

The Board of Trustees of the Town of Berthoud met for a regular meeting on Tuesday, January 27, 2009. Mayor Tom Patterson called the meeting to order at 7:00 p.m.

#### ROLL CALL

Board members present: Mayor Tom Patterson  
Mayor Pro-Tem David Gregg  
Trustee Dick Shepard  
Trustee Jeff Hindman  
Trustee Michael Patrick  
Trustee John Bauer  
Trustee Glen Buckingham

Staff members present: Town Administrator Jim White  
Museum Director Tom Vaughan  
Town Clerk Mary Cowdin  
Administrative Assistant Lisa Underhill

#### **Pledge of Allegiance**

Mayor Patterson led the Pledge of Allegiance.

#### **Citizen Participation**

Citizen Lisa Bauer addressed the Board. Mentioned that the Town has severe budget issues they are dealing with. Offered a remedy to save time, money and resources. Every week each trustee receives a large packet of paperwork, which contains information pertaining to the Board meetings. She brought the past 6-months worth of paperwork (envelopes only). The envelopes are used only once, and one is used each week. They received the equivalent of two reams of paper in the past 6 months. Some pages are printed on only one side, some only contain a few lines worth of information. Some papers are printed on color paper, which is more expensive. It costs the Town a large amount of money to put the information together, clip it, copy it, etc. 2.5 reams are used per Trustee every 6 months. 17,500 sheets of virgin paper are used each year for this purpose. Each Trustee has a Town email address. She stated that it makes sense to bypass paper, eliminate waste, and eliminate time it takes for people to put the packets together, and the time it takes for the Police Department to deliver this information. This could be distributed to each Trustee electronically.

Several Trustees stated that they do recycle the papers and envelopes.

Trustee Hindman stated that he used his laptop at the MPO meeting last week, rather than printing the packet, and it saved a huge amount of paper. Several other Trustees voiced support

for receiving packets electronically where applicable. Trustee Bauer stated that if it was an additional cost to have the packets delivered, that most Trustees could likely pick up their packets at Town Hall. It was also suggested that recycled paper could be used.

Milan Karspeck addressed the Board. He noted that sometimes papers from a previous meeting were needed, and may not be available if information is sent electronically.

Mr. Karspeck addressed the statements which have been made regarding water being wasted going downstream. He stated that he is not aware that this has happened. He stated that there are ways around that, and Staff does not typically do this. Our rights are very good. We don't have a great amount of excess water. This is a really important subject, which is worthy of a good discussion. The Utility Advisory Board is willing to offer their help. This should be considered prior to reducing the amount charged for raw water.

Administrator White commented that several people will comment on this issue at future Board meetings. Ed Simpson will address the Board in February. Paul Zilis and Darrell Zimbleman both deal with water for the Town, and will also address the Board. The target date is the third Tuesday in February.

### **Reports**

Trustee Shepard attended the Library Board meeting last Thursday. There are a lot of things going on with their new district. Sara made a brief presentation about an economic gardening seminar she recently attended. The library could potentially offer services for small businesses via this program. This could help with economic development in Berthoud and business retention.

Trustee Bauer reported on a meeting he attended along with Administrator White regarding the North I-25 EIS. Commuter \_\_ is planned. An express toll road is planned on I-25 between Hwy 66 and \_\_\_ (a separate middle section – it could also be used for commuter buses)... Expansion of I-25 up to Fort Collins was not consistently ... Rail has been consistently supported. The next workshop is planned for Thursday, January 29.

Mayor Patterson mentioned that meetings have been well attended. There is good consensus...

Trustee mentioned that a Recreation Center for Berthoud would be a good stimulus for the Town. He attended the Larimer County Open Lands Advisory Board. Hermit Park – view down to Estes Park. They are completing the largest GOCO grant that has been given – working with the Nature Conservancy. This is a nationally known project which is phenomenal. Hindman received a report, but is unable to distribute due to containing confidential information.

Administrator White reported that PWD Huerta submitted that the Town of Berthoud be considered for an American Public Works Association award for our Mountain Avenue Project.

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Town Staff (\_\_\_\_) attended the luncheon, which was held on Monday, January 26, 2009 for the award ceremony. PWD Huerta plans to submit the project for a national award through the APWA. White mentioned that Larry Bebo was involved as a partner in a project for Denver which also received an award on Monday. The Mountain Avenue project has received a lot of positive comments.

Administrator White met with Dr. Marsi Liddell of Aims, who spoke with the House Committee for Local Government to talk about a taxing district which would be required to help Aims build its new campus. A vote of the people will be required to create this district. This passed committee. Aims is one of two district colleges, technically not part of the Colorado College system. The group that was initially opposed, came in with an amendment allowing Berthoud only to create a district. This was supported unanimously. It can now move to the next step.

Administrator spoke with Dan Clayton today regarding the Safeway deal. The decision which was to go before the real estate commission today has been delayed. An update will be made for the Board in February.

Administrator White reported that Tim Katers has new zoning maps available. The map was created by Bob Barkeen.

Administrator White reported that Tim Katers should have a draft of the proposed incentives to the Board later this week. Part of the incentives could ...

North I-25 EIS...

### **Consent Agenda**

- 6a. Minutes of the January 20, 2009 meeting
- 6b. Bills allowed
- 6c. Financial Statement
- 6d. Liquor License Renewal

Motion to approve Items 6a and 6b on the Consent Agenda by Trustee Gregg, seconded by Trustee Shepard. Motion passed unanimously.

Trustee Bauer noted that the check register which was in the packets this time is a different format than what is normally received. Clerk Cowdin noted that this will be the format going forward.

### **Volunteer board appointments**

Administrator White reported that June and Patrick Macarelli have both been interviewed by the Tree Board.

The Tree Board recommended that June and Patrick Macarelli be appointed to fill the vacant positions on the Town of Berthoud Tree Board for 2009, terms to expire, August 31, 2012.

Motion made by Mayor Patterson, seconded by Mayor Pro-Tem Gregg.

### **Appeals – commercial historic district**

Administrator White introduced Attorneys Greg Bell and Attorney \_\_. Ian McCarger

Charles and Michelle Johnson, and Mark and Susan Wojciechowski, wish to opt out of the Historic District and were present.

Attorney Bell voiced that the Board is here tonight ...his job is to advise. Separate from normal legislative function. Process utilized and evidence against... Guidelines and notice were given by Bell with advise on how to conduct. Board will serve as judges, Bell will help with process questions. Can be decided individually, or together. Not an appropriate for special meeting, must be done in a public meeting.

Mayor Patterson asked about a decision being postponed for a later meeting, and if one could be decided and another held for later.

Bell stated that normally appellants give their evidence first.

Administrator White stated that Sue Brungardt, Tom Vaughan and Sue Seewalt from the HPC were all present.

Mayor Patterson asked to hear from appellants first.

Mark Wojciechowski passed papers out to the Trustees. He also had pictures of the building in question. The building has no foundation beneath it. He stated that the building is rotting from the inside out. There was a former residential unit attached to the back of the building. He proposed that his intention is to tear the building down eventually and build a new building. The new building would like to have 11 units on the top floor, commercial on the first floor. The plans given to the Board contained his proposed new building. The costs the rehabilitate the existing building are very high. He felt the value of the existing building is not worth rehabilitation. He could have \$612,000 into rehabilitation. The building is roughly 15... SF. The mortgage he assumed is \$275(k?). Estimated he would need approximately \$500,000 to rehabilitate this building. Mr. Johnson displayed pictures of a building he built in \_\_ and that he would like to build a similar building at this location. The new building would be more functional. He stated that he was not sure why the building was included in the first place. The information he received from the HPC stated the history of the building, but not any other historic significance. Required agreement of property owners in proposed district states that

100% agreement. ...from August 23, 2006 HPC meeting notes. Asked what architectural significance was for his building. Not sure if economic hardship would be grounds for his appeal. Ordinance 920 stated that enhancement of property value ... Property may be eligible for economic incentives if it meets historic significance, character... visual appeal or symbolic significance for the community...owns several properties – this one is an embarrassment. Has some income from it due to it being rented. Proximity to a park or unique area... Maintenance shall be required...structure shall not be allowed to ...what is his obligation to fix/maintain? Will a demolition permit be required from the Town – how does this process work? Wants to know what incentive is for being part of the Historic District? Received a call yesterday that it was predetermined that this would go against him. That if he agreed to historic ...that he could apply for demolition at a later time.

Mayor Patterson asked if Mark could divulge his source stating that the hearing was predetermined. Mark stated that he would not divulge this.

Trustee Hindman reiterated that this is a serious matter and that it is not predetermined.

Mayor Patterson stated that this (that hearing has been predetermined) could be safely be dismissed.

Trustee Patrick asked about his concern about criteria about designation about this particular building. He asked if Mark received recorded documents, architectural survey, and reasons for designation. This is required by Code. The HPC shall send notice of designation. Mark responded that he did not recall receiving these documents. The designation has to be recorded within 10 business days of being approved by the Clerk and Recorder. Mark stated that he did not recall receiving this information. He drove to Fort Collins to pick up the architectural survey approximately two weeks ago. Patrick stated that the district was created months ago. Trustee Patrick asked about the economic hardship. Requirement that property was purchased prior to the creation of the historic district – Mark stated that he purchased approximately 10 years ago. Mark stated that the building would likely not meet any current Town codes, mainly due to the fact that it does not have a foundation. Patrick asked about his potential to apply for an economic hardship exemption – in property's present condition – not a good return on investment. Asked what would be needed to get a reasonable return on this investment. Mark stated that he owns properties in several cities...does not want to lose money – wants a positive cash flow. Mark does not wish to be obligated to restore this building. If a flaw is found in spreadsheets, please bring it up. Distressed that Fickel did not go before, since he is more knowledgeable about the process.

Trustee Hindman asked if the date of the appeal letter received at Town was known? The Town Clerk can clarify.

Trustee Bauer asked about the designation of this property. Wanted clarification as to whether the building was in a historic district, or a designated historic building.

Administrator White stated that the letter was received October 2, 2008.

Ian McCarger questioned the witness. He asked if the package of documents he brought should be entered into the record for tonight. The letter from Milo Construction is unsigned and is from a party, which is not present tonight. Mark stated that the spreadsheet contains information but has no specific information from the Milo letter. Ian asked if Mark understood that he could apply for a demolition permit if he loses his appeal tonight.

Mayor Patterson stated that he felt that the Board should hear from both property owners before appeals are made...

Michelle Johnson addressed the Board. She stated that she also received a phone call from Mr. McCarger. He told her that he foresaw that the appeals would be denied. She stated that she did not receive...she received a letter in September stating that it included a map and other items, but did not have any attachments. Ms. Johnson brought the paper she received. Administrator White examined the paper and asked Greg Bell to examine it as well. Bell stated that the paper contained a list of the legal description of properties in the district and contained information showing that it was a legally recorded document. Ms. Johnson stated that she did not receive guidelines on how to go through this appeal. This is a non-income producing building. They do not wish to sell. They feel they do not have the funds to restore their building. Ordinance 920 is not very good. It is very general. Ms. Johnson asked for copies of the minutes, but did not receive them all. There were remarks throughout showing that the ordinance needed to be revised. The minutes talked about revision being requested by Fickel. She cannot afford to renovate a building. She got architectural survey to help determine the historical significance of her building. Building has the sense of... Must meet criteria to be historic...asked for help in understanding significance... Does not feel ordinance and minutes give enough information to make an informed decision. Cannot afford historic renovation. Does not have guidelines about what will be required from her relating to this building.

Trustee Bauer asked if she received notification that her building was recorded as historic. She stated that she did not.

Trustee Patrick asked about designation of the building as a group or individually. Statute requires notice that property is being designated and asked if she received paperwork...she stated that she did not receive this paperwork. Non-income producing property – owners inability to resell property in current condition, or ... if value of structure would be affected due to historic designation... She stated that she had no way to tell. Ms. Johnson gave written notice to the Town stating that she wished to opt out.

Trustee Gregg asked about Section B...is department Town Staff. Bell stated that he thought it would be Zoning Department or Land Use Department. Gregg asked if she received documents... Ms. Johnson stated she did not.

Ms. Johnson received a certified letter from the Town of Berthoud stating that a Historic District was being created and that she was in it. Resolution 138... announced meeting. Letter dated August 8, 2008. She was made aware that she could appeal at the September 10 meeting. She received a copy of ordinance 920 at that meeting. She was not given any information at that time stating why her property had historic significance.

Administrator White stated that appeal letter was received by the Town on 10/9/08.

Board took a short break at 9:45.

Reconvened at 9:50.

McCarger wanted to clarify what documents would be part of the record and why. He passed out a packet to each Board member. The documents were marked Exhibits A-E. Exhibit A, B is ordinance 994, passed in 1994 establishing standards..., Exhibit C is the study commissioned by the HPC – is lengthy, D is copy of minutes of ...meeting. Is date District was designated. E is recorded listing of all the properties within the district and the minutes of that meeting. Also have notification from Ms. Johnson of recording. Wanted to add this notification to the record. Exhibit F is the Secretary of the Interiors standard for Historic Designation. Asked to make official part of this evening's hearing. Ordinance empowered HPC to designate properties and resources. Also authorized them to adopt criteria and standards. Also authorized them to commission studies (exhibit C), evidence that they did as they were told to do. Not considering exemptions for hardship or permits for demolition. Are considering if HPC followed ... Not appropriate to consider exemptions tonight – you are an appeal body if an exemption is denied. Tell if HPC did as they were instructed to do. Asked Sue Brungardt to take podium and he could question her.

Sue Brungardt introduced herself. She has been a member of the HPC since it was formed in 2002. She has been involved in all meetings and hearings leading up to tonight. She is familiar with ordinance... In 2002 not sure which properties to include. In 2004 after study was commissioned, they identified properties which were part of the core part of Berthoud. This study gave idea where to form district. Commission held a public hearing for the survey presentation. Ann Bond did two presentations, which were listed in the papers and invitations were sent to property owners. Sue did not attend 2004 meeting, but stated that information was sent out. Main Street worked closely with the HPC and shared information about where they were going. Mr. W and Ms. Johnson were not at any of these meetings. Sue went door to door to talk to owners about the formation of the district. Mr. Fickel stated that information was needed about specific properties that were to be included, so this information was put together. The community was canvassed. Information was mailed to those who were out of Town. Letters were received back. 18 property owners agreed to be part of the district. Mr. White agreed verbally to have properties that the Town owned to be part of the district.

Sue came before the Town Board to inform them where they were headed – were instructed to have another public hearing. Sent information certified. Information was placed in the papers and the HPC had an open house. Exhibit G ...Sue was present at public hearing – results are shown in exhibit D (minutes of the HPC meeting). Mr. W and Ms. J were present and had an opportunity to present evidence and had an opportunity to inquire about the requirements. The meeting was held and was open to public comment. Public comment was closed and ...Marion Maggi pulled herself from vote, ....vote was unanimous....

The District itself is included in these blocks, some properties in the district are not historic. All properties were designated and included in the historic district.

Mr. W's property – what caused it to fit in HPC picture? Sue stated that this property may have been moved up from original Berthoud. May have been put on timbers and rolled up valley. Based on historic discussions, this may have happened. In early 1910...had his cobbler shop ...people of significance in history had shops there. If property was originally moved up from old Berthoud site.

Johnson property fits criteria for inclusion in district – capped with decorative cornice. Found pictures of building in 1890 – was one of original parts of new Berthoud. Mass Ave was main street in Town in early 1900s. People would get off train in the area. Mass was integral part of town in the early 1900s. Study was done by an independent source.

Ordinance stated that prompt notice was to be given. In October, no direction was given about how to proceed – did not send out, could have sent in December. Attorney Fickel has been the HPC's attorney. Once appeals are exhausted the HPC will know which properties are included and which are not.

Trustee Patrick asked about ordinance 920, section 3. Designation authorized...next paragraph...each such designation shall include...Ms. Brungardt stated that the survey showed designation...notification of particular designation has not yet been sent. HPC designated district, as opposed to individual buildings. Properties within the district had already been designated prior to formation of the district. Legal description included in notice was on individual properties. No buildings were left out of district, whether or not they met the criteria. Ordinance does not contain opt-out clause. Identification of alterations that would have significant detrimental impact of historic district – was not completed.

Ordinance states that alterations would be reviewed if there was a need for a permit.

Ordinance 994 outlines HPC guidelines....to follow secretary of interior's guidelines.

Buckingham: heard from appellant ...picture of proposed building...is there inconsistency of notion - why would property owner not be allowed to bring forth a plan for a new building. Would this be a normal part of this process. Would HPC review this and see if it fits historic...

Sue stated that FRESH building can be added. Fort Collins added new buildings.

BUCK: if person brought plan forward to build new “historic” building?

Sue stated that new buildings could be reviewed by the HPC. The state of CO encourages to rehab and save when necessary that are salvageable.

GB: how is it determined what should remain of a building.

SB: ordinance 920 states that property owners can appeal to Town Board just as they are tonight.

SB: no separate designation is on record for Mr. W or Ms. J property – they are part of district.

JB: is building itself designated as historic?

SB: no separate recording that property/building itself is historic.

JH: asked if issue...

Bell – issue is that properties before you were done properly per procedure.

Attempting to resolve issue outside of hearing is normal.

JH: ordinance spells out what is required by owners for changes in their properties – spells out procedures and appeal process. Board is making sure properties were created properly by procedure. Section 3, item B – if application is filed by persons other than owner of property ...consider survey, done by ...if department...1 member of HPC shall contact property and explain....

SB: stated that public hearing (certified letter in August) inviting to meeting covered HPC contact. No written information was given at that meeting. People were directed to Tom Vaughan to get...

JH: specific surveys to two properties (Johnson survey – 5LR10884; Wojciechowski survey - ...)  
Will need legal interpretation from our attorney to see if legal requirements were met. Section 3, item B #2 A&B – proof that within 10 biz days recorded and notice sent...reasons for designation and ....

SB: items were sent within 10 days. Filed on September 24 (10 working days). Property owners had 30 day appeal from September 10. Ms. Johnson’s was received on October 9. HPC has not sent...have been waiting for appeal process to be completed.

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JH: Fickel was advising HPC in his role as Town Attorney.

SB: Fickel has worked for the HPC from 2002 through May of 2008. After May 2008, the Town got the HPC an attorney. Thinks it was October 2008.

JH: August and September meetings conducted...

SB:

JH: only 2 of the 35 properties are designated as individually designated properties. Are these looked at differently?

SB: Under same review process as planning and zoning. Any of these properties in district and Fickel/McCarty street, \_\_\_\_, and water tower. Need to be flagged so if work is needed on these properties, they would be reviewed by HPC. 2-weeks is the period allowed for review. Changes required to the exterior require the same review.

DG: Explain loss of properties in the district.

SB: Dan Corson from office of...met with HPC to discuss opt-out option and other ways to exclude properties from within districts. No other cities allow ... Allows property district benefits of being part of district. Would hurt the town more to not have these properties. Mr. W's property – there would be opportunities for his property to receive grants such as survey grants or rehabilitation grants – would be eligible for 20% state tax credit. We would lose a piece of Berthoud's history. Historic districts can draw people into an area.

DS: 994 attached to 920 two years later, why?

SB: reviewed ordinance & found it lacked some things. Liz Kearney and Mr. Zink wrote based on other ordinances. Upon review, found 994 helped clarify design guidelines.

SB: There are two weeks until the next appeal. Fort Collins used the same guidelines.

DS: does 994 take precedence over 920.

SB: no, only enhances 920. There are 8 pages in design guidelines from last February. Prior Board put 920 into Comprehensive Plan. 8 pages talk about historic...

Mr. W: does there need to be 100% participation as far as state of CO is concerned?

SB: this is not designated a state or national district.

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JH: in ordinance there are provision for moving or demolishing a building in/from a district?  
There is nothing to preclude this, as long as the HPC concurs.

SB: correct.

SB: not requiring property owners to put money into their properties, only to maintain the properties. Safety issues need to be addressed, they would be addressed by the Town anyway.

Mr. W: how arduous would the plan be if denied to demo – would architect be needed.

SB: same steps are needed as if applying directly to Town. Plans would need to be submitted. Property owner has burden of proof that building needs to be demolished or causes issues.

McCarger: objected to Mr. W's comments.

JH: looking at whether or not property is to remain in district.

SB: Sue Seewalt and Tom Vaughan talked with the State of Co.

McCarger: all evidence he has. HPC was given powers, they exercised these powers. District cannot be formed until all appeals are exhausted. Notice will be complied with when appeals are exhausted. Did contact Mr. W & Ms. J to see if a compromise could be reached. Did not represent that the deal was done and things were already decided. Take issue with being characterized this way.

Bell: People have asked for an opinion. Within your province to decide. You will need to decide if issues in ordinance are material or procedural. Procedures are not defined well. Have issues about contacting those within district – if definition ...was met. Must look at material issues. May be wise to view final appeal – there will be additional evidence with Fickel's properties. May be wise to view all prior to making a decision. There are two categories of designation.

DG: asked for clarification on what it is that should be considered. Counsel for HPC stated that exemptions should not be considered. Ordinance is not clear about...

Bell: my reading...decisions must be made by HPC before Town Board rules. HPC has not made decisions...only about inclusion.

MP: section 6 makes no reference to appeal.

Bell: true, does not specify a process.

MP: does not require HPC to ...

Bell:

Bell: Board can interpret that they can ...

MP: counsel for HPC, not part and parcel of what is being considered by Board tonight...appeal not related to these 2 specific properties...

McCarger: deciding whether district established consistent with ordinance as to these 2 properties.

MP: determination to be made is to entire property including 2 appeals...

McCarger: if you find defective, can a certain property be excluded by appeal, or...  
If improperly created, only applicable to properties under appeal. Would not affect district as a whole.

JB: would cases need to be represented if all are considered together.

McCarger: would ask that record that was made tonight be integrated into future record – ask that Mr. Fickel be given copy of paper record which is created tonight. Minutes could be made available to Fickel as well.

JH: This hearing would be continued and pick up where we left off.  
Interested in McCarger's opinion if section 3, item b has been fulfilled? 1<sup>st</sup> paragraph – property owner, if not one petitioning, will be contacted as to why their property is being included, and procure their consent prior to inclusion in the district...

McCarger: can interpret...certified letters went out, meetings were held where there were oral interpretations, ordinances were supplied at meeting...could you find that this was fulfilled? Yes you could, ...don't feel that items have not been met...caution that if we adjourn and take up again in a couple of weeks – need to refrain from ex-parte contact

JH: would like copy of resolution which was passed in July.

JB: HPC will be at next meeting, current property owners – if they cannot attend...

McCarger: decision does not need to be rendered at next meeting. Their case should not be changed by their presence or lack of their presence.

MP: there were at least two board meetings where these matters were taken up.

GB: the ordinance was redone.

MP: was redone due to procedural inconsistencies. Would be valuable to see those meeting minutes for reference.

JH: ordinance was passed...was reviewed by town attorney. Town attorney participated in approving this ordinance and advised HPC for many years. Should this be considered.

McCarger: should not be considered for the purposes of this appeal.

MP: original ordinance was written by two citizen attorneys.

JH: drafted by citizens who wished to create historic district.

MP: interpretation of B...last clause – how would you give it meaning or exclude from meaning.

McCarger: do you need to find that these have all occurred at the same time?

18 property owners consented. Don't know what nomination for review means. Nomination came from HPC study.

Cannot assign it meaning.

Mr.W's exhibit should be labeled, separately from other exhibits.

Ms. J's exhibit should be labeled as well.

Intent of ordinance – can be discerned by minutes, discussion, etc.

Advises care in producing evidence among yourselves.

BG: moved that the BOT continue this matter at the next regular meeting on feb.

Seconded by \_\_\_\_

Meeting adjourned at 10:13 pm

With no further official business the Special meeting was adjourned at 7:14 p.m.

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Mayor Pro-Tem David Gregg

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Lisa Underhill  
Administrative Assistant