

BOARD OF TRUSTEES  
REGULAR MEETING  
TUESDAY, OCTOBER 25, 2005  
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The Board of Trustees for the Town of Berthoud met for a regular meeting on Tuesday, October 25, 2005 in the Board Room of Town Hall. Mayor Karspeck called the meeting to order at 7:00 p.m.

MEMBERS PRESENT: Mayor Milan Karspeck  
Mayor Pro-Tem Don Ashcraft  
Trustee Louis Gervasi  
Trustee Glen Buckingham  
Trustee Michael Patrick

MEMBERS ABSENT: Trustee Peder Thorstensen  
Trustee David Gregg

STAFF PRESENT: Town Administrator Jim White  
Public Works Director Tony Huerta  
Town Planner Wayne Reed  
Police Chief Bobby Forrest  
Town Attorney Bruce Fickel  
Deputy Town Clerk Charlene Reed

**PLEDGE OF ALLEGIANCE**

Mayor Karspeck led the pledge of allegiance.

**CITIZEN PARTICIPATION**

Ralph Nelson of 1121 4<sup>th</sup> Street addressed the Board regarding the recycle bins in the parking lot on 3<sup>rd</sup> and Welch. He suggested signs be posted and a fine applied for people who leave trash in the area.

**REPORTS**

Trustee Buckingham reported that he and Mayor Karspeck attended a planning session for the I-25 and Highway 287 corridor. The Department of Transportation presented eight options for mass transit in the area. Mayor Karspeck noted John Bauer also attended.

Administrator White reported that an airplane fly in was held to bring in the farm calendars. The event was well attended by the residents of Berthoud.

Administrator White noted the "Coffee with Jim" for November has been moved to Saturday, November 19 at Santiagos at 8:00 a.m.

Administrator White noted the Town of Berthoud was invited by DOLA to participate in the Best and Brightest intern program in 2006. The Town has been offered another \$30,000 to cover part of the salary and fringe benefits for an intern for 2006-2007. This is the same program we have used successfully in the pas, since it gives us a full time staff person for half the cost.

Administrator White noted the Bureau of Reclamation has set tentative dates beginning in December to negotiate a long term carriage agreement with the Town. A proposal has been made that these hearings be held at the Northern Colorado Water Conservancy District or at the Community Center or Town Hall, but once the actual location is determined, the Board will be notified. Each party will be allowed to have five representatives present, and three of the Town's representatives will be Administrator White, Public Works Director Tony Huerta and Water Attorney Paul Zilis.

Trustee Buckingham suggested that since the Bureau of Reclamation is in the process of hiring an area manager, we send a request to the Bureau asking for a plan of succession for any representative that

participates. That will prevent problems that might occur if there is a personnel change in the middle of this process.

Trustee Buckingham noted that the monthly Historic Preservation Commission meeting will be held on Wednesday, October 23, 2005 at 7:00 p.m. in the Board Room at Town Hall. The public is welcome to attend.

Attorney Fickel reported that the Town is being sued by Public Service Company to obtain access to an easement owned by the Town. He noted that the attorneys involved are working diligently to resolve this issue.

Chief of Police Bobby Forrest addressed the Board to provide an update on new programs that have been initiated for Crime Prevention and Traffic Enforcement in Berthoud.

Chief Forrest also noted that he is working with the principals in the area to come up with a plan for Halloween.

Chief Forrest reported that we have an opening for an officer in Berthoud and we have received applications from 25 candidates. We will begin assessments this week and hope to fill this position in the near future.

Mayor Karspeck noted the Board received reports on sales and use taxes and bond compliance. Our sales tax collections remain steady and use tax is up for the year. We are currently in compliance with our bond requirements for both water and wastewater.

#### **CONSENT AGENDA**

The consent agenda consisted of the minutes of the regular meetings held on Tuesday, September 27, 2005 and Tuesday, September 18, 2005 and the special meeting held on Tuesday, October 11, 2005, the financial statement for September 2005 and the liquor license renewal for Piccabears.

Trustee Buckingham moved to approve the consent agenda as submitted. Second by Mayor Pro-Tem Ashcraft. Trustee Patrick abstained and all other members voted yes.

#### **BOY SCOUT PACK 6 FUNDRAISER**

Administrator White noted Berthoud Cub Scout Den 6 has asked for time in front of the Town Board to make a request for a donation. The overall request is to have the Board match the efforts of the Cub Scouts in fund raising efforts for contributions to those who have suffered great losses during Hurricane Katrina. The donation would be earmarked for the American Red Cross.

Scout Leader Greg Carter of 524 E. County Road 8 addressed the Board and noted that each of the boys would like to address the Board regarding this request. Scouts Simon Ellarby, Zach Bracken, Justin Carter, Caleb Hammel, Nathan Hammel, Matthew Holliday, David Kolman and Berin Klawiter each addressed the Board asking for support with their fundraising efforts.

Administrator White noted that he learned in his initial meeting with the scouts that the plan is that each of the boys work to earn money for this project. The intent is not to solicit funds, but to earn funds to donate. Administrator White noted the Town Board is entrusted with the management of Town funds, and does not normally make donations using those funds. However, this is an uncommon and significant event, and the scouts are asking for help.

Administrator White noted this group is already active in donating time to the Town. They are one of the groups that volunteer to clean up around the recycle area, pick up trash in Fickel Park and they have been active in food drives for our community.

Board members supported the idea, but did not feel comfortable using Town funds. Following discussion, it was decided that the Board Members would use personal funds as matching funds for the scouts.

Trustee Patrick moved to authorize a challenge to the scouts to raise up to \$200, which will be matched by the Board using individual funds, for a contribution to the American Red Cross for Hurricane Katrina victims. Second by Mayor Pro-Tem Ashcraft.

Trustee Buckingham asked that the motion be modified to increase the amount to \$500 indicating that he would make up the difference.

Trustee Patrick amended his motion to increase the amount to \$500. Second by Trustee Buckingham. The motion passed unanimously.

#### **HABITAT FOR HUMANITY SKETCH PLAN**

Planner Reed noted the Habitat for Humanity is requesting that they be allowed to add one common building to its five acre PUD. The proposed unit would be a storage building located in the far north east corner of the property next to the railroad and close to an existing metal barn on the north. The purpose of this unit would be to provide an indoor area for any old car not presently garaged throughout the property, to store materials used for the subdivision, and to house donated building materials such as windows and doors for the thrift store at Fourth and Massachusetts.

Planner Reed noted that the proposed building would create a conflict with the alley, stormwater outlet and real estate lines. He noted that, if this is approved, it will require an amendment to the final development plan, a replat to the final plat and revisions to the construction plans for this project.

Tom Patterson addressed the Board, explaining the need for and use of the proposed building. He noted Habitat has three automobiles that can be donated, but they do not have the location to store the donated vehicles and this gives them the ability to store items for the thrift store. They already have the building and would like to be able to utilize it on the property.

Mayor Pro-Tem Ashcraft asked if they would be willing to remove the building after the property build out is complete, and noted he could support this request if that was agreed upon up front. Mr. Patterson noted they would be willing to remove the building at that time.

Trustee Patrick agreed with the comments about the usefulness of the building and agreed it would be important that the building be removed when the project is complete. He noted, at the current rate, that could be 15-20 years. Mr. Patterson noted that Habitat is working to get in a position to meet the Town commitment of two homes per year. Trustee Patrick noted in general terms the Board supports Habitat and would be willing to accommodate this request as long as the building is not an eyesore.

Planner Reed noted an amended plat and PUD will be brought back to the Board for approval.

#### **COLORADO TRACTOR PUD DEVELOPMENT AGREEMENT**

Carlin Barkeen noted that the PUD and Final Development Plan for the Colorado Tractor PUD was approved on September 27, 2005 with a maximum period of validity of fifteen years. She noted this agreement includes all conditions specified during that meeting with no changes.

Mayor Pro-Tem Ashcraft asked for clarification of item #5. Ms. Barkeen noted the applicant has requested the ability to have a larger sign and have agreed to reduce the size of that sign.

Trustee Patrick asked that the wording under item #7 on page 11 be modified. He noted the only way a developer would be allowed to make changes in the size and number of signs would be if there was a change in the sign code regarding signs at I-25. The wording presented suggests that the Developer may increase the square footage of a sign or signs, and that is not permitted. Ms. Barkeen noted any modification would have to come back to the Board. Trustee Patrick noted that the current language does not state that requirement.

Trustee Patrick moved to approve the Development Agreement for the Colorado Tractor PUD with the language incorporated that would limit the allowed signs to the existing permitted signs unless changes to the sign code provide different possibilities. Second by Trustee Buckingham. The motion was approved unanimously.

### **GATEWAY PARK COMMERCIAL PHASE 1 DEVELOPMENT AGREEMENT**

Ms. Barkeen noted this agreement is for Gateway Park Commercial - Phase I, covering Tracts G, H and I. All public improvements will be financed by the Developer and all impact fees will be collected on a permit basis. The Developer will provide 115% collateral. This agreement covers public improvements, timing and town acceptance of the improvements.

Trustee Buckingham asked if this agreement poses any risks to the Town, and Ms. Barkeen noted none are apparent. She noted this agreement was reviewed by the Town Attorney.

Trustee Buckingham moved to approved the Development Agreement for Gateway Park Phase I. Second by Trustee Gervasi. The motion passed unanimously.

### **WAIVER REQUEST – 512 5<sup>TH</sup> STREET**

Mayor Karspeck noted this item was discussed at the Tree Board meeting and he was a participant in that discussion. He asked Attorney Fickel if he should recuse himself from this discussion. Attorney Fickel noted that the Board is being asked for a legislative change for the requirement for trees and setbacks for the Downtown Core area, and not for a change to this specific property. He noted if this is treated as a variance for this specific property, it will be considered by the Planning and Zoning Commission. The Board is free to accept input and consider this item as a policy change, but if that is not done, this will be referred to the Planning and Zoning Commission for consideration.

Planner Reed noted the information provided in the packet pertains to this specific property, but the Board is being asked to consider the regulations in place. The Town has a regulation that states, "All trees removed on a lot or tract as part of a site development or redevelopment shall be replaced with a minimum of three (3) trees for every tree which is to be removed." The regulation also states that "Trees which are to be removed in the public right-of-way as part of site development or redevelopment shall be mitigated by replacement of new trees equal in value to those which are to be removed."

Planner Reed noted that the Town has the ability to accept a cash payment which is equivalent to the replacement cost of the trees at current fair market value, and if the trees are in a public right-of-way, the monetary payment can be made to the Town for the removal of trees within the right-of-way.

Planner Reed noted this applicant is asking the Board to consider whether this regulation goes against the goals of the Board of Trustees to protect the vitality of our Downtown area. If that is the case, then staff will bring a modification back to the Board for approval.

Mayor Pro-Tem Ashcraft noted removing trees is a major consideration. We are guessing where the root system is for these trees, and are unable to determine what damage will occur if they are removed. He noted that while our arborist is competent to make recommendations in this area, he would like a second opinion. He noted there are things that can be done to check the roots to mitigate damage to the trees.

Mayor Karspeck asked what would be in the area where the trees are located. Planner Reed noted the building would be within six feet of five existing trees. The parking lot and driveway cut would be near one tree, and in addition, there would be significant reconstruction of the sidewalk on the lot.

Mayor Pro-Tem Ashcraft noted his preference would be to exhaust all options before we remove the trees. He also noted it would be appropriate for the arborist to attend the next meeting where this is discussed to allow the Board to have a discussion with him directly.

Trustee Patrick noted we are looking at changes that will affect an unspecified downtown district. We do not know at this time what the Downtown area will look like and what tree structure we want for the area. He did not feel it would be appropriate to start making changes without input from the Main Street Design Committee and the Planning and Zoning Commission. He suggested this request is more suitably handled through a variance, rather than changing the guidelines regarding trees. He suggested it would be inappropriate to make a broad brush general solution to a specific problem, and he noted he would like to see the building move forward.

Gary Maggi of 417 Chisolm Way, addressed the Board. He noted that they understand that a variance is not something that is done by the Board of Trustees, but noted the Board is currently addressing many specific changes in the downtown area, including the roundabout and other changes to 287. He asked the Board for assistance with this project, noting that the project meets the goals of the Board for the Downtown area. He asked the Board to draft a new policy addressing the trees in the downtown area to allow lot owners to replace the trees at a three to one ratio and plant the trees where requested by the Town.

Trustee Buckingham noted he is concerned with communities bestowing rights on trees, cats and dogs. He suggested that the law and code suggests we attempt to classify these items as property and they belong to the property owners. He suggested that sometimes as a society we get carried away with "saving" things that should be under the domain of the property owner.

Administrator White noted this request was discussed with Arborist Shiloh Hatcher and Public Works Director Tony Huerta, and it was agreed at the meeting that this is an opportunity for the Town to obtain trees for this property and for other locations where we need trees. This is a big picture opportunity for the Town to obtain needed trees.

Mayor Pro-Tem Ashcraft noted many of the mature trees in the Town are Green Ash, and they are being attacked by beetles. It is inevitable that these trees will be having problems in the future and in other towns in Colorado, these trees are already being replaced because of this problem. This is a good opportunity for us to replace older and possibly less healthy trees.

Mayor Karspeck noted the Board needs to work to keep downtown as pretty as possible. He noted that trees bring value to the properties and mature trees can and should be preserved. He also felt that a discussion with the arborist would be appropriate.

Mr. Maggi noted this lot is not very large and with the limits currently in force, there is no room for a building. He noted their original intention was to leave the trees until they found out the limits for the lot. In order to go forward with this project, the older trees need to be removed and will be replaced by smaller trees. He noted their goal is to bring a quality project to the Town, and in order to do so, this problem will need to be addressed.

Mr. Maggi noted the developers of this property are already a part of Berthoud, and they are working to bring additional retail space to the Town. He suggested the Board weigh the value of the trees against the value of the building and the tax dollars that will come from the businesses we will be able to attract. He noted they are willing to replace the trees they remove and pay for the trees to be removed.

Trustee Patrick noted it sounds like the real issue to consider is the level of the financial cost to replace the trees. Mr. Maggi noted that is definitely a consideration. The cost of replacing these trees is significant, and we already have trees downtown. There will be other businesses in the area that will want to redevelop in the downtown area, and these businesses must compete with businesses that are built for less money elsewhere. He noted that when they considered whether to build on this lot, they could have built the same building elsewhere for less money.

Trustee Buckingham asked if there is the possibility to keep one or more of the trees. Mr. Maggi noted there is at least one tree that can be saved, but it would take input from the arborist to determine if it is possible to save more than one.

Mayor Karspeck asked that this be brought back to the Board and asked that Arborist Shiloh Hatcher be asked to attend the meeting.

#### **PERSONNEL MANUAL MODIFICATION**

Administrator White explained that Town of Berthoud Personnel Policy states that the maximum number of hours an employee can accumulate is 240 hours. When we add the new vacation this year, we have several employees who will exceed that maximum. The policy manual also says that if an employee accumulates more than the 240 hours, they will be paid for any excess hours. When we add new vacation in December, the cost to the Town could be approximately \$22,000. This problem can be fixed over time, but he noted we are asking for a modification to eliminate the need to pay out the excess vacation.

Mayor Karspeck noted this limit was put in place because of a prior employee who had excessive comp and vacation time.

Trustee Buckingham asked why we need to extend this or pay out the difference. He suggested that the limit be firm, and if employees go over, they lose the time. Administrator White noted the current policy states that employees will be paid for hours in excess of the 240 hours. There are several employees that will reach that point at the beginning of 2006.

Trustee Buckingham suggested that most companies do not allow accrued vacation and allowing employees to accrue large amounts is a financial risk to the Town. He felt that we should require that employees use their vacation, and make sure that the employees know that unused vacation will be forfeited.

Administrator White noted the practice of paying excess hours has been a long standing policy of the Town. He agreed that we should require employees to take their vacation, but asked for a year to get this resolved. It is not likely that the employees will be able to use all the accrued vacation in the next two months.

There was discussion regarding the actual wording of the existing policy. It was noted that this policy allows those employees who are not able to take vacation due to their positions with the Town to be paid for excess vacation, and it was suggested that this does not apply to every employee. It was also noted that if an employee does not take vacation, this sets aside future salary for current hours.

Administrator White agreed that it is important that we not see circumstances where the Town is at risk for a financial obligation of this type. He agreed that we need to have a cap and notify the employees so that they understand that our new policy would be "use it or lose it." He noted the goal here is to get the time

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to make this transition, and to avoid payout out over \$20,000 to the employees who currently have accumulated vacation and comp time.

Mayor Pro-Tem Ashcraft suggested this be reviewed by the Attorney and bring this back to the Board.

Trustee Patrick noted it is important to encourage employees to use their vacation. This is a management issue and it is important that all managers be involved in working on staffing so employees can take time off.

Administrator White reminded the Board that there is no meeting scheduled for November 1, 2005. He noted there is a joint meeting scheduled with the Planning and Zoning Commission on Thursday, October 27, 2005. There is a Finance Committee meeting scheduled for Tuesday, November 1, 2005 at 7:00 a.m. at Town Hall.

With no further business, the meeting adjourned at 9:15 p.m.

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Mayor Milan Karspeck

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Deputy Town Clerk Charlene Reed