

TOWN OF BERTHOUD  
BOARD OF TRUSTEES  
REGULAR MEETING  
APRIL 22, 2008  
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The Board of Trustees of the Town of Berthoud met for a regular meeting on Tuesday, April 22, 2008 in the Board Room at Town Hall. Mayor Tom Patterson called the meeting to order at 7:00 p.m.

MEMBERS PRESENT: Mayor Tom Patterson  
Mayor Pro-Tem David Gregg  
Trustee Michael Patrick  
Trustee Dick Shepard  
Trustee John Bauer  
Trustee Jeff Hindman

MEMBERS ABSENT: Trustee Glen Buckingham

STAFF PRESENT: Town Clerk Mary Cowdin  
Chief of Police Glenn Johnson  
Planning Director Robert Anderson  
Public Works Director Tony Huerta  
BATS Director Eric Boyd  
Town Attorney Bruce Fickel  
Deputy Town Clerk Charlene Reed

**PLEDGE OF ALLEGIANCE**

Mayor Patterson led the pledge of allegiance.

**CITIZEN PARTICIPATION**

Valerie Pearson of 1032 6<sup>th</sup> Street Court addressed the Board regarding RV parking. She has had an RV parked at her house for 30 years and the Town's Code Enforcement Officer has required them the vehicle. She explained that she contacted her neighbors and received no objection to having her RV parked in front of her house. She described where they park the vehicle and asked the Board to reconsider the changes in the ordinance regarding RV parking. She noted that even the Code Officer felt the location for her RV was appropriate. Mayor Patterson said he would request a review involving the Chief, staff and whatever Board Members are interested prior to the next meeting to determine what needs to be done.

**Trustee Bauer moved to put temporary injunction on the ordinance until a review is complete. There was no second.**

Mayor Patterson noted the majority of these issues have been addressed and this is allowing people to move the RV's back until a decision is made.

**Trustee Bauer moved to put a temporary injunction on the ordinance for Mrs. Pearson until the review is complete. There was no second for the motion.**

Trustee Hindman noted he would have a problem with doing this for one person. If there is a problem with the code, it should be reviewed and revised for everyone. There may be others that have a problem with the code who are not here this evening. He asked Town Attorney Fickel about the legalities of suspending the ordinance while it is reviewed. He felt it is better to have complaint based code enforcement, and if no one is complaining, then the ordinance should not be enforced. If we are going to review this and in the interim not have people comply with it, he would like to hear from the attorney regarding how this is accomplished.

Attorney Fickel suggested that staff be instructed to put this at the lowest end of its concerns with respect to enforcement and to enforce everything else prior. He noted that when someone gets a citation or notice, they can come into court and request a continuance until the matter can be reconsidered by this Board and that will typically be granted while it is reviewed. If the board changes the code, then the Town would not be prosecuting anyone for something that has been changed. He suggested the easiest thing to do would just be to move to have staff not enforce the ordinance.

Attorney Fickel noted one concern is dealing with items that are not on the agenda and not before the Board for action. The Board has no other information than that provided by one individual, and notice has not been published to the community that the issue will be considered. It would be preferable when the issue is not on the agenda to direct staff to minimize enforcement until proper notice can be published.

**Trustee Bauer moved to direct staff to lower the priority of enforcement of the ordinance regarding RV Parking to allow for time to review. Second by Mayor Pro-Tem Gregg.**

Trustee Hindman noted this should be considered on the next agenda if we are minimizing enforcement. Mayor Patterson noted that would be appropriate if a reasonable decision can be made by the Committee prior to that meeting.

Trustee Patrick noted this issue with RV parking was addressed by the prior board with three to four public hearings. He encouraged Board members to review the prior minutes before setting agenda items. He felt the Board is going to be overloaded with items if we reconsider everything done by a previous Board. He felt it is bad public policy to order staff not to enforce ordinances until we determine whether they make sense.

**The motion passed with one NO vote.**

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Staff will provide dates of minutes and a job description of the Code Enforcement Officer.

T. J. of Schlauser Signs in Loveland asked for an amendment to the sign code to allow electronic message centers to display information to potential clients for the businesses in Berthoud. Studies have proven that electronic message centers can enhance motorist's attention to visual surroundings and can be appealing aesthetically and easily read. Mayor Patterson asked for copies of the information provided for a future meeting when the sign ordinance is reviewed. T. J. offered his assistance to help rewrite the sign code.

Eric Boyd of the Berthoud Main Street program noted they are concerned about the enforcement of the sign ban. He noted there are several businesses in precarious financial position and enforcement of this ordinance may have a negative affect on these businesses. With the Mountain Avenue project beginning, the businesses need to be allowed to promote themselves. He asked the Board to suspend enforcement of the sign ban until the completion of the Mountain Avenue project. He also offered assistance from the Main Street program to contact other communities to determine what they are doing regarding sidewalk signs. He encouraged the Board to help the businesses by allowing them to do all that they can to encourage customers.

Janelle Goode of the Berthoud Chamber agreed with the concern about sidewalk signs. She asked that the Board reevaluate the code and suspend removal of the signs and void all tickets issued since April 1. She asked that changes be made to allow sidewalk signs as part of the overall enhancement of the Mountain Avenue Enterprise Zone. The signage allows businesses to bring in customers and is part of the flavor of Berthoud.

Don Downey of Dean's Furniture noted that the Town recognizes the need for signs and puts large signs over Mountain Avenue that can be viewed by everyone passing through Town. The businesses would like to have the opportunity to advertise their businesses on Mountain Avenue to encourage customers to come to their businesses. He noted it is not fair that the Town can put signs over the street, but businesses are not allowed to put signs out that tell people that are in business and to offer their services and products. He noted he would also like to see signs allowed on the 287 Bypass. He noted the Bypass has taken 30% of his business away and he would like to be able to advertise out there. .

**Trustee Patrick moved to direct staff to prepare an amendment to the existing sign ordinance modifying the existing sign regulations to provide for a permit process which would allow "sandwich" advertising signs up to a maximum area of ten square feet. One or more staff designees may issue these permits at no cost if the sign is to be located within a designated downtown area with however many feet of the business provided it will be located in a position which will not affect the public safety. And until such amendment is considered, provide a moratorium on**

**enforcement and prosecution of the existing ordinance to the contrary. Second by Mayor Patterson.**

Trustee Patrick encouraged everyone to read the prior minutes and then determine whether to reconsider the ordinance. He noted one of the concerns was that we would have a proliferation of large off site real estate signs. He noted this resolves the immediate problem and then at a later date, the Board can look at the entire sign code.

Trustee Bauer noted this motion is directed at how to make changes now and our business owners want to participate in the review of the ordinance. This appears to be a good quick fix, but it does not take into consideration some of the ideas that some of our businesses would like to have considered.

Mayor Pro-Tem Gregg noted this allows permitting process and buys time for the Board to review and study the existing ordinance. Trustee Patrick noted we are directing staff to bring an amendment. There are already sign requirements in the existing ordinance that would apply to sandwich boards.

Trustee Hindman suggested that adding a permitting process is just another bureaucratic hurdle and not a good idea. We already have a permitting process for permanent signs. He noted he would support suspending portable sign enforcement to allow time to review the sign ordinance. He suggested that we direct staff to suspend enforcement and form a committee to work with staff and business owners and amend the code.

Trustee Patterson noted we need time to consider the details with all parties interested and work to resolve the details. This is a way to not penalize our business owners in the interim.

Trustee Patrick noted this is a directed concern that was brought about by the fact that we had a long period of time where no code enforcement was done. Once codes are enforced, we recognize the issues that need to be addressed. This is a simple solution to address the issue until it can be reviewed and resolved.

Trustee Hindman suggested we are enforcing something that is causing virtually every business owner in Town to be upset, and he felt that should have been cause for the Town Administrator to come to the Board and say this is a problem, and we need to take care of this. He felt the staff should be proactive by coming to the Board and recommending changes.

Mayor Pro-Tem Gregg noted he agreed with suspending enforcement of the code to allow time to review the sign code.

Trustee Patrick noted requiring a no cost permit allows us to have some control over what is put on the sidewalk and protects the public from hazards. The Town is responsible for what is put on our sidewalk. It is not difficult to direct staff to make sure signs are allowed and permitted, but at the same time the Town does not incur any liability from these signs. We are directing staff to get started on this process.

Trustee Hindman felt we need to put a moratorium on enforcement of the sign code regarding sandwich signs and then establish a committee to involve business owners, Board members and staff to review the sign code.

**Trustee Hindman moved to amend the motion to say that the Mayor and Town Staff set up a committee to work on revisions of the sign code and bring them back to the Board at a study session before we direct staff to amend the code. There was no second.**

Trustee Patrick noted his amendment is to focus on these specific signs and this is amending the entire sign code in the foreseeable future. He noted he is not comfortable in saying the entire sign code is under a moratorium.

**Trustee Hindman moved to amend the motion to suspend portable sign enforcement and set up a committee to review this with staff and the business community and at such date it is ready, bring the code back to the Board for a study session for review and to set a public hearing. Second by Mayor Pro-Tem Gregg.**

**The amendment passed unanimously.**

**The original motion passed unanimously.**

### **REPORTS**

Town Clerk Cowdin reported that we received a letter from Governor Bill Ritter, Jr. announcing that the Town received Energy/Mineral Impact Assistance funds for our Mountain Avenue Infrastructure Improvements. We have not received specific information regarding the amount of the award, but we are anticipating that we will receive \$500,000. Final notice should be received in the next two weeks.

Town Clerk Cowdin noted that Administrator White has served as the Town's liaison to the Larimer County Open Lands Committee. It is time to appoint a representative and Trustee Hindman volunteered to serve.

**Trustee Patterson moved to appoint Trustee Hindman as the Town of Berthoud's representative to the Larimer County Open Lands Committee. Second by Trustee Bauer. The motion passed unanimously.**

Town Clerk Cowdin noted we have received two letters of interest from residents wanting to serve on the Planning and Zoning Commission. Once the Board liaisons are appointed, we can start the interview process.

Town Clerk Cowdin announced that a Board retreat has been tentatively scheduled for Tuesday, May 20. She asked that Board members confirm their availability for that date.

Attorney Fickel advised the Board that the Town was involved in a lawsuit involving a contractor who bored through a water line on Taft, north of Highway 56. The Jury determined that the Town was 90% negligent in the incident and the contractor was 10% negligent. The prevailing party may come back for litigation costs and they are asking for \$17,000. The Town has filed objections to the costs, and he noted he will bring a settlement offer back once it is negotiated.

#### **CONSENT AGENDA**

The consent agenda consisted of the minutes of the regular meeting from April 8, 2008, the special meeting from April 14, 2008, the bills allowed for April 2008, and the Mountain Avenue Medallions. Board members addressed each item individually.

**Trustee Bauer moved to approve the minutes of the regular meeting on April 8, 2008 as amended. Second by Trustee Shepard. Trustee Hindman abstained and all other members voted to approve the motion.**

**Trustee Bauer moved to approve the minutes of the special meeting held on April 14, 2008 as presented. Second by Trustee Hindman. The motion passed unanimously.**

**Trustee Bauer moved to approve the April bills as presented. Second by Trustee Shepard. The motion passed unanimously.**

Board members considered the request to purchase medallions for the Mountain Avenue project. Main Street Manager Eric Boyd explained that the medallions are to be paid for under the CDOT Enhancement Grant for the Mountain Avenue project. CDOT will process reimbursement for the artwork expense, once the Town provides receipts showing the payments. The initial payment to order the artwork is \$12,500.

**Trustee Bauer moved authorize the Town to spend \$12,500 to order the pre-cast concrete artwork for use in the Mountain Avenue project. Second by Trustee Shepard. The motion was approved unanimously.**

#### **PROCLAMATION – ARBOR DAY**

Mayor Patterson read the Arbor Day proclamation and proclaimed April 26, 2008 Arbor Day.

Tree Board President John Goreski addressed the Board, noting that there is a celebration planned for Saturday, April 26, 2008 at 10:00 a.m. south of the new Turner Athletic field. This is the Town's 25<sup>th</sup> year as a Tree City USA, and we will be recognizing the Waggener family and their contribution to the Town. He noted the Tree Board is also working with the Main Street Committee to develop a planting plan for Mountain Avenue and they hope to work with the Windsor Tree Board to host a tree conference with the next two years.

**PUBLIC HEARING – ORDINANCE CHANGING  
STREET NAME - S. E. 2<sup>ND</sup> STREET**

Planner Anderson explained that planning staff received a phone call on April 9<sup>th</sup> from Kimberly Culp with LETA (Larimer Emergency Telephone Authority) stating that there had been a 911 call with a Southeast 2<sup>nd</sup> Street address. According to their records, Berthoud does not have southeast addresses, so the call was routed to a Southeast 2<sup>nd</sup> Street address in Loveland, creating a significant delay in emergency response time. Research by the planning staff has confirmed that the recorded plats for Mary's Farm, Mary's Farm Tract 1 and Mary's Farm Tract A do not show the dividing line where East 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Streets become Southeast 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Streets (Michigan Avenue).

Staff is recommending that the proposed ordinance be passed as an emergency ordinance so that the documents can be recorded with the county immediately.

Mayor Patterson opened the floor for public comment. There was none.

**Mayor Pro-Tem Gregg moved to adopt Emergency Ordinance 1085, renaming streets located within Mary's Farm, Mary's Farm Tract A and Mary's Farm Tract 1 Subdivisions, south of Michigan Avenue, Town of Berthoud, Larimer and Weld Counties, State of Colorado. Second by Trustee Bauer. The motion passed unanimously.**

**SET PUBLIC HEARING – WHITE EASEMENT VACATION**

Planner Anderson noted that Orman and Marilyn White have filed a request with the Town to vacate a portion of Bimson Avenue, located between 1<sup>st</sup> and 2<sup>nd</sup> Street.

**Mayor Pro-Tem Gregg moved to set the public hearing for the Bimson Avenue road reservation vacation for May 13, 2008. Second by Trustee Bauer. The motion passed unanimously.**

**ACCEPT ANNEXATION PETITION & SET PUBLIC HEARING FOR  
SOMMARS ANNEXATION AND OVERALL DEVELOPMENT PLAN**

Planner Anderson explained that Mark and Jeannine Sommars have submitted a petition for annexation to the Town for approximately 9 acres located at 533 East County Road 8. Staff is recommending that the Board accept the petition and set a public hearing for June 10, 2008.

**Mayor Pro-Tem Gregg moved to accept the Sommers Annexation Petition and Supplement to the Annexation Petition and pass Resolution 4-08, setting a public hearing for June 10, 2008. Second by Trustee Bauer. The motion passed unanimously.**

**INTRODUCTION OF CONSTRUCTION MANAGEMENT  
SERVICES FIRM – JR ENGINEERING**

Public Works Director Huerta explained that on April 4, 2008, the Board accepted a proposal from JR Engineering to provide Construction Management Services for the Mountain Avenue Phase 1 Improvements project. He introduced the team-leaders of the new team, Trent Marshall and Scott Sims.

Public Works Director explained that we received authorization from CDOT to advertise for construction services. JR Engineering will assist with the advertising and will be involved in the review of contractors to help us select the most qualified contractor. They will also be reviewing bid documents. Trustee Hindman asked to be allowed to review the documents to help avoid problems that have occurred with past projects.

Board members asked if there will be a plan in place for communication with Town Staff during the project. Public Works Director Huerta noted that will be one of his functions during the project. He will be the liaison between the public and Town Hall when working to resolve problems that occur during construction. Plans are also in place to attend the next Chamber of Commerce luncheon to keep the local business owners aware of the plan and what is being done. Once a contractor is selected, we will have a public meeting to introduce the contractor to our residents and business owners. It was noted that some businesses are not members of the Chamber of Commerce, so staff was asked to make door to door visits with the businesses in Town to be sure everyone is in the loop.

Public Works Director Huerta noted we hope to have a contractor in place by the end of May, and at that time, we will begin planning for the groundbreaking. We anticipate that construction will take four to six months, working Monday through Friday. There is a possibility that construction may occur on weekends or at night, if necessary.

### **BATS CONTRACT APPROVAL**

BATS Director Eric Boyd explained that Larimer County contracts with BATS to provide rural transit service for residents living within the Berthoud Fire Protection District. BATS is to be reimbursed at 50% of the cost of the ride.

**Trustee Bauer moved to approve the 2008 contract with Larimer County. Second by Trustee Shepard. The motion passed unanimously.**

### **APPOINTMENTS**

Mayor Patterson noted that following the municipal election, it is customary for the Board to appoint various Town Board members to serve as non-voting liaisons to advisory boards, committees or commissions. He made the following appointments, based on indications of interest by the Trustees.

Finance Committee – Mayor Patterson and Trustees Buckingham, Patrick, Bauer, and Hindman

Tree Board – Mayor Patterson

Parks and Open Space – Mayor Pro-Tem Gregg

Library Board – Mayor Patterson

Transportation Committee (BATS) – Trustee Bauer

Historic Preservation Commission – Trustee Buckingham

Planning and Zoning Commission – Mayor Pro-Tem Gregg and Trustee Shepard

Mayor Patterson noted the Utility Board is not currently an active Board. Board members asked that the Town Clerk advertise for applicants, and appointed Trustees Bauer, Patrick and Shepard as liaisons to this Board.

Board members discussed the legalities of having liaisons to the Planning and Zoning Commission. It was noted that Longmont has trustees that serve in this capacity. Attorney Fickel noted that Longmont has different rules as a home rule municipality. All subdivision reviews and approvals are done by their Planning and Zoning Commission, and those items are not reviewed by their Board. He noted that their City Attorney is concerned that any appeals would be held by their Board, and that could create a conflict of interest if the liaisons have sat in on any quasi judicial discussions at the Planning and Zoning Commission meetings. They are considering removing the liaison or recommending that the liaison not be involved in quasi judicial discussions. He noted having a liaison on the Commission can become a problem in litigation, and is no longer required in the statute. If a Board member sits in on a quasi-judicial discussion at the Planning Commission level, then he would be disqualified from being involved in an appeal at the Board level.

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Mayor Pro-Tem Gregg suggested that the Planning Director inform the liaisons when quasi-judicial issues are to be considered, and the liaisons can not attend those meetings. There are other items considered by the Commission where the liaisons could be involved in the discussions.

Attorney Fickel agreed to contact CML to determine how this is being handled by other cities and towns in Colorado. He noted he will be attending the CML Annual Conference and will bring this up for discussion at that meeting. Other options were considered, including asking members of the Planning and Zoning Commission to attend Board meetings to explain the reasoning behind their decisions if asked. It was also noted that if these meetings are planned in advance, with enough delay between Commission meetings and Board meetings, then the approved Planning Commission minutes can be available for review by the Board.

Board members discussed the type of minutes that are being down for both the Planning Commission and Board meetings. Our CIRSA attorney is recommending action minutes. Several trustees noted they prefer to see more detailed minutes, because they indicate the thought processes when decisions are made. Attorney Fickel noted he prefers detailed minutes, and once they are approved, they are not subject to interpretation.

Trustee Patrick noted the Board received a letter from Mayor Karspeck asking to be appointed to the Tree Board.

**Trustee Patrick moved to appoint Milan Karspeck to the Tree Board. Second by Mayor Patterson. The motion passed unanimously.**

With no further business before the Board, the meeting adjourned at 8:55 p.m.

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Mayor Tom Patterson

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Deputy Clerk Charlene Reed