

TOWN BOARD OF TRUSTEES  
REGULAR MEETING  
SEPTEMBER 27, 2005  
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The Board of Trustees for the Town of Berthoud met for a regular meeting on Tuesday, September 27, 2005 in the Board Room of the Town Hall. Mayor Milan Mayor Karspeck called the meeting to order at 7:02 p.m.

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

MEMBERS ABSENT: Trustee Louis Gervasi  
Trustee Peder Thorstensen

STAFF PRESENT: Town Clerk Mary Cowdin  
Public Works Director Tony Huerta  
Building Official Trustee Patrick Buckley  
Town Planner Wayne Planner Reed  
Town Attorney Bruce Fickel  
Planning Technician Sue Bowles

### **PLEDGE OF ALLEGIANCE**

Mayor Karspeck led the Pledge of Allegiance.

### **CITIZEN PARTICIPATION**

Gary Wamsley of the Berthoud Weekly Surveyor addressed the Board regarding the intersection at 3<sup>rd</sup> St. and Mountain Avenue, stating that it has more traffic than it was designed for. Last Monday Jill Boyd was hit by a car at that intersection.

Mr. Wamsley suggested a controlled lighting system, such as flashing lights to alert oncoming drivers and enforcement of traffic laws, noting that there is a need to regain participation of the police department to enforce and get tough, and the new police chief seems to be in agreement. Mr. Wamsley feels this is a solvable problem and that the Board can come up with a solution.

Mayor Karspeck agreed that it is a serious problem. We almost lost one of our own and we want to make sure that doesn't happen in the future.

### **REPORTS**

Trustee Buckingham reported that the Historic Preservation Committee will be meeting tomorrow night and discussing what kind of plaques to put on historic buildings.

Town Clerk Cowdin reported that due to Administrator White's absence, "Coffee with Jim" has been rescheduled to Saturday October 8<sup>th</sup> at the Wayside Inn at 8 a.m.

Cowdin also reminded the Board that October 6<sup>th</sup> is the CML District 2 dinner in Windsor.

### **CONSENT AGENDA**

The Consent Agenda consisted of the minutes of the regular meetings of September 13, 2005 and September 20, 2005, and the Financial Statement for August 2005.

**Trustee Gregg moved to approve the Consent Agenda as submitted. Second by Mayor Pro-Tem Ashcraft. With no further objections, the Consent Agenda was approved.**

### **PUBLIC HEARING – SIGN CODE AMENDMENT**

Planning Director Reed reported that the change to Section 30-13-302 c. of the Town of Berthoud's Development Code is being proposed specifically for lots without buildings. The wording has been changed as shown in the ordinance along with the addition of a prepositional phrase "subject to other restrictions set forth in this code".

**After significant discussion and with input from other board members, Trustee Patrick moved to accept the language suggested by staff for Section 30-13-302 5. c., and to amend the table in Section 30-13-304 C. to eliminate the lines below 25 feet for "Distance from right-of-way line", and adding the words "or more" so that the last line reads "25 feet or more", and to change the maximum size allowed to 60 square feet per side, and to eliminate the first two sentences in paragraph D. Second by Mayor Karspeck. The motion received unanimous approval.**

Mayor Karspeck opened the public hearing. There being no one in the audience wishing to speak, the matter was brought back to the Board for discussion.

**Trustee Patrick moved to accept Ordinance No. 1015 as amended. Second by Trustee Buckingham. All members voted YES.**

### **PUBLIC HEARING – TOLLGATE 2<sup>ND</sup> REZONING AND COLORADO TRACTOR PUD FINAL DEVELOPMENT PLAN**

Planner Barkeen reported that John and Twila Brown, who represent the Colorado Tractor Corporation are requesting approval of the rezoning of 79.18 acres from T to PUD – and a Final Development Plan (FDP). The FDP and the PUD would allow the current uses of a landscape business and homes as well as the tractor business. Barkeen noted that the owner is aware that this area is intended for mixed use development, but would like to pursue this use until such time as the market will bear more intense development.

In addition to the request for rezoning and final development plan for the property, is requesting several waivers from the Town's standards, including waivers from the sign regulations.

John Brown addressed the Board, gave an overview of the plan and provided a letter of support signed by several customers and associates as well as property owners in the area.

Mr. Brown gave a brief summary of the economic benefits of the business, and noted that they are willing to move forward without tax breaks of any kind and will pay for all development costs.

Mr. Brown asked that the Board consider Colorado Tractor's request for oversized signs, noting that the I-25 area is uniquely different from the core area due to the traveling speed on the interstate, and the need to attract customers off of I-25.

Mr. Brown also asked the Board to consider rewording of the condition that limits the life of the business to 15 years, pointing out that putting a 15 year limit is like signing a closed end lease and asked that the Board approve a change of the wording to say "for a period of 15 years, more or less, to be determined by the market economic conditions as to the feasibility of a more intense development of the property".

Attorney Fickel disagreed with the wording, noting that at the end of the 15 years, the applicant could come back to the Board and ask for an extension. Attorney Fickel further noted in regards to the sign issue he would be hesitant without some study of what other communities have done.

Mayor Karspeck opened the public hearing.

David Besh with Centennial Bank stated that he has a business relationship with Mr. and Mrs. Brown and Colorado Tractor and they have always been extremely professional in their business dealings. Very prudent and very conscientious and he offered his support and highest recommendation for this to be allowed.

Ralph Nelson commented that he worked for 24 years with a farm machinery manufacturing company. The area they are at on Highway 34 is not adaptable for a farm machinery trade. Out on 56 is a more open space for farm machinery. Dealers are primarily small towns. It's not a place for that in the future and will be surrounded.

The item was brought back to the Board for discussion.

Trustee Gregg noted that generally he is in favor of this and further noted that it would take very little study to conclude that if we don't have separate sign standards for the area around I-25, we probably need to develop them.

Barkeen explained that the waivers were based on the minor improvements and expansion, noting that they will not be increasing runoff to any significant degree, and there will be minor traffic impacts. Water quality has been addressed, as has additional landscaping around the sales area.

After some discussion regarding the applicant's requests for larger signage, and the proposed modification of the language regarding the 15 year time limit, **Trustee Buckingham moved to approve Ordinance 1016 as written. Second by Mayor Pro-Tem Ashcraft. All members voted YES.**

**Trustee Gregg moved for approval of the Final Development Plan for Colorado Tractor Corporation with the attached conditions from staff and suggested 3 modifications to those 6 conditions with the addition of wording added to the 2<sup>nd</sup> condition so that it reads "The permitted uses on the FDP shall be allowed for a period not to exceed 15 years from the date of approval, at which point this approval shall expire, or may be extended at Board of Trustee discretion", and condition 6., strike the specific language "60 square feet per façade for both signs", just leaving it to say "That the applicant modify the proposed signage consistent with the maximum signage allowed per the Town of Berthoud Development Code as it may be amended. Second by Mayor Karspeck. All members voted YES.**

Recess at 8:50 p.m. Reconvened at 9:00 p.m.

**PUBLIC HEARING – ROCKY MOUNTAIN SUSTAINABLE ENTERPRISES**  
**SPECIAL USE REVIEW**

Planner Reed addressed this item, noting that although the Planning Department is facilitating the review of the proposed business, and allowed the Building Department, Fire District and Public Works Director to develop the conditions recommended in Attachment 10.

The proposed business would provide reactor grade fuel for the other bio-diesel business that is already in town. The company will be moving into an existing building and there will be no additional outdoor storage or enhancements to the property. Planner Reed reported that the Planning Commission had endorsed this proposal at its last meeting, and attached the conditions on Attachment 10.

Building Official Buckley noted that Attachment 10 is basically a summation of building and fire code regulations and pre-treatment regulations applicable to this business. The building, fire and public works departments have met with applicant and visited their site, and they had very productive meetings and the applicants are well on their way to compliance with the items listed. Based on this, Buckley felt comfortable this would be a good and responsible business for Berthoud, and would not be putting the town in any jeopardy.

DeWayne Perry, one of the applicant's and owner of the business noted that they find all of the conditions to be reasonable and fair and will abide by them in their entirety. Perry explained the process that will be employed by Rocky Mountain Sustainable Enterprises, noting that its function will be to provide feed stock supply chain services to bio-diesel manufacturers by processing used cooking oils so that they may introduced directly into their customer's bio-diesel reactor. There are currently 5 employees, and they expect to have 10 within 12 months.

In response to questions regarding the potential odors, Perry explained the processes, filters and containers they will be using that should keep odor to a minimum.

Trustee Buckingham would like to see a hazard or accident clean up plan for the operation.

Mayor Karspeck opened the public hearing.

Byron Johnson, co-owner of a building 300 feet to the west of this property noted that he employs 12 people, and had concerns about the odors, and potential spills, as well as fire suppression. If everything is addressed, we don't have a problem with it.

Trustee Buckingham stated that laying out the most likely and worst scenarios should address these concerns; fire, tank breakage, etc. Those are the things that need to be addressed.

Tom McCauley whose property is adjacent to this building spoke, stating that he had some of the same concerns. A lot of it has been addressed. Alternative energy is great, but not sure about refinery. In reading about bio-diesel, he understood they use lye and methanol.

There being no one else wishing to speak, the hearing was closed and the matter brought back to the Board.

Pat Buckley noted that the fire code addresses maximum capacity and volume, and noted the maximums allowed. He further explained that they will not be using lye or methanol in their process, and that this process has a fairly high flashpoint.

Byron asked who is liable to clean up a spill, and whether the company has adequate insurance for his property and surrounding properties.

Attorney Fickel explained that it is not in the Town's code to require insurance. It can control health safety and safety issues, however it is up to the corporate entity to evaluate insurance. Those are appropriate concerns but not ones we can deal with.

Perry suggested that Byron visit the site and see what they will be doing, extending that invitation to anyone else who would like to see the plant and how the material is handled. He also noted that they do have considerable insurance in place.

Attorney Fickel suggested that in on Attachment 10, Paragraph 3, wording be added so that No. 3 reads "RMSE shall agree to provide spill control, documentation of an emergency preparedness plan, and training of personnel, and then continue with the paragraph as written.

**Mayor Pro-Tem Ashcraft moved to approve the special use request for the manufacturing, assembling, packaging, processing, storing, and distributing of raw vegetable and animal products at 211 Versaw Court, finding that the request complies with the criteria for special uses per Section 30-5-105 and Section 30-9-501 of the Development Code and attaching all conditions set forth by staff as identified in Attachment 10, with the added statement to item 3. Second by Trustee Gregg.**

Trustee Gregg commented that it was nice to have a staff that fleshed out so many issues on such a technical matter and brought it to the Board with really nothing left to do but compliment.

**The Board gave a unanimous vote in favor.**

#### **AWARD BID AND ADDITIONAL FUNDING – MEADOWLARK DRIVE PAVING**

Public Works Director Tony Huerta explained the requests are for \$45,000 to be taken from the road impact fee fund to augment the shortfall of needed funds to construct the improvements. If approved, the 2<sup>nd</sup> request is to accept the most qualified low bid from Mountain Constructors to construct Meadowlark Drive. The third item is to support a reimbursement agreement to the developer of Matthews Farm Village for improvements to the road.

Fickel further explained that the developer of the Villages was only required to construct interim improvements to the road, and he posted \$70,000 for those improvements. In order to make more permanent road improvements, this developer agreed to loan the Town an additional \$75,000 and is requesting that he be reimbursed an additional 5%.

Huerta explained that by doing this, the section that will be built is 32' of 4" asphalt on road base with shoulders on each side with drainage swales, and a culvert under Meadowlark to continue drainage the swale to the east to intercept with the box culvert at Gateway Park. The ultimate section will be done with Gateway Park Phase 2 and the Safeway project and will be a 52 feet flow line to flow line including curb, gutter and sidewalk, 3 travel lanes, and detached five feet sidewalks on both sides.

Trustee Buckingham felt this was a generous offer by the developer.

Trustee Gregg suggested contemplating sleeving for future development.

**Trustee Buckingham moved to approve the procurement of an amount not to exceed \$45,000 from the road impact fee fund to augment the available funds posted by the Developer of Matthews Farms Village for the construction of Meadowlark Drive and further moved to direct staff to collect and reimburse any used portion of these funds back to the Road Impact Fee Fund from subsequent future developments that would use and benefit from the improvements to Meadowlark Drive. This reimbursement to the Road Impact Fee Fund will occur prior to any reimbursement to the Developer of the Matthews Farm Village. Second by Mayor Pro-Tem Ashcraft. All members voted YES.**

**Trustee Gregg moved to accept the most qualified low bid and award a contract to Mountain Constructors, Inc. to construct Meadowlark Drive to an interim street section to permanent standards for an amount not to exceed \$176,315.00. Second by Mayor Pro-Tem Ashcraft. All members voted YES.**

**Trustee Buckingham moved to direct staff and town counsel to draft a reimbursement agreement to reimburse the developer of the Matthews Farm Village for that portion of the Meadowlark Drive costs that were advanced by the Developer, plus a 5% annual interest, seeking reimbursement of his minimum obligation from the Gateway Park developer at such time that developer is obligated to construct Meadowlark Drive and from the Road Impact Fee Fund, whichever occurs first. Second by Mayor Pro-Tem Ashcraft. All members voted YES.**

#### **PUBLIC HEARING - PORT MASTER PLAN**

Planner Reed addressed the Board, beginning with a short Power Point presentation to address the parkland dedication issue, percentage versus population based.

Planner Reed noted that this recommendation is not changing the fundamental aspects of how we deal with parkland, the fact that dedication is required, or a fee in lieu of. It is not changing the development fee, though if a decision is made to go with the population based, we would have to recalculate the development fee. We would still have the same two components that we have today. We would still seek to acquire neighborhood parkland dedication within the neighborhoods as the opportunities arise.

Planner Reed introduced Janna McKenzie with EDAW, the consultant for the PORT plan.

Planner Reed noted that this recommendation does not change the values that Berthoud has about parks, and will achieve the vision that is in the 2001 Park Development Plan. In the community survey, a majority of Town residents stated that the community did not have enough large multi purpose parks, centralized neighborhood parks, playgrounds and small pocket parks. The recommendation is in no way in conflict with any of those identified needs.

Planner Reed handed out a chart that compared the 7% parkland dedication to the population based to Berthoud as we know it. The chart shows that given the Town center, if we looked at existing land uses and all the residential units, we have not less than 1,890 dwelling units. The 7% would have us arrive at 35 ½ acres of parkland. The proposed standard would place 12 ½ acres in neighborhood parks, and have 25 acres already arrived at for a community park.

Planner Reed noted that since 2000, our gross density has decreased from 3.72 which is what we have in the core part of town, down to 2.7 gross density in new developments. The decrease is due to The Estates at Matthews Farm which is a very large property relative to the number of dwelling units on there. Under the 7% parkland dedication we received 4.8 acres of parkland. Under the population based, it would have been dramatically less because the population is less. Reed further noted that under the population based scenario, you wouldn't get too much parkland and too little development fees. That is why staff is in support of shifting to the population base parkland dedication.

Planner Reed provided a conceptual illustration of the area known as the Trails at Sugar Creek showing how the plan would work using the population based scenario as outlined in the PORT plan, between Bunyan Ave. and LCR 10-E, between LCR 17 and 4<sup>th</sup> St. There would be 2 substantial neighborhood parks within walking distance of all residents. If we recognize the need to place parks strategically so that they are equitably distributed throughout the community, we can on a project by project basis understand where we should get the parks and where we should take fees in lieu of in anticipation of placing the parks an equal distance apart so that we cover our areas so everyone can walk and enjoy our parks.

Mayor Karspeck opened the public hearing. There being no one wishing to speak, the matter was brought back to the Board for discussion.

Trustee Gregg stated that he still remains strongly convinced that a population based assessment to plan for our parks in the future is the most fair way to go. Gregg further noted his strong support of the split between neighborhood parkland and community parks. There has been a concern about trying to start planning for the future for a larger community park where we might have a larger gathering spot. We also need to consider the costs of maintaining a lot of smaller neighborhood parks. This plan is endorsed EDAW, both the planning and the parks staff, the CAC, the survey information from this process, and the planning commission.

Mayor Pro-Tem Ashcraft commented that labeling the definition of a small park under 3 acres or 5 acres is ridiculous. He agreed that we should be striving for large community parks, and that he likes population based park land dedication, but not this formula. In his opinion, this plan will provide less parkland in an average childhood than if we use the 7%. He further noted that none of the groups who worked on this plan are responsible for the Town's fiscal outlook, and in his opinion, this dedication is not fiscally sound.

Mayor Karspeck expressed his support for the population based parkland dedication, and acquiring community parkland. In his opinion, it is not equitable to make large lots pay for more than their fair share of park dedication. Parkland dedication should be based on impact, just like all of our other impact fees.

Trustee Buckingham stated that the Board needs to be able to direct whether a developer is going to dedicate land or pay fees in lieu so that we can take Project A's money and put it on an existing park such as Pioneer Park that needs a lot of improvements. He also noted his concern that the population based would encourage higher density.

Trustee Patrick noted his opposition to the population based parkland dedication stating that it would have the effect of reducing the financial contribution to the Town by developers to the detriment of the Town and its citizens, and would drive higher density to get equivalent park space. In his opinion, the current 7% dedication requirement gives the Board flexibility in deciding to take cash in lieu of where

it's an advantage to the Town, and receive parkland in new developments where it is most beneficial for the residents. Trustee Patrick further stated that although he is a strong advocate of larger community parks, he is unwilling to concede significantly reducing the size of parks within neighborhoods. He further noted that it could be a generation before the Town had enough money for a community park.

Trustee Gregg noted that all of our impact fees are collected now with a vision for the future. Trustee Gregg disagreed that the population based plan encourages higher density, noting that the higher the density, the more the dedication or fee in lieu will be required from that subdivision.

Mayor Karspeck agreed, further noting that he doesn't want his land use decisions driven by parkland dedication and acquiring as much parkland as possible, but instead to acquire a fair amount, and the population approach does that.

Trustee Patrick disagreed, saying that if we have the same density under the population based proposal, we will get approximately half of the return for parkland that we would have under the existing structure.

Trustee Gregg pointed out that that's not taking into account the additional community parkland.

Planner Reed noted that the formula being proposed does not drive densities. To arrive at a similar parkland dedication, you merely have to achieve that which we already have in the older part of town which is 3.72 dwelling units per acre. If we presently have 2.6 acres of neighborhood parkland per thousand, then this recommendation maintains that and adds 5 acres for community parks. This does not change the Board's practice of where it decides to take parkland or fees in lieu of.

Janna noted that the critical point to this analysis is the difference between neighborhood and community parks. You could take the 7%, leave it exactly the same as it is and decide to segment it into a little bit goes to neighborhood parks, and little bit goes to community parks. It's the same thing. The difference is how it's applied in low and high density situations.

Mayor Karspeck reiterated his opinion that developments should pay for the population impact they have on the community. When you have more people in your neighborhood, you need more parks.

Trustee Gregg noted that a very clear illustration is that Gateway Park Subdivision has 178 units and dedicated 2 acres of parkland. Matthews Farm Estates has 29 dwelling units, and they dedicated 4.8 acres.

Trustee Patrick stated that's just simply based on what we agreed to allow people for density which is driven by the market. The only question is from a policy standpoint, do we want to be changing horses in terms of how we're going to assess impact fees. In my view, that's not a discussion that comes from an advisory committee.

Planner Reed noted that today, on a per acre basis for 22 developed acres, the parks department is provided \$5,455 per acre. If we had 7% parkland today, we would have 36 acres, not 22 acres. Jeremy Olinger, our Parks and Recreation Director spoke to the Board at a previous presentation, discussing that given the funding that he's provided and the amount of full time employees that he can dedicate to operations and maintenance of our parks, he literally today couldn't maintain another acre of parkland just given the amount of time it takes to mow, trim and maintain. I appreciate that you recognize that if you're favoring the 7%, that you would be giving more money to our parks and

recreation department to adequately fund it, which is another objective under Goal 7. This is not parkland for parkland sake, but is park for park quality sake.

Trustee Patrick stated that whatever we get for additional parkland is going to be driven by developments that are bringing in additional people, and those will change the retail sales tax base and fee levies and additional revenue that will come with additional population. Patrick recognized that our current budget has difficulties but it is not a driving force for making policy on how we're going to decide to take parkland dedication in a development code context.

Trustee Gregg noted that the argument that this new plan is going to leave us with tremendously less than we currently get under the 7% plan is patently false.

**Trustee Patrick moved for approval of the PORT Master Plan with the following amendments:**

**First, the Board of Trustees expresses its strong appreciation for the time and effort provided by the ad hoc PORT Community Advisory Committee members for their work on the Parks, Open Lands, Recreation and Trails Master Plan. Appreciation also to staff and to the consultants. As the specific functions requested of the Committee are now concluded, the ad hoc committee is now disbanded with the gratitude and thanks of the Board of Trustees.**

**The Board of Trustees reiterates its approval of the general concepts set forth in the draft PORT Master Plan submitted for consideration, including the need to plan and move forward, as finances permit, on the acquisition and development of larger community sized parks.**

**The Board of Trustees, as a matter of public policy, reiterates that neighborhood parks are an important and integral benefit to developing communities within our Town. Thus, the Board declines to accept the suggestion that development of community parks requires a substantial reduction in the current development code requirement for land dedication for neighborhood parks, or that the current Town ordinance and development code requirements for parkland dedication should be changed to a population based model. The Board of Trustees explicitly rejects all recommendations based on a suggested change to the existing Town development policy, and reiterates its strong support of the existing Town parkland dedication development policy, which is based on a requirement that 7% of the raw land in a proposed development, or \$800 per single family equivalent (SFE), if the development has a park within an acceptable walking distance. The current content of the Section "C" – Park Implementation, being inconsistent with the approved development code and the fiscal policy of the Town of Berthoud, will be replaced with a summary of the current provisions of the Town of Berthoud Development Code which apply. Second by Trustee Buckingham.**

Trustee Gregg commented that it's a good thing we don't plan our open space that we have to get the land now and spend the money now; otherwise, we wouldn't have money to buy some of the conservation easements we've planned and saved for.

Mayor Karspeck agreed noting that the basis of impact fees is we buy things when we can, but we still have to get money up front to do it, and further stated that he can't support this motion, especially the wording.

Trustee Patrick agreed that impact fees have that goal, but they have to have some reasonable relation in time to the time they're collected versus the time that they benefit the people who pay them,

and I don't think a 15 year or 20 year in the future investment fits that from a basic definitional standpoint.

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

Mayor Karspeck noted that he supports the PORT Master Plan, but is opposed to the changes.

**RESOLUTION – APPOINTMENT TO THE SOUTH PLATTE BASIN ROUNDTABLE**

Fickel reported that the resolution reconfirms the appointment of Larry Howard to serve on the South Platte Basin Roundtable.

**Trustee Buckingham moved to approve Resolution 18-05. Second by Trustee Patrick. The resolution passed with a unanimous vote in favor.**

**APPOINTMENT TO VOLUNTEER BOARDS AND COMMITTEES**  
**APPOINTMENT TO THE HISTORIC PRESERVATION COMMISSION**

Trustee Buckingham reported that there is one vacant seat on this commission. There was one applicant for this opening; however, Tom Vaughan is out of the country right now. That interview will be scheduled when he returns.

Also, the commission has suggested a reappointment of Cindy Martin and Herb Meeker for a three-year term.

Trustee Buckingham moved to approve the suggested reappointment. Second by Trustee Patrick All members voted in favor.

Meeting adjourned at 11:29 p.m.

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Mayor, Milan Mayor Karspeck

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Planning Technician, Sue Bowles