

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
MAY 23, 2006
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The Board of Trustees of the Town of Berthoud met for a regular meeting on Tuesday, May 23, 2006 in the Board Room of Town Hall. Mayor Milan Karspeck called the meeting to order at 7:00 p.m.

MEMBERS PRESENT: Mayor Milan Karspeck
Mayor Pro-Tem Don Ashcraft
Trustee Glenn Buckingham
Trustee Chase Sommars
Trustee Louis Gervasi
Trustee Peder Thorstensen

MEMBERS ABSENT: Trustee Michael Patrick

STAFF PRESENT: Town Administrator White
Town Clerk Mary Cowdin
Public Works Director Tony Huerta
Interim Planner Carlin Barkeen
Town Attorney Bruce Fickel
Deputy Clerk Charlene Reed

PLEDGE OF ALLEGIANCE

Mayor Karspeck led the pledge of allegiance

CITIZEN PARTICIPATION

Douglas Mallett of 929 6th Street addressed the Board regarding his sewer charge. He noted he is paying \$200 per month for the bill. Mayor Karspeck asked him to meet with the Town Administrator or the Utility Billing Clerk to address this issue.

REPORTS

Mayor Pro-Tem Ashcraft reported he will be attending the CML meeting in June, along with the Town Administrator. This meeting provides valuable information and training for elected officials. He encouraged any other trustees who are interested to attend.

Trustee Buckingham announced that there will be a Historic Preservation Commission meeting on Wednesday, May 24, 2006 at 7:00 p.m. in the Board Room at Town Hall. The topic of the meeting will be the formation of a Historic District for Berthoud.

Administrator White reminded the Board of the date of the retreat, Monday, June 12, 2006, beginning at 6:00 with refreshments, and with the meeting from 7:00 p.m. to 9:00 p.m., at the home of Town Attorney Bruce Fickel. He asked if the Board would like to

invite Don Sandoval and the Board confirmed, noting he provided valuable assistance when setting goals.

Administrator White reminded the Board that Town Hall will be closed on Monday, May 29, 2006 for Memorial Day. He also noted that Saturday, June 3, 2006 is Berthoud Day, and extensive planning has occurred for all the events scheduled in June, 2006.

Administrator White reported that Clean-Up Day on May 13, 2006 was successful. Gallegos Sanitation removed 20 roll-offs during the event.

Administrator White reported that Rebecca Paulson was appointed to be the Library Director, effective Saturday, May 27, 2006.

CONSENT AGENDA

The Consent Agenda consisted of the minutes of the regular meeting on May 9, 2006 and the liquor license renewal for the Derby Grill. Trustee Sommars recused himself from the vote.

Trustee Buckingham moved to approve the Consent Agenda as submitted. Second by Trustee Gervasi. The motion was approved unanimously.

PUBLIC HEARING – ORDINANCE RE: PEAKVIEW MEADOWS VACATION OF EASEMENT

Planner Barkeen noted that the applicant, Gabriel Development, Inc, Heckel Construction, LLC and GHG Land, LLC have filed a request with the Town to vacate certain easements located within the Peakview Meadows Subdivision. All affected utility companies have provided signatures of consent for the proposed easement vacations. She noted these easements will not be utilized now or in the future, and are placing unnecessary restrictions on the building envelopes of the subject lots.

Leroy Gabriel, the applicant, addressed the Board, asking that the easements be vacated.

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

Mayor Pro-Tem Ashcraft moved to approve Ordinance 1031 an ordinance vacating certain easements in the Peakview Meadows Subdivision. Second by Trustee Buckingham. The motion passed unanimously.

Trustee Thorstensen arrived at 7:18 p.m.

**CONTINUE PUBLIC HEARING KNIEVEL ANNEXATION
& REZONE, REVIEW AND APPROVAL OF HERON
LAKES AMENDED OVERALL DEVELOPMENT PLAN**

Mayor Karspeck reopened the public hearing and provided information regarding letters that were received regarding this project.

Planner Barkeen noted the Board received a revised Fiscal Impact Analysis and the summary regarding the difference in the proposed ODP and the ODP passed in 2001. She summarized the changes between the two plans, noting that among the significant changes was the willingness of the applicant to provide a nonpotable water system.

Planner Barkeen noted the Board expressed concern regarding the Town's ability to modify the plan's buffers; density or lot lines in the event that there is a decline in the heron rookery and asked that the applicant utilize seasonal construction to mitigate the impact on the osprey and heron. She noted the applicant has agreed to the addition of the following notes in the ODP General Notes, as follows:

- 1) "The Town has the ability to modify density, buffers and lot locations in the event that the Heron Rookery is found to be in decline and it is determined by the Division of Wildlife, Town's Environmental Consultant and Town Staff that the Heron Lakes Development is the cause of the decline."
- 2) "An environmental management plan shall be required with the PDP submittal."
- 3) "Timing of construction activity shall minimize disturbance during nesting season as determined by the Management Plan, the Division of Wildlife, Town's Environment Consulting and Town Staff."

The Board also requested that the golf course and open space areas will remain as open space in perpetuity. The following note will be on the ODP:

- 1) "All open space tracts and golf course parcels shall remain as open space in perpetuity as a deed restriction or conservation easement."

Mayor Karspeck asked for clarification of the number of units in the project. Trustee Buckingham noted according to the P & Z minutes, they removed the density bonus that was requested. Ms. Barkeen noted they reduced the bonus to 25%. Discussion followed regarding the revised number of units approved by the Planning and Zoning Commission and it was determined that the total units approved was 679. Ms. Barkeen noted the Planning and Zoning Commission was not comfortable with the transfer of units from the Knievel property to the Heron Lakes property. They were concerned that the Town did not have a plan in place to make transfers of this type.

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Attorney Fickel noted comments provided from the Chairman of the Planning and Zoning Commission, Chris Thorne, and he distributed copies of those comments to the Board.

Trustee Buckingham asked for Attorney Fickel's interpretation of the density transfer. Attorney Fickel noted the densities requested on both properties are permissible under the current land use plan. Mr. Birdsall noted development on properties west of the parkway would be based on county densities with appropriate bonuses based on the land use plan.

Planner Barkeen noted the land use plan states the desirable features that are to be considered before allowing bonuses, and the Planning and Zoning Commission found that desirable features are being offered. They were concerned about how to measure desirable features as it related to the density bonus.

Attorney Fickel noted the density being requested is acceptable under the current land use plan, without transfer. He noted if the current land use plan allows us to permit the densities they are requesting, then legally this is not a density transfer.

Mayor Karspeck asked for information regarding the designation of a school site. Ms. Barkeen noted the school district contacted the applicant and staff regarding their request for a school site on the Knievel property.

Jon Turner, the applicant, addressed the Board, providing information regarding the difference between the approved plan and their proposal. In the new plan, they pulled the course away from the bypass and moved the clubhouse and made the course safer for golfers. The golf course is also further from the rookery. He noted they are committed to making this work in Berthoud and feel this will be a benefit to the Town.

Mayor Karspeck asked what plans are included for regional trail connections. Mr. Birdsall noted they have plans for connections on all sides of the development.

Trustee Buckingham noted he would like to see stronger language regarding the timing of construction and activity around the heron rookery. Mr. Turner noted they are willing to have this established once the mitigation plan is in place when the PDP is submitted. Planner Barkeen noted this language and details will be included in an environmental management plan, and that will be included with the PDP.

Mayor Karspeck asked whether buffers should be established at the ODP stage. Planner Barkeen noted buffers are usually addressed in the PDP. Mayor Karspeck asked if the final decision regarding buffers can be done with the PDP and that was confirmed by Attorney Fickel. Attorney Fickel noted this needs to be addressed in the development agreement, which will be the governing document for the development.

Mayor Karspeck opened the floor for public comment.

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Brenda Peacock of 2024 Breckenridge Drive addressed the Board regarding whether this property is developed as a golf course or open space. She expressed concern that a golf course might not be sustainable in Berthoud. She felt the property would benefit more people as open space and would be valuable for connecting to regional trails.

Elissa Peacock of 2024 Breckenridge Drive expressed concern that plants and animals in the area will be negatively affected by a golf course. She noted her family spends time in the Loveland open space, and this property could be utilized in the same manner.

Scott Sarbaugh of 1320 Pearl Street, Boulder, Colorado addressed the Board, noting that he is in support of having a golf course in Berthoud. There is already a course approved, and this plan is better.

Elizabeth Kearney of 1600 W County Road 10E suggested it is a bad idea to move the 124 units outside the beltway. The original development was already approved for 467 units on the property, and that already included a density bonus. She suggested that moving the additional 124 units to the Heron Lakes property will put a burden on the ecosystem. She felt that the perpetuity of open space on this property is critical and encouraged the Board to make sure this occurs.

Kimberly Pirkey of 4538 Malibu Drive addressed the Board in favor of open space for this development. She noted they recently moved to Berthoud and they were drawn here because of the agricultural opportunities offered.

Karen Stockley of 316 Bothun Road expressed concern that the mitigation plan is not in place and buffers have not been established. She felt this needs to be done before this project goes forward.

Robert Kearney of 1600 W County Road 10E addressed the Board in favor of open space. Open space would give the whole town access to recreational activities. He noted a golf course only serves 10% of the population, while open space can be used by everyone. He suggested it is the duty of the Town to pluck this jewel and hang on to it for posterity.

Norma Banzhaf of 915 10th Street spoke in support of a golf course. She felt that if this becomes a regional golf course with a hotel, it will bring tax money into the Town. She pointed out that open space is not free and requires care.

Chris Bolton of 1586 County Road 10E addressed the Board reminding Board members that they have a responsibility to the citizens, not the developer. He expressed concern regarding how much this development will cost the Town in services and infrastructure. He felt the number of homes being proposed for the property is too high, and felt there

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needs to be a larger buffer between the older communities on the south end of the development. He felt open space would benefit more residents, and suggested that fairways and public trails do not mix.

Wayne Matthews of 1716 W County Road 10E noted he would like to see fewer houses because of the problems that have occurred because of the drought.

Dick Shepherd of 230 2nd Street spoke in favor of the golf course, asking if it would be possible to attract minor golf tournaments to the course. He felt this could be a destination point for the surrounding area.

Nancy Lamb of 1101 N County Road 19 encouraged the Board not to transfer density from Knievel to Heron Lakes.

Mina Cox of 841 N CR 19 addressed the Board to clarify the P & Z recommendations. She noted the density bonus was reduced because of requirements for the property on the west side of Highway 287. There is already 50% clustering requirement in this area and she explained why the density bonus was reduced.

Karen Machiney of 1708 W County Road 10E echoed comments regarding open space instead of the golf course.

Tammy Russell of 548 5th Street spoke against the golf course. She suggested open space is rare and should be protected.

David Lamb of 1101 N County Road 19 supported the golf course, noting it would bring people to Berthoud to shop and would generate tax revenue for the Town. He encouraged the Board to respect the recommendations of the Community Advisory Committee.

There were no further comments and the discussion returned to the Board.

Trustee Gervasi asked questions regarding trails and if there is a restriction regarding trails crossing a golf course. Ms. Barkeen explained that the code does not specifically address trails on golf courses. She noted in many places there are trails that run through golf course areas, but they do not run across the greens themselves.

Trustee Gervasi asked Kirby Carroll, the Town's environmental consultant for comments regarding Audubon International. Mr. Carroll noted their recommendation would be for the developer to work with Audubon International and they have agreed.

Trustee Thorstensen spoke in favor of the golf course, and felt this would be a great regional draw. He noted that the sewer plant has more than adequate capacity to handle

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growth and additional residents in the Town would help with the water and sewer rates. He noted an evaluation has been done and both the Town and the Fire Department have adequate services available. He felt this will be a tremendous asset to Berthoud.

Trustee Buckingham noted when you consider transferring 124 units from Knievel to Heron Lakes, you are discussing 124 units that probably would not have been approved for the Knievel property. He noted this is a much improved plan with many amenities that will benefit the residents, including nine miles of trails.

Mayor Karspeck noted that when this project was considered in 2001, one reason he was in favor of the golf course was because the Town did not have the money to maintain this amount of open space, and that is still the case.

Mayor Karspeck noted that Karen Stockley has made several key points regarding the rookeries and buffers. He suggested it is important for the Town to do the best job possible to make this project work with the wildlife that already inhabit the property. He suggested that we delay the decisions regarding the rookeries and buffers until the PDP to allow Audubon International, the Department of Wildlife and the Town's Environmental Engineer and staff to work to determine the buffers that need to be established.

Mayor Pro-Tem Ashcraft noted he is not a big fan of golf courses, but the economic benefit to the Town is significant. He was in favor of including a requirement in the PDP for the property to be preserved as open space in perpetuity. He noted one comment that has been made during these hearings is that this developer will be putting homes on environmentally pristine land. He pointed out that most of this area is zoned for agricultural and has been used as ranch land.

Trustee Sommars noted he is excited that the Town has the possibility of a golf course. This is an excellent opportunity for Berthoud residents and for the businesses in Berthoud. In the long run, this plan will pay for itself. He felt the clubhouse is a key element of the plan and would like to see it built and open early in the development.

Planner Barkeen noted that the applicant will be paying all impact fees, and they are not requesting any waivers.

Mr. Turner addressed explained that the Planning and Zoning approved a plan, which is almost identical to the plan that was already in place on the property. He explained the difference in what was approved and what they are requesting.

Mayor Karspeck noted the plan approved by the Planning and Zoning Commission on April 13 included 467 units. Planner Barkeen agreed, noting the plan that was approved by the Planning and Zoning Commission was the plan that is already in place. The applicant at that time had the option to keep the existing plan or bring the revised plan to

the Board for consideration. Mayor Karspeck asked if density was approved on the Knievel property. Planner Barkeen noted Knievel was approved with 124 dwelling units.

Trustee Buckingham noted that since the Planning and Zoning Commission failed to transfer the density to Heron Lakes, if the Board approved the plan with the density relocated to Heron Lakes, that would be a modification of the Planning and Zoning recommendation. Planner Barkeen agreed, noting that the developer is requesting 696 homes and the Planning and Zoning Commission reduced that number by 17 and left the units approved for Knievel on the east side of the parkway. They also approved 88 units on the Knievel property on the west side of the parkway and did not change the number on the Heron Lakes plan.

Board members recessed at 9:13 p.m. and reconvened at 9:27 p.m.

Mayor Karspeck noted the Board needs to consider the Knievel Annexation for approval. He asked if it is possible to prevent establishing densities, density transfers and bonuses as part of the annexation. Attorney Fickel noted that would be an option if it is acceptable to the developer.

Mayor Karspeck asked if there was anything else that was not considered. Planner Barkeen noted the recommendations being presented include the Planning and Zoning Commission recommendations and staff recommendations. She noted that the Planning and Zoning Commission did not include any of the conditions on the recommendation for the annexation.

Trustee Buckingham moved to approve Resolution 6-06, the findings of fact for the Knievel Annexation with the stipulation that all density references are deleted from the annexation of the supplement to the annexation. Second by Mayor Pro-Tem Ashcraft.

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

The motion passed unanimously.

Trustee Buckingham moved to approve Ordinance 1032, annexing the Knievel property and concurrently zoning the property to T (Transitional), finding that the request is consistent with the annexation criteria set forth in the Colorado Revised Statutes and Section 30-8-130 of the Town of Berthoud Development Code and accepting the supplement to the Annexation Petition, with the acreage involved in the project corrected to 221.25 acres. Second by Trustee Sommars.

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

The motion was approved unanimously.

Mayor Karspeck opened the floor for public comment regarding the rezone from T (Transitional) to PUD and there were no comments.

Trustee Buckingham moved to approve Ordinance 1033, rezoning the Knievel Property, attaching the conditions recommended by the Planning and Zoning Commission and Staff, and with the modification that the issues regarding density bonus, transfer of density bonus, finding that the request is consistent with the Town's standards for rezoning to PUD, and is consistent with the Comprehensive Plan, the Land Use Plan and the Best Development Practices. Second by Trustee Thorstensen. All members voted YES.

Mayor Karspeck noted the Board needs to consider the Heron Lakes Overall Development Plan. Planner Barkeen presented information regarding the recommended conditions, noting that the requested language regarding the environmental issues and the environmental management plan would need to be added to the motion.

Trustee Buckingham asked that item #12 be modified to state that "The Town agrees that it will reasonably cooperate with the property, at the Property Owner's expense and if it is in the Town's best interest to form a metropolitan district, in analyzing the feasibility of the same, for the purpose of levying an assessment or property tax to the Property or any portion thereof, in order to fund a portion of its public infrastructure costs."

Mayor Karspeck asked that Section 16 be modified to state that "The golf course option is selected and the golf course design shall incorporate the best development practices from the Audubon International's *Audubon Cooperative Sanctuary Program* to the maximum extent possible."

Mayor Karspeck also asked that a requirement be incorporated into the language in the ODP which states that the developer will construct the course clubhouse early in the project. Attorney Fickel suggested that requirement should be included in the development agreement. Planner Barkeen suggested that the Board request a phasing plan be included with the PDP.

Trustee Ashcraft asked that Section 17 be modified to state that "The Heron Lakes development shall mitigate storm water runoff by providing deep and shallow rooted phytoremediation techniques (per EPA), or other acceptable techniques, as acceptable to the Town's Public Works Department."

Mr. Birdsall noted they have concerns with the buffers included in item #15. He noted the Department of Wildlife has agreed verbally to changes in the buffers, but the letter from December 27, 2005 asks for a 450 foot buffer along the shorelines. He noted the

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environmental consultants are agreeable to variations in the buffer, based on the condition of the wildlife in the area.

Mr. Birdsall noted there are significant ramifications to not transferring the density. They are proposing removing the density from the property forever and are willing to dedicate the property to the Town as permanent open space. They are proposing that we increase the size of the open space in Heron Lakes and are asking for an increase in the density for the building envelope on that property. They feel this is a critical component to the plan. If you leave the density on Knievel, this takes the development away from the golf course and blocks the view from the parkway. This would result in high density housing on the Knievel property.

Mayor Pro-Tem Ashcraft expressed concern about changing the hunting buffers. Mr. Birdsall noted they are not restricting access to the state wildlife area. They are asking to move the hunting area away from the new homes that are being constructed in the area. He noted they are very anxious to work with Audubon International and the Town's environmental consultant to resolve these issues. Mr. Turner suggested that the Town Board make the final decision on the buffers with the recommendations from the Environmental consultant and the Department of Wildlife and that those decisions be postponed until the PDP.

Trustee Buckingham felt it was appropriate to include the items regarding Density Bonus and the Transfer of Residential Units.

Trustee Buckingham noted he would like to see 62 units, rather than 124 moved from Knievel to Heron Lakes. Mayor Karspeck noted the goal is to leave the property open so leaving 62 units on the property would not accomplish that goal. Trustee Buckingham noted he did not feel the Board would have approved 124 units on the property.

Mr. Birdsall noted they originally refused to reduce the number of units being transferred because the additional 124 lots will allow them to make the project better. He suggested the Board consider this at the PDP level once all buffers have been established and they are able to determine what would be the appropriate density for the property. He noted they consider the density transfer a win-win situation. The Town gets open space and a better golf course. He noted they are willing to commit to building the clubhouse and the golf course in the first phase of development.

Mayor Karspeck noted they are taking a risk by leaving this decision to the Board when the FDP comes forward. Mr. Birdsall agreed, but noted once the resource management plans and mitigations plans are developed, if there is not room for the density being requested, that is acceptable.

Planner Barkeen suggested that the Board include a requirement that the developer will provide a phasing plan.

Mayor Karspeck moved to approve the Heron Lakes Overall Development Plan, attaching the conditions recommended by the Planning and Zoning Commission and staff, as revised this meeting, finding that their request is consistent with the Town's standards for an ODP, and is consistent with the Comprehensive Plan, the Land Use Plan and Best Development practices, and with the modification that the issues regarding density bonus, transfer of density bonus and the Division of Wildlife recommendations and the golf course design and the southern boundary buffer be resolved at the time of the PDP approval and that a phasing plan will be in place at the of the PDP. Second by Trustee Thorstensen.

Trustee Buckingham moved to have the density transfer be reduced from 124 units to 62 units. The motion failed for a lack of second.

Trustees voted on the original motion. Mayor Karspeck and Trustees Gervasi, Thorstensen, Sommars and Buckingham voted YES. Mayor Pro-Tem Ashcraft voted NO. The motion was approved.

EXECUTIVE SESSION

Mayor Karspeck noted the Board needs to adjourn for a privileged attorney-client conference regarding quasi-judicial proceedings.

Trustee Gervasi moved to adjourn to an Executive Session. Second by Trustee Buckingham. The motion passed unanimously.

Board members adjourned to an Executive Session at 10:40 p.m. and reconvened and immediately adjourned at 11:15 p.m.

Mayor Milan Karspeck

Deputy Clerk Charlene Reed