

TOWN OF BERTHOUD
BOARD OF TRUSTEES
REGULAR MEETING
OCTOBER 9, 2007
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The Board of Trustees of the Town of Berthoud met for a regular meeting on Tuesday, October 9, 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 Louis Gervasi
Trustee Peder Thorstensen
Trustee Glen Buckingham
Trustee Michael Patrick
Trustee Chase Sommars

MEMBERS ABSENT: Mayor Pro-Tem Don Ashcraft

STAFF PRESENT: Town Clerk Mary Cowdin
Planning Director 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

Town Clerk Cowdin reminded the Board that there is a Finance Committee scheduled for Thursday morning at 7:00 a.m. in the conference room at Town Hall.

Attorney Fickel requested an executive session for the end of the meeting to discuss negotiations.

CONSENT AGENDA

The Consent Agenda consisted of the minutes of the regular meeting from September 25, 2007 and the special meeting held on October 2, 2007, the bills allowed for August 2007 and a special event liquor license for BAHA.

Trustee Gervasi moved to approve the consent agenda as submitted. Second by Trustee Thorstensen. Trustee Patrick abstained and all other members voted for approval.

PUBLIC HEARING/FIRST READING FOR ORDINANCE
RE: ADOPTING THE DEVELOPMENT CODE BY REFERENCE

Planner Anderson noted this is the first reading of the ordinance for changes to the Development Code. The second reading and the public hearing for this change is set for October 23, 2007.

DOWNTOWN DEVELOPMENT AUTHORITY

Planner Anderson explained that the Board of Trustees established an annual goal for 2008 to pursue the establishment of a Downtown Development Authority. The proposed resolution instructs staff to take the steps necessary to establish the authority and get this on a future ballot for approval by the voters.

Trustee Buckingham explained the benefits of having a Downtown Development Authority. This would allow property owners in the business district of Berthoud business owners to borrow money to make significant improvements in their downtown properties, at an interest rate comparable to the rates that municipalities pay. The City of Fort Collins has a Downtown Development Authority, and that has allowed them to make significant improvements in their downtown. This will benefit the Town with more retail sales which increases our sales tax collections. The Town will pay the out of pocket expenses to form the authority, but will not be involved in the funding of improvements. The business owners will pledge the increased value of their property and the anticipated increased revenues as collateral for the loans. He explained that this resolution authorizes the spending of up to \$35,000 for the creation of the district, since there are fees involved in the process and the Town will need to hold an election to get this approved.

Trustee Gervasi asked if we have identified a source for the \$35,000 that is needed to go forward with this project. Town Clerk Cowdin noted the funds will come out of the general fund.

Trustee Buckingham noted that Fort Collins has linked their DDA to their historic district, which has also made grant monies available to the business owners, which has allowed them to make impressive improvements in the downtown area.

Mayor Karspeck read the title of the resolution and summarized its contents.

Trustee Thorstensen moved to approve Resolution 21-07, indicating the Board's support for the creation of a Downtown Development Authority. Second by Trustee

Sommars. Trustee Gervasi voted NO, and all other members voted in favor of the motion.

BERTHOUD HOLLOW FILING #1

Planner Barkeen noted that R & M Land Holding, LLC is presenting requests for approval of their preliminary plat and their PDP. This property is located south of LCR 10E and west of 4th Street. She summarized the request for the Board, noting that this plan is consistent with the Town's Comprehensive Plan goals and policies, the Land Use Plan and Best Development Practices. Staff is recommending approval with the following conditions, as recommended by the Planning and Zoning Commission:

- 1) The park will be included in Phase 1 of the development
- 2) The applicant will work with staff towards a safe collector street cross-section, which preserves the trees adjacent to 4th Street (adjacent to the southern portion of the property).
- 3) Provide a temporary alley where Outlot B is depicted until the time that the north-south alley continues south to the adjacent property.
- 4) Identify on the plans that the drainage area located southeast is temporary and will need to be modified at the time that a development application is filed for the property to the south of this property.
- 5) The applicant will work with Town staff in pursuing possible better street connections to the west from the southwest corner of the property.

Planner Barkeen explained the problem with the location of a safe collector street and suggested a possible solution to this problem. There is a historic home directly in the path where the road would go for a straight access, and there is also a large tree in the area. It was determined it is not appropriate to destroy the house and tree to maintain the street grid and there was a suggestion for a modified grid that would solve the problem.

Tom Goodhew, the architect, Stuart Gorton, the engineer, and Mark Green, the property owner were present to answer questions.

Trustee Patrick asked if the plan is for the road to tie into County Road 4. Mr. Goodhew explained that there is a house on the property that is in line with where the road would need to go for a direct connection. The plan is to go around the house.

Trustee Buckingham asked if the plan is to put a major arterial south of this subdivision. Planner Barkeen noted the proposed transportation plan is being reviewed, but it projects a major arterial about a quarter of a mile south of this project.

Trustee Patrick noted that this roadway is being rerouted for a tree. He pointed out that the road will last 70-80 years, and the tree is older and will probably not last that long.

He asked what changes will occur when the tree dies. Planner Barkeen noted that there will be no need for changes when the tree dies. The proposed road will have parking, a bicycle lane and be a normal width. Around the tree, we are eliminating the parking area and the bicycle lane, and the roadway will still be a normal width.

Planner Anderson noted that staff is recommending that the street be completed as proposed and left as is when the tree dies. It would be the Town's responsibility to make changes in the street, but unless there is a significant increase in traffic in the area, it will not be necessary.

Trustee Patrick noted that the plan allows for a temporary road around the park. Planner Anderson noted that there have been indications that the Trails at Sugar Creek is going to request a modification to their road plans, so staff hopes to remain flexible to work to coordinate these plans in the future. At this time, we are treating this as a stand alone project. Trustee Patrick suggested that ten years from now, we may still have a temporary road, and he asked what can be done to make sure that the road is eventually paved. Planner Anderson noted that can be included as a condition to approval.

Trustee Patrick questioned the variance regarding the rear setbacks. Mr. Goodhew noted they are asking for 5 feet instead of the 15 feet allowed in the development code. Trustee Patrick asked if the intent is to stagger the setbacks, and that was confirmed by Planner Anderson.

Trustee Patrick noted the plan indicates that the alleys will not be paved. Planner Barkeen noted that is not a part of this phase of the application process, but will be considered at a future meeting.

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

Trustee Patrick moved to approve the Berthoud Hollow Preliminary Plat application, finding that the request is consistent with the Town's criteria for a preliminary plat and the Town's subdivision regulations. Second by Trustee Gervasi. The motion passed unanimously.

Trustee Patrick moved to approve the Berthoud Hollow PDP application, with Planning and Zoning Commission's recommended conditions and with the additional conditions that the temporary all weather road will be paved in five years, if development in the area has not already required that it be paved, that the rear setback be approved at 5' and staggered between adjacent properties, that the alley request will be attended to at a later date, and that Staff and the applicant continue to work together to pursue better street connections to the west, and that the street connections to the west and around the park will be addressed in the next filing. Second by Trustee Gervasi. The motion passed unanimously.

BERTHOUD INDUSTRIAL PARK PUD AND ODP AMENDMENT

Planner Barkeen explained that the applicant is requesting an amendment to the approved ODP to change a portion of the residential land use area to commercial, employment/light industrial and shooting range. She explained that the Planning and Zoning Commission recommended denial on this request based on findings that the proposed land uses are not compatible with the Town's land use plan.

Planner Barkeen noted the original ODP included 20 acres of commercial. This proposal is to allow additional property in the development to be used for commercial, employment/light industrial and would include an expansion of the existing gun club. The properties surrounding this area include the transfer station and a dairy, and any modification of this plan will bring up changes that must be made. If this is approved by the Board, the land use plan will have to be amended. There is not a suitable category in our land use plan to accommodate the shooting range. There would also need to be an amendment to the Town's municipal code to allow the discharge of firearms within Town limits. The current land use plan does not extend the commercial, employment/light industrial area all the way to the south, so that would also need to be modified. Regardless of what is proposed, there will be planning issues that must be addressed.

Planner Barkeen noted it is staff's opinion that this area could be compatible with the proposal for light industrial commercial and employment area. This would add to the Town's job base, and could be beneficial to the Town. She noted the shooting range area is not compatible with urban areas.

Mel Green, the president of the Berthoud Gun Club, addressed the Board. He explained that the gun club has been a part of the community since 1952. The shooting range has been annexed into the Town and they are proposing to expand their operations. He noted the ground at the shooting range was given to the Town by the Berthoud Gun Club. It is on a landfill and is being beautified and cleaned up. This facility is used free of charge by many youth organizations from Berthoud and the surrounding area.

Jackie White addressed the Board. She is freshman at Berthoud High School and class president and has spent many hours at the Gun Club. She feels it is an asset to the community.

Zach Bauer of Berthoud suggesting that shooting is a good hobby and he felt it would be good for the Board to support the Gun Club.

Logan Gillespie of Mead indicated that she has because of the Berthoud Gun Club, she has had the opportunity to compete at state competitions for the past two years. Without the Gun Club, that would not have happened.

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Mr. Green noted the Berthoud Gun Club has impacted a lot of lives. There have been competitors in the state shoot off and archery competition. The facility had sanctioned 4H projects and provided a facility to allow 500-600 kids to obtain their shooting experience to allow them to hunt in Colorado.

Mr. Green explained that they have visions of putting buildings down range to the north and east side of the property, and plan to build a berm on the west side. They would like to have a building that would host between 150-200 people, which could be used for community events.

Brad Wright of Colorado Youth Outdoors in Loveland noted that one of the goals of their organization is to promote healthy relationships between parents and their children. One of the programs they support is trap shooting. The Berthoud Gun Club is the only facility in the area where parents and their children can go for trap shooting. He noted that the facility is over capacity and expansion would be beneficial.

Jim Birdsall explained that the Hillside Commercial Group has had the Green Acres property under contract and they have been working on a plan that is consistent with the approved ODP. He explained that with the surrounding land uses, which include a dairy farm, the cemetery, the landfill, and the police gun range, it is difficult to visualize residential in the area. He noted that the Berthoud Gun Club has had their permit extended for ten years, and all the remaining businesses are in the area to stay. He suggested that a commercial, employment/light industrial usage would be more compatible with the businesses in the area. He noted they are asking the Board to consider a change in the ODP to allow that usage and also to expand the Berthoud Gun Club. This idea was presented to the Planning & Zoning Commission, and they were not in support of the change. He asked if the Board would be willing to support this modification since it is an opportunity to expand our commercial area.

Mr. Birdsall noted the conversation at the Planning Commission was that they do not oppose the existing Gun Club, but they do not feel it is appropriate in the Town limits. Mr. Birdsall noted the Town surrounds the Gun Club on the north and west. He suggested the best way to control the hours of operation, lighting and noise of the club would be to annex the property. This is a tough land use, and as residential in the area increases, there is a tendency to try to eliminate this type of usage.

Mayor Karspeck asked what options the Board has in considering this request. Planner Anderson explained that the land use plan is under the purview of the Planning and Zoning Commission and it is currently the regulatory document used in decisions of this type. If the Board wants to take action on this proposal, then the land use plan would need to be made an advisory document.

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Nancy Frase of Frase Consulting Group Inc. addressed the Board representing neighbors next to this area. The neighbors are concerned with having an industrial area next to their homes, and there are proposed homes to the west and existing homes to the east. She noted there is a need for a facility such as the Berthoud Gun Club, but they do not feel a developing area is an appropriate place for it. She noted the majority of the shooters are kids, and she suggested that creates a good chance for an accident. She suggested the Berthoud Gun Club has a history of noncompliance, and felt that since many of the members are from outside Berthoud, the Gun Club is providing a benefit to nonresidents at the expense of Berthoud residents.

Ira Hooker noted he has lived next to the Gun Club for years and is a proponent of the Club at its current size and usage. He explained that he spent three years on the Community Advisory Committee, and the land use plan that came from those meetings did not allow industrial usage in this area. He felt that the requested changes would create a level of noise that is not compatible with the surrounding neighbors.

Dan Junk of Longmont explained that he is one of the instructors at the Berthoud Gun Club working with youth. He noted that the 4H clubs have an accident rate of .001 per 100,000 kids taught. No other sport comes close to that rate. This program is teaching kids how to shoot safely and to handle weapons. He suggested if we do not support this club that would be a tragedy. This country was founded on the specific beliefs, and one of those is the right to keep and bear arms. He encouraged the Board to provide the support necessary to keep the club going and allow the Gun Club to provide training for our youth.

Larry Bebo of Berthoud noted he is not against the Berthoud Gun Club and suggested they do a good job. He noted he has proposed to do a development across the street from the Gun Club, and his concern is not with the Gun Club, but with the change to commercial, employment/light industrial. He stated that he will not build a residential area next to an industrial park. He suggested he would not like to live next to a park of this type, and he does not feel that others will want to live there. He suggested the Gun Club should remain as a part of the community, but he will not build a residential development across from an industrial park.

Richard Green, the owner of Green Acres, noted his original intent was to fill this area with houses, but it is difficult to sell homes for \$400,000 if there are people shooting large amounts of ammunition. He suggested the Gun Club has continued to grow without permits. He suggested this is the only option for this property since the Gun Club continues to grow and the noise cannot be abated. He noted he has contacted lawyers and does not want to shut the Gun Club down, he just wants them to pay for his losses.

Jeff Wood suggested it is odd that people will move homes in next to an airport and then complain about the noise. The Berthoud Gun Club has been in business a long time and

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he did not feel it is appropriate for people to move in next to the Gun Club and then complain about the noise.

Jeff Stamp asked the Board to consider this proposal and allow the Gun Club to create a community center for all the residents of the community.

Bill Geddis suggested that someone needs to come up with a plan to get the Berthoud Gun Club moved to a more desirable location.

Mr. Birdsall responded to the comments, noting that they are not proposing heavy industrial for this area. The type of industrial they are proposing would be very compatible next to residential. He noted if they are required to put residential in this area, they will have a problem completing this development.

Trustee Patrick asked Mr. Birdsall how he would feel if this proposal was being made for property adjacent to Heron Lakes. Mr. Birdsall noted that while expansion of the Berthoud Gun Club is a complicated question, the proposed industrial area would be a great buffer between the existing gun club and the residential area that is planned to the west. He noted a gun club is a tough land use in any urban area. He suggested that bringing the Gun Club into the Town is a way to address the problems, since the Board would have more input into the operation of the club.

Trustee Patrick noted that Mr. Bebo was more concerned about the change from residential to industrial, than about the Gun Club. Mr. Birdsall noted the impact from this change to industrial should have a negligible impact on the area.

Trustee Sommars asked Planner Anderson what would have to occur for the Board to take action on this request. Planner Anderson explained that at the present time, the Land Use Plan is a regulatory document. If the Land Use Plan was changed to an advisory document, then the Development Code could be changed to allow this usage. This applicant is searching for direction from the Board regarding whether this change can be allowed.

Trustee Sommars felt any development that brings employment to the Town would be beneficial.

Mayor Karspeck suggested that Mr. Birdsall has done an excellent job and this could be a buffer in this area. He noted he hoped there is a way to accommodate this application and allow this to go forward. He noted he would like to see an alternative for Second Street, and see the Town allow mixed use along Second Street. There needs to be a better place for industrial uses.

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Trustee Buckingham noted he is a supporter of the Gun Club. The problem is that as growth nears the facility, there is increased concern. He noted for the long term, it would be good for the Gun Club to find an area that can be isolated.

Trustee Buckingham noted for the other area, we already have an approved ODP, and this proposal reflects significant changes. This use is not consistent with the land use plan, and there are hundreds of acres that could be used for light industrial around Berthoud. He noted he does not feel it is a good idea to bring an ODP that has been approved and request changes that are not compatible with the land use plan.

Trustee Gervasi noted he has lived on 1st and Welch for years and he can hear the noise from the Berthoud Gun Club from his home. He noted they were here before he moved to Berthoud. He noted he supports them being able to remain where they are. They provide a service to our community and support for our youth.

Trustee Gervasi noted he is sympathetic to Mr. Green, but he pointed out that the Gun Club has been in operation since 1952. The development plans for the other properties in the area were done long after the gun club began operating. There has to be some rights granted to a business that was here long before these developments were planned. He noted he is in support of this proposal.

Trustee Thorstensen asked if there are retail sales at the Gun Club. Mr. Birdsall noted as part of the expansion, the plan would be to include a pro shop and concessions area. Trustee Thorstensen noted this is an opportunity for the Town to benefit from a first class state of the art gun club. He noted he would be excited to live near a facility of this type. He suggested that this will be a draw to the community and should be supported. He also felt the industrial park would be a good neighbor in this area.

Trustee Patrick noted the issue is not whether the gun club will continue to exist. They have been granted right to continue as they are for the next ten years. The residents located around the gun club are willing to tolerate its existing use. The real question is whether we are going to make a radical change in the use approved for this property. At some point in time, this will be in the middle of Berthoud, and he pointed out that there are no other communities that have a gun club in the middle of town.

Trustee Patrick noted we are trading off a proposed residential development that has been in the works for many years in an area where we have indicated that we want to see residential and retail commercial, and allowing it to be turned into light industrial, which will not bring retail tax dollars to the Town. He noted it is that the Board's responsibility to balance the concerns of the property owners, and he suggested that the solution is not to make the problem bigger and in the middle of town. Expansion is not going to result in less noise. He noted if one of our major goals is to develop a strong sales tax base,

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then we are not accomplishing that goal with this change. He also suggested that the majority of the residents of Berthoud are not aware that this is being considered.

Mayor Karspeck noted the land use plan is not sacred. Mr. Birdsall has pointed out problems with the plans for this area and the change he is proposing makes sense. This property is on the edge of Berthoud and the proposed light industrial usage could be compatible with the residential development planned for the area.

Trustee Buckingham noted the Town has been discussing the acquisition of large amounts of land south of the gun club property and he suggested the club be relocated to a portion of that land with perpetual buffers that might resolve this problem.

Trustee Thorstensen felt that would be a good idea. He agreed that the Land Use Plan is a guideline and felt that Mr. Birdsall could make this an excellent facility.

Trustee Gervasi pointed out that the Berthoud Gun Club is willing to invest time and money into this project and they do not have a guarantee of existence beyond the next ten years. He also pointed out that ten years ago, the only thing east of Welch was the Bed and Breakfast and the landscaping company.

Mayor Karspeck asked Planner Anderson what options the Board has in addressing this request. Planner Anderson noted the Board can send this back to the Planning and Zoning Commission for further consideration or they can amend the preferred land use plan to an advisory document, which would make the Development Code primary and that would allow the Board to make the decision.

Trustee Buckingham suggested this request be returned to the Planning and Zoning Commission with a request that they look for alternate solutions.

Larry Bebo asked to address the Board, so Mayor Karspeck reopened the floor for public comment.

Mr. Bebo noted he is fine with everything as it exists right now. He noted he does not want the gun club to be moved onto the Town's property, as that would put it next to his house.

Ms. Frase noted that up until 7-8 years ago, it was a matter of a few people shooting occasionally. Now the Berthoud Gun Club operates up to 80 hours a week and discharges up to 5,000 rounds per week. That is not what the neighbors signed up for.

Mr. Hooker noted he does not want his property values affected by an industrial property. He suggested Mr. Green can continue to make a profit using his land for agricultural purposes.

Mayor Karspeck closed the floor for comment and noted he would like to have the Planning and Zoning Commission reconsider this request.

Trustee Buckingham noted the commission was put in place for a reason and he feels it is important for the Board to support the commission. He noted he would not like to think we are creating a process where an applicant can not like what they hear from the Planning and Zoning Commission, so they bring their request to the Board, looking for a different decision.

Trustee Buckingham moved to send this request back to the Planning and Zoning Commission for additional consideration to find a solution. Second by Trustee Patrick with a request that the motion be modified. Trustee Buckingham withdrew his motion.

Trustee Patrick moved to send this item back to the Planning and Zoning Commission for additional consideration with the express comment that the Board is not trying to pre-ordain their decision. Second by Trustee Buckingham. Mayor Karspeck and Trustees Buckingham, Patrick and Gervasi voted YES. Trustees Sommars and Thorstensen voted NO.

EXECUTIVE SESSION

Mayor Karspeck noted the Board is adjourning to Executive Session for a privileged attorney-client conference regarding a potential lawsuit, and instructions for negotiations regarding annexations and electric municipalization.

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

The Board adjourned to Executive Session at 9:35 p.m., reconvened and adjourned at 9:40.

Mayor Milan Karspeck

Deputy Town Clerk Charlene Reed