

RCPTN # 96019479 03/20/96 13:31:00 # PAGES - 5 FEE - \$26.00
M RODENBERGER RECORDER, LARIMER COUNTY CO STATE DOC FEE - \$.00

ORDINANCE NO. 738

AN ORDINANCE APPROVING THE ANNEXATION AND ZONING OF LAND TO THE TOWN OF BERTHOUD, COUNTY OF LARIMER, STATE OF COLORADO, TO BE KNOWN AND DESIGNATED AS THE MARY V. MOORE ANNEXATION TO THE TOWN OF BERTHOUD, COLORADO.

WHEREAS, a Petition for Annexation together with seven copies of a Plat of said land as required by ordinance were filed with the Town of Berthoud by the owners of one hundred percent (100%) of the area of the land hereinafter described; and,

WHEREAS, the Board of Trustees by motion at its regular meeting accepted said Petition and found that the Petition substantially complied with the statutory requirements set forth in Sections 31-12-104, 31-12-105 and 31-12-107, C.R.S.; and,

WHEREAS, the Board of Trustees has determined that an election is not required under Section 31-12-107(2), C.R.S. as provided in Section 31-12-111, C.R.S.; and,

WHEREAS, the Board of Trustees has determined that additional terms and conditions were not to be imposed and that the Petition was signed by owners of one hundred percent (100%) of the property proposed to be annexed, exclusive of streets and alleys. Therefore, in accordance with Section 31-12-107, C.R.S., the Board of Trustees of the Town of Berthoud has determined that an ordinance to annex such land to the municipality should be considered.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

Section 1.

That the following described land to be known and described as the Mary V. Moore Annexation to the Town of Berthoud is hereby annexed:

A part of the South Half of the Northwest Quarter of Section 24, Township 4 North, Range 69 West of the 6th P.M., Larimer County, Colorado, more particularly described as follows:

BEGINNING at the West Quarter Corner of said Section 24 and considering the West line of the Northwest Quarter of said Section 24 as bearing North 01° 00'14" West with all bearings contained herein relative thereto; thence North 01° 00'14" West along the West line of said Northwest quarter a distance of 1,126.35 feet; thence North 88° 35'05" East

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335.10 feet; thence North 01°00'14" West 195.00 feet to a point on the North line of the South Half of said Northwest Quarter; thence along said North line North 88°35'05" East 1,659.66 feet to the Northwest corner of the tract of land conveyed by warranty deed recorded in the office of the Clerk and Recorder of Larimer County on March 9, 1994 at Reception No. 94021331; thence South 00° 58'25" East along the West line of said tract of land 1,317.12 feet to a point on the South line of the South Half of said Northwest Quarter; thence along said South line South 88°27'47" West 1,994.10 feet more or less, to the POINT OF BEGINNING.

The above described parcel contains 58.90 acres and is divided into Tracts "A" and "B". The legal descriptions and zoning for these two tracts are described on Exhibits "A" and "B" attached hereto and incorporated herein by reference.

Section 2. Effective Date:

The Board of Trustees of the Town of Berthoud herewith finds, determines and designates that this Ordinance shall take effect and be in force 30 days after publication.

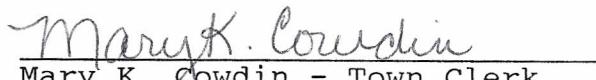
At its meeting January 23, 1996, a public hearing was set by the Board of Trustees of the Town of Berthoud for its meeting held on the 13th day of February, 1996. After the public hearing, the Ordinance was read, passed and ordered published by the Board of Trustees at its meeting this 13th day of February, 1996.

TOWN OF BERTHOUD:



Richard Strachan - Mayor

ATTEST:



Mary K. Cowdin - Town Clerk

Published: 2-15-96

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EXHIBIT "A"

TRACT A
MOORE ANNEXATION

A part of the South Half of the Northwest Quarter of Section 24, Township 4 North, Range 69 west of the 6th Principal Meridian, Larimer County, Colorado, being more particularly described as follows:

Beginning at the West Quarter corner of said Section 24 and considering the West line of the Northwest Quarter of said Section 24 as bearing North 01° 00'14" West with all bearings contained herein relative thereto; thence North 01° 00'14" West along the West line of said Northwest Quarter a distance of 612.96 feet to the TRUE POINT OF BEGINNING:

thence continuing along said West line North 01°00'14" West 513.39 feet; thence North 88°35'05" East, 335.10 feet; thence North 01°00'14" West 195.00 feet to a point on the North line of the South Half of said Northwest Quarter; thence along said North line North 88°35'05" East, 327.20 feet; thence South 01°00'14" East 726.26 feet; thence North 89°52'10" West 662.41 feet to the TRUE POINT OF BEGINNING.

The above described parcel contains 9.41 acres, more or less, and is zoned AG.

EXHIBIT "B"

TRACT B
MOORE ANNEXATION

A part of the South Half of the Northwest Quarter of Section 24, Township 4 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado being more particularly described as follows:

BEGINNING at the West Quarter corner of said Section 24 and considering the West line of the Northwest Quarter of said Section 24 as bearing North 01°00'14" West with all bearings contained herein relative thereto;

thence North 01°00'14" West along the West line of said Northwest Quarter a distance of 612.96 feet; thence South 89°52'10" East 662.41 feet; thence North 01°00'14" West 726.26 feet to a point on the North line of the South Half of said Northwest Quarter; thence along said North line North 88°35'05" East 1,332.46 feet to the Northwest corner of the tract of land conveyed by Warranty Deed recorded in the office of the Clerk and Recorder of Larimer County on March 9, 1994 at Reception No. 94021331; thence South 00°58'25" East along the West line of said tract of land 1,317.12 feet to a point on the South line of the South Half of said Northwest Quarter; thence along said South line South 88°27'47" West 1,994.10 feet to the POINT OF BEGINNING.

The above described parcel contains 49.49 acres, more or less, and is zoned PUD.

WY5

EXHIBIT "C"

Mr. Bebo and the Town agree that the building permits for this development shall be issued in building phases. Each building phase here under shall be a period of twelve months from January through December of any given year. The initial building phase shall commence upon the execution of this agreement by the Town or upon annexation of the property, whichever shall last occur. There shall be four building phases for this project. The maximum number of homes that may be built in the project in any one building phase shall be 35, provided, however, that if less than 35 homes are built in any phase, the unused number which were not built shall be carried forward and added to the permitted number in the next phase. It is the intent of the parties, that credits for unconstructed homes in any building phase shall be continuously carried forward and added to the number of building permits in succeeding phases.

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ADDENDUM TO ANNEXATION PETITION

This is an addendum to the Mary V. Moore annexation petition. The Town of Berthoud is referred to as "Town", Mary V. Moore is referred to as "Petitioner" and Lawrence L. Bebo is referred to as "Mr. Bebo".

WITNESSETH:

RECITALS

WHEREAS, the Petitioner is the owner of the real property described in the attached Exhibits "A" and Exhibit "B", included by reference and hereby made a part of this Agreement. This real property shall be referred to as the "subject property", and

WHEREAS, the Petitioner is interested in obtaining approval from the Town with a request for the annexation of the subject property with a zoning designation of AG (Agricultural District) per Exhibit "A" pursuant to Title 30, Article 5, Section 201 of the Development code and PUD (Planned Unit Development) per Exhibit "B" pursuant to Title 30, Article 5, Section 400 of the Development code, and

WHEREAS, consistent with Title 30, Article 8 of the Town Development Code, the Town finds it desirable to annex the subject property in order to provide adequate urban services to said area and to ensure that development will proceed in accordance with the Town's adopted Land Use Plan; and

WHEREAS, the Town is interested in ensuring that certain terms and conditions of the development be met by Mr. Bebo in order to ensure the orderly and logical development and phasing pattern for the subject property in accordance with the Town's growth management policies and the Town's desire to ensure a modest and predictable rate of growth.

WHEREAS, Mr. Bebo intends to purchase and develop that part of the subject property described in Exhibit "B" (49.9 acres) and upon the transfer of Exhibit "B" property he, his successors, assigns, or devisees will be responsible for complying with this addendum and Mrs. Moore will be released from that part of subject property described in Exhibit "B". This Addendum to Annexation Petition does not pertain to the property located in Exhibit "A" (9.41 acres) which is not being developed.

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COVENANTS

1. Zoning and Allowed Uses

The Petitioner states:

a. The residential density on the property (Exhibit "B") shall not exceed 3.8 units per gross acre (or a maximum of 173 units). For purposes of counting units, accessory dwelling units as permitted under the Development Code shall not be counted as part of the maximum number of units.

2. Phasing Commitments

a. Each phase of the Overall Development Phasing Plan is designed to be a logical increment of development that provides for satisfactory infrastructure and compliance with the Town's desire to manage and slow growth.

b. The Phasing plan is attached hereto as Exhibit "C" and incorporated herein. It establishes a maximum number of residential units which may be built during each specified phase.

c. The Town agrees upon approval of the annexation that the following issues with respect to a PUD (Planned Unit Development) development on this property (Exhibit "B") have been considered and preliminarily satisfy the requirements of the Development Code with respect to annexations.

1. The Addendum to the Annexation Petition and the PUD plat submitted therewith initially meet the intent and purpose of the Town's Comprehensive Plan and Land Use Plan.

2. Public Facilities and utilities necessary to serve this development are in place or are reasonably available to the developer of this property.

3. Mr. Bebo has agreed to make the required commitments to the Town for the extension and construction of the public improvements necessary for the development.

4. The property (Exhibit "B") meets the requirements for the PUD zoning.

5. Mr. Bebo's agreement to accept a limitation on building permits set forth in Exhibit "C" to the Addendum to the Annexation Agreement establishes a satisfactory limitation on the development's rate of growth.

6. The fiscal impact report was submitted to the Larimer County Commissioners.

7. The Neighborhood meeting requirement has been met for the PUD.

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3. Water/Sewer

a. The Petitioner will provide water and wastewater service to the property through the extension of existing Town mains. These extensions shall be installed and paid for by the Petitioner and be in compliance with the Town's standards.

b. Mains larger than those required to serve the property (Exhibit "B") but required by the Town shall be subject to the provisions of Title 30, Article 11, Section 303 of the Town Development Code. The Town and the Petitioner shall enter into a reimbursement agreement to compensate the applicant, Mr. Bebo, for the cost of the required over-sizing from future developments or any new units which make use of the over-sizing.

4. Park Fees

a. Mr. Bebo's agrees to comply with one of the following options for the park dedication/park development requirements in the Development Code Chapter 30-10, Section 30-10-105, Parkland Dedication and Development Fee. The options are listed in priority.

Option #1: Purchase 3.7 acres from Mary Moore, from the 9.4 acres of which she has retained ownership and will assist in obtaining a first right of refusal for the balance of the 9.4 acres. This option satisfies the park dedication requirements and will be completed prior to the issuance of building permits.

Option #2: Dedicate to the Town eight lots at the intersection of Colorado Avenue, 3rd Street, and Iowa Avenue. This option satisfies the park dedication/park development requirements and will be completed prior to the issuance of building permits.

Options #3: Assess each individual property at the issuance of a building permit the existing fee for park dedication/park development fees.

5. Transportation Improvements

a. When the traffic at the intersection at State Highway 56, US Highway 287 and First Street exceeds 20% of current flows one of two alternate traffic improvements will be constructed. Either a new street access from the development extending north through the Fickel Third Annexation to State Highway 56, or a new intersection at State Highway 56 shall be constructed in accordance with the design approved by both the Colorado Department of Transportation and Town of Berthoud's. The current traffic study submitted by Mr. Bebo equates traffic flows with dwelling units. The Town shall establish the number of dwelling units which would equate to a 20% increase in traffic flows. The Town will keep track of building

permits issued for this development and for the Fickel Third Annexation and will notify Mr. Bebo when the critical number of dwelling units has been reached. Additional building permits beyond the determined critical number will not be issued until a agreement is reached between the Town and the responsible parties or construction has commenced, whichever comes first.

It is Mr. Bebo's position that the costs of constructing the intersection are the responsibility of the Colorado Department of Transportation (CDOT) and the parties will attempt to have the CDOT pay for all or a portion of these costs. The balance of any costs remaining after any contribution by DOT will be allocated among the parties directly contributing to the increased traffic flows and Mr. Bebo will pay his proportionate part. Said allocation of costs amongst the parties shall be determined by the Town.

6. Drainage

a. Mr. Bebo agrees to participate in the Town's project to relocate the two First Street irrigation ditches to the east of First Street. The allocation of cost for this purpose is \$10,000. The \$10,000 will be placed in an escrow account until the project is completed.

7. Landscape

a. Mr. Bebo agrees to comply with Section 30-14, Landscape Regulations including Section 30-14-303 (D), Tree Lawns which states "Within the lawn area setback tall canopy trees shall be planted at a maximum spacing of forty (40) feet from the trunk centerline trunk centerline. Trees shall be planted five (5) feet from the back of curb to the centerline of the trunk. Tree selection shall be from material requirements specified in the appendix of this code."

8. Utility Rebate

a. Per the Annexation and Rebate Agreement between the Town of Berthoud and Mary V. Moore, dated June 20, 1994, Mr. Bebo agrees to rebate \$148.32 per lot to Mary V. Moore based on the proportion of the excess capacity in the 6" water line used by the Berthoud Heights East PUD.

b. This agreement and any documents executed pursuant hereto shall become null and void in the event the subject property is not annexed to and developed in the Town of Berthoud.

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PETITIONER

Mary V. Moore
BY: Connie L. Moore
Mary V. Moore
Richard Bebo ~~Reserve~~
BY: Lawrence L. Bebo

PURCHASER

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

9th The foregoing instrument was acknowledged before me this
day of ~~December~~, 1995 by Mary V. Moore and Lawrence L. Bebo.
January 1996

Witness my hand official seal.

My commission expires: OCT. 19, 1998



Lorraine Stroh
Notary Public

Town of Berthoud
By: David M. Lenahan
Town Administrator

Attest:

Mary K. Cowdin