MHz Digital Trunked Radio System which will provide total interagency communications. He noted this agreement includes Weld and Larimer Counties and all federal agencies and was a project of Homeland Security.

Mayor Pro-Tem Ashcraft moved to approve the IGA for Emergency Management. Second by Trustee Buckingham. With no objection, the motion was approved by unanimous consent.

IGA - TURNER MIDDLE SCHOOL GOCO GRANT SUBMITTAL

Mayor Karspeck noted the purpose of this IGA is to allow Turner Middle School to apply for a GOCO grant for the enhancement of the Turner Middle School Recreational facility.

Mayor Pro-Tem Ashcraft moved to approve the IGA between the Town of Berthoud and the Thompson R2-J School District for the GOCO grant application for Turner Middle School recreation facility enhancement. Second by Trustee Patrick. With no objection, the motion passed by unanimous consent.

APPOINTMENTS TO HISTORIC PRESERVATION COMMISSION

Trustee Buckingham noted interviews were held for three applicants for the two openings on the Historic Preservation Commission. The Interview Committee is recommending that the Board appoint Cynthia Martin to complete the term that ends on August 31, 2005 and Kirk Moors to complete the term that ends on August 31, 2006.

Mayor Karspeck moved to approve the nomination of Cynthia Martin and Kirk Moors to complete the terms on the Historic Preservation Commission, ending on August 31, 2005 and August 31, 2006, respectively. Second by Mayor Pro-Tem Ashcraft. With no objection and by unanimous consent, the motion carried.

With no further business before the Board, the meeting adjourned at 11:12 p.m.

Mayor Milan Karspeck

Deputy Town Clerk Charlene Reed