

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
OCTOBER 23, 2007
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The Board of Trustees of the Town of Berthoud met for a regular meeting on Tuesday, October 23, 2007 in the Board Room at Town Hall. Mayor Karspeck called the meeting to order at 7:00 p.m.

MEMBERS PRESENT: Mayor Milan Karspeck
Trustee Don Ashcraft
Trustee Louis Gervasi
Trustee Peder Thorstensen
Trustee Glen Buckingham
Trustee Michael Patrick
Trustee Chase Sommars

STAFF PRESENT: Town Administrator Jim White
Town Clerk Mary Cowdin
Library Director Sara Wright
Town Planner Robert Anderson
Planner Carlin Barkeen
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

Administrator White reported that the Town of Berthoud was featured in the Institute of International Education 2006 annual report as a result of our international visits over the past few years and he distributed several copies for review.

Attorney Fickel reported that depositions are being held for the Town's employees for the Larimer County Road 17 case, which involved a contractor that hit a Town water line. Litigation is pending, the trial is set for the end of November, and after the depositions are completed, further information will be provided to the Board.

Mayor Karspeck presented summaries from the Metropolitan Planning Organization (MPO) regarding local investments and specific information regarding the funding that Berthoud has received.

CONSENT AGENDA

The consent agenda consisted of the minutes of the regular meeting held on October 9, 2007, the special meeting held on October 16, 2007, bills allowed for October 2007, and the liquor license renewal for Baci Ristorante.

Trustee Gervasi moved to approve the consent agenda as presented. Second by Mayor Pro-Tem Ashcraft. The motion passed with one abstention from Trustee Patrick.

PUBLIC HEARING RE: PROPOSED LIBRARY DISTRICT

Mayor Karspeck explained that this is an informational meeting for the voters and is required by the formation statute.

Dick Lyons, Attorney for the Berthoud Community Library District, explained that the petition for the proposed library district was submitted to the Larimer County Commissioners and the first hearing held the first week of August. The Commissioners referred the issue, which included the formation of the district, the proposed mill levy to support the district and the ability to de-Bruce, to the voters for the election on November 6, 2007. Allowing the district to de-Bruce will allow them to apply for state and federal grants. Statute requires that public hearings be held within each municipality within the proposed boundary of the district. Under that statute, the hearing is for the public to discuss the purposes, powers, rights, obligations and responsibilities of the district.

Library Director Sara Wright summarized the purposes, powers, rights, obligation and responsibilities of the district and noted that the formation of a district will increase the tax base for the Library. Residents who live in the portion of the Berthoud Fire Protection District that is in Larimer County will also contribute to the support of the Library.

Mayor Karspeck asked if there were other comments from the audience and there were none. He noted there is a public hearing scheduled for Thursday, October 25, 2007 at 2:00 in the Board Room at Town Hall. The public is invited to attend.

**PUBLIC HEARING/SECOND READING FOR ORDINANCE
RE: ADOPTING THE DEVELOPMENT CODE BY REFERENCE.**

Planner Anderson explained that the previously discussed proposed changes to the Berthoud Development Code are intended to update the Code to meet the Grant Requirements of the State of Colorado Department of Local Affairs (DOLA) Energy and Minerals Grant. To save a considerable amount of publication costs, the ordinance adopting these changes is being adopted "by reference" and as an Emergency Ordinance

to meet the October 31st deadline. He noted that Town legal staff has reviewed and approved the ordinance as to process, form and content.

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

Trustee Patrick noted that when we adopt a code by reference, there is no document attached to the official ordinance or motion. He asked how we make sure that the document approved is the same as is in use in the Town.

Attorney Fickel noted the approved document will be available for inspection in the Clerk's office and cannot be changed without approval of the Board.

Trustee Buckingham moved to approve the adoption of emergency ordinance 1070, by reference, changes to the Berthoud Development Code. Second by Trustee Patrick. The motion was approved unanimously.

**PUBLIC HEARING – COOPER PROPERTY ANNEXATION,
REZONE AND OVERALL DEVELOPMENT PLAN**

Planner Barkeen noted the applicants are presenting three items for consideration before the Board, including:

- 1) Annexation for approximately 205 acres from FA-1 (Larimer County, Farming) to T (Transitional);
- 2) Rezoning for approximately 190.5 acres from T (Transitional) to PUD (Planned Unit Development) zoning district;
- 3) An ODP for approximately 190.5 acres for mixed-use commercial, residential and recreational uses, with a maximum 968 dwelling units (5.08 du/ac) and 270,000 square feet of commercial.

At the Planning and Zoning Commission meeting on September 27, 2007, the Commission recommended approval of the three requests, with the following conditions:

- 1) The low-density area is extended south to match the Town's Land Use Plan.
- 2) That the area south of the 287 Parkway is not developed for residential or commercial.

Ms. Barkeen noted the applicant is willing to restrict residential development in the area south of the 287 Parkway, but they are asking the Board to allow commercial development in the area.

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Planner Barkeen summarized the staff report and recommendations. She noted this applicant is proposing clustering the residential units in the development to maximize the open space in the area. The proposal recognizes the separator agreement and the open space requirements of the Town.

Scott Sarbaugh, owner and partner of the project, provided a detailed summary of the project and noted that David Blake from Calthorpe and Associates and Roger Walker, project coordinator, are present.

Mr. Sarbaugh noted they are in agreement with the recommendation regarding no residential development on the south side. He noted they are asking to include 10,000 feet of commercial development on the corner in that area that would be valuable to the Town with regards to the collection of sales tax dollars.

Mr. Sarbaugh explained that this submission does not include the recommended change to move the low density area to match the existing land use plan. He noted that when the comprehensive plan was approved, this area was approved for commercial to protect sales tax dollars. When you move the low density line down, you are impeding the ability to design and implement the commercial node. He summarized what is planned for the area.

David Blake with Calthorpe Associates explained the basis of new urbanism and gave a power point presentation representing built communities that are not only high density mixed use, but show the livability of this type of project.

Trustee Gervasi noted he would not be in favor of eliminating the commercial area from the south section of the development.

Trustee Gervasi asked whether the southern area would be private or public open space. Planner Barkeen noted depending on what is in the area, parts may be private and parts may be public. As an example, a drainage area located here would be private. Mr. Blake noted there are common amenities that could be considered, and the decision regarding private or public will be made depending on the specific areas.

Trustee Gervasi asked about setbacks. Mr. Sarbaugh noted they are asking for relief from the setback for the commercial area.

Trustee Gervasi noted that several of the slides of the Stapleton area presented some of the same characteristics we are trying to avoid, with large parking lots and wide streets. Mr. Blake noted that the slides were not always well done, and he suggested that the view from the streets show a very livable space. Parking is necessary for larger uses, but the idea is to hide the parking areas behind stores on the main streets.

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Trustee Gervasi expressed concern about the high densities, but was encouraged by the proposed commercial areas.

Trustee Buckingham noted there was discussion in the neighborhood meeting about raising the area adjacent to the railroad and he asked what is being considered. Mr. Walker explained that the property in this area is five feet lower than the culverts that were put in for drainage. This is already causing drainage problems in the area, and by filling this in and raising the area, this should alleviate the drainage problems which are already occurring.

Trustee Buckingham asked how the applicant sees commercial and residential development coming on line. Mr. Sarbaugh explained that the development will be phased, but you have to have rooftops before you can deliver large commercial.

Trustee Buckingham noted "the Board has heard the rooftops before retail nonsense before." He noted the Town already has a 78% leakage of our sales tax dollars and suggested we could support some retail. He proposed a link between the residential and commercial development. The first 25% of residential development would be allowed, and then the next 25% would be allowed if the commercial area is developing at the same time. He noted he is having a problem with being asked to rubber stamp a plan with 12/du per acre, with no sense of how soon the commercial area will come on line.

Mr. Sarbaugh responded that when you are marketing a mixed use community, the expectations on all sides are for commercial to be included with the residential. The way to get commercial is to have a proven product and to be able to adapt to the current market conditions. He noted future phases of this development will present all sorts of residential and commercial opportunities and the plan will show the relationship between residential and commercial.

Trustee Buckingham noted the information provided also included the discussion of a roundabout. Mr. Sarbaugh noted roundabouts are not included in the plan at this time. Once a traffic study is done, these issues can be addressed.

Trustee Buckingham asked what comments have been received from Larimer County Engineering. Mr. Walker noted that the comments were regarding what reports they will be required to submit. Once the reports are submitted and reviewed, there will be recommendations for the Board to review.

Mayor Karspeck noted that while he is a strong proponent of rail, this plan presents a rail station in the middle of a low density area that would be difficult to access, rather than in a high density area which would be more appropriate. He noted in discussions regarding rail for our area, this was not one of the proposed locations for a rail stop, and it does not seem that it is likely that one will be placed in this area.

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Mr. Sarbaugh agreed that any rail for the area is in the future, but he felt that it is important to plan for it now. At some point, residents of the area will need to utilize public transportation, and since this property is adjacent to the railroad track, they feel that they should come up with a future plan that would utilize public transportation in the area.

Mayor Karspeck noted that when the buffer was identified along 287, the goal was to create view corridors for the residents of the area and those people using the Parkway. He suggested that this plan removes our opportunity to protect this area.

Mayor Karspeck expressed concern about the access to the area. CDOT has eliminated access for the first 600 feet, and he asked the plan for the area. Mr. Blake noted at the 600 foot mark, they would like to see a right in/right out access and then a full intersection connecting this property with the Bader property across County Road 17. Mayor Karspeck encouraged to applicant to find creative ways to access the property, rather than utilizing traffic lights which can create delays. He noted when you are considering this kind of density feeding onto County Road 17, you need to look closely at land uses and transportation. This is a difficult property to develop and he felt this is not an appropriate place for this much density. He encouraged the developer to consider partnering with the Town to create open space in the area.

Mayor Pro-Tem Ashcraft asked if the applicant has make arrangements for driveway access for the Rice Property. Mr. Sarbaugh noted access has been granted across the property and that will be honored and respected.

Mayor Pro-Tem Ashcraft felt sharing open space would be a good idea and would benefit both parties. He noted that the Town has been actively pursuing rail access from Longmont and he suggested any help the applicant can provide would be appreciated.

Mayor Pro-Tem Ashcraft noted he likes the idea of high density over commercial. He also noted he is tired of hearing that houses have to come first. With sales tax leakage at almost 80%, the town should be able to support some retail. He noted he would like to work with a development that would be willing to begin the commercial development at the same time as the residential development, which would be a greater benefit to the Town.

Trustee Patrick noted that nothing that was presented during the power point presentation is included in the formal ODP. With the ODP as it is presented, we could just as easily have high density, ugly apartment buildings presented at the next phase. He noted his expectation that the kind of development presented will never find funding in Berthoud. That type of development works in larger areas, such as Stapleton and San Francisco, but not here. He noted he would love to see this come to fruition, but the presentation has not been reduced to writing and attached to the plan.

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Trustee Patrick noted this property was originally to have been a part of the separator and the only reason it was modified was to bring a commercial node on the corner. The town needs retail sales tax based commercial to realize improvements on a financial basis. If we are making exceptions for retail or commercial properties, that would be acceptable. Any other exceptions to the buffer would not accomplish our original goal.

Trustee Patrick noted putting a park and ride in the back corner of the property is inconsistent with a low density area, and traffic will be a problem if this occurs. He noted that while he is excited about public transit from Berthoud to Denver, he is not sure this is where it will occur.

Trustee Patrick noted that private open space is an oxymoron. Space is either public or private.

Mr. Sarbaugh noted the vista corridors are protected in this plan. There are 62 acres of buffer, and the uses they are requesting are those that are allowed in the buffer zone according to our Land Use Plan. He summarized the plan for the area and noted that specifics, such as open space versus private space, will be defined at a future presentation of the preliminary plat. At this stage, broad brush painting occurs, with specifics defined in the next phase.

Mayor Karspeck opened the floor for public comment.

Karen Stockley of 316 Bothun Road noted this plan is almost exactly the same as the plan presented three years ago, except that the density has increased from 900 homes to 960 homes. She asked if the Town is so desperate for commercial that we are willing to approve anything just to get retail sales tax dollars. The Town already has sales tax leakage, and we should be able to support commercial in the area. This kind of planning is a good thing, but moving the heart of Berthoud into the separator does not make sense.

Nancy Lamb of 1101 N CR 19 noted that the Planning and Zoning Commission did not intend for this whole area to be commercial. She noted she would not want to be making the decision regarding approval of this project, because the decision is difficult. All commercial needs houses to go forward, but with the addition of these homes, the number of homes in this area will exceed what is in Berthoud now. If we want to keep Berthoud as the core part of Town, then we need to limit densities north of Town.

The Board considering a proposed resolution which sets forth the finding of fact.

Trustee Buckingham moved to approve Findings of Fact Resolution No. 22-07, for the Cooper Property Annexation. Second by Trustee Gervasi. The motion was approved unanimously.

Mayor Karspeck read the title of the proposed ordinance annexing the property.

Trustee Buckingham moved to approve Ordinance No. 1071, for the Annexation and Rezoning (to T, Transitional) for the Cooper Property application, finding that the request is consistent with the C.R.S. and Town of Berthoud's criteria for annexation. Second by Mayor Pro-Tem Ashcraft. The motion passed unanimously.

Trustee Buckingham moved to approve the Cooper Property rezoning from T (Transitional) to PUD (Planned Unit Development, Ordinance No. 1072, finding that the request is consistent with the Town's criteria for PUD zoning. Second by Mayor Pro-Tem Ashcraft. The motion passed unanimously.

Trustee Patrick moved to approve the Cooper Property ODP with the following conditions: No residential development south of 287, a three-acre commercial node on the southeast corner of the property adjacent to 287, compliance with the land use plan and the town development code with respect to what can be built in the buffers and a prohibition on stand alone high density residential in the commercial node. Second by Trustee Buckingham.

Trustee Patrick explained that the purpose of the restriction is to approve this property for mixed use, but not for a standalone 10-story apartment building. This applicant is requesting approval for a mixed use development, which is what this approval suggests. If some future developer comes in and tries to build ten apartment buildings, that will not be allowed.

Trustee Buckingham withdrew his second.

Second by Trustee Sommars.

Trustee Gervasi asked if the applicant will be allowed to intrude into the buffer. Trustee Patrick responded that they are entitled to intrude for the specific uses allowed in the development code.

Attorney Fickel asked if the intent of the motion is to prevent tri-plexes and duplexes. Trustee Patrick noted they would have to include these as a part of a mixed use development, which would prevent construction in the absence of companion commercial development.

Trustee Patrick further moved that the working assumption for the motion is that commercial developments are exempt from the buffering requirement. Second by Trustee Sommars.

When asked, Trustee Buckingham explained that he withdrew his second because he felt we are only removing stand-alone high density in this area. It was pointed out previously that the only reason the Board was allowing this density was because we wanted a retail node in this area. He noted he still does not see that this motion gets us the retail node we need.

Trustee Patrick noted he shares the concerns about commercial. Retail sales tax is the driving impetus for the development of this area. If someone wants to build retail residential above retail, that would not be impacted by this motion and if someone can bring something like that to fruition in Berthoud that would be acceptable. If that is not possible, then it is not acceptable to bring high density usage without commercial.

Attorney Fickel asked if mixed use as presented is satisfactory and will be presented in more detail in future presentations.

Trustee Patrick noted either pure commercial or commercial with retail attached would be acceptable.

Mayor Pro-Tem Ashcraft and Trustees Patrick, Thorstensen and Sommars voted YES. Mayor Karspeck and Trustees Gervasi and Buckingham voted NO. The motion passed.

SET PUBLIC HEARING – ORDINANCE RE: MUNICIPAL FEE

Administrator White noted the finance committee has included a municipal fee to cover certain municipal services. The proposed fee is \$6.24 per unit per month, which is an increase from the current fee of \$4.05.

Trustee Buckingham moved to set the Public Hearing on November 13, 2007. Second by Trustee Patrick. The motion passed unanimously.

SET PUBLIC HEARING ORDINANCE RE: WATER & WASTEWATER RATES

Administrator White noted the Town is requesting rate adjustments of 15% in water and 18% in wastewater.

Trustee Gervasi moved to set the Public Hearing on November 13, 2007 to consider rate adjustments for 2008 in the water and wastewater Enterprise Funds. Second by Trustee Buckingham. The motion passed unanimously.

SET PUBLIC HEARING – 2008 BUDGET & RELATED ORDINANCES

Administrator White noted that the final draft of the 2008 budget and all related ordinances will be included in the November 13, 2007 packet. This budget includes changes that were discussed on October 16. He noted that if the budget is approved in November, then we may need to make adjustments when the final mill levy information is received.

Trustee Gervasi moved to set a public hearing for the 2008 budget and related ordinance for November 13, 2008. Second by Trustee Buckingham. The motion passed unanimously.

In reviewing future agendas, Trustee Thorstensen asked to move the item regarding contract trash service to a special meeting on November 6. Administrator White noted we have consultants coming to the meeting and he will have to determine if it is possible to move the meeting.

Trustee Patrick noted since this is an issue that creates considerable public concern, he would support moving it to a date where everyone can attend. Mayor Karspeck noted there have been a significant number of meetings over the past few that have been attended by less than all of the trustees, so he encouraged all the trustees to attend the meeting where this is discussed.

With no further business before the Board, the meeting adjourned at 9:40 p.m.

Mayor Milan Karspeck

Deputy Town Clerk Charlene Reed