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ORDINANCE NO. 571

OF THE TOWN OF BERTHOUD, COLORADO, CREATING THE BEIN SPECIAL IMPROVEMENT DISTRICT NO. 1985-1, IN THE TOWN OF BERTHOUD, COLORADO, FOR THE ACQUISITION, CONSTRUCTION, AND INSTALLATION OF STREET, WATER, SANITARY SEWER, AND DRAINAGE IMPROVEMENTS THEREIN, PROVIDING FOR THE ISSUANCE OF BONDS IN PAYMENT FOR SAID IMPROVEMENTS, PROVIDING OTHER DETAILS CONCERNING THE DISTRICT, AND DECLARING AN EMERGENCY.

WHEREAS, Berthoud Associates, Ltd., Thomas C. Bein and Louise I. Bein, and Mary Schmidt (the "Owners") have presented their Amended Petition and Waiver to the Board of Trustees (the "Board") of the Town of Berthoud, Colorado (the "Town") for the organization of the Bein Special Improvement District No. 1985-1 (the "District") for the construction of certain street, water, sanitary sewer, and drainage improvements (the "Improvements"); and

WHEREAS, the Owners own all of that real property lying within the District and constitute 100% of owners of real property to be assessed for the Improvements; and

WHEREAS, the Owners have waived in writing notice, publication, and hearing pursuant to C.R.S., §31-25-503(4.5); and

WHEREAS, the Board has accepted the Amended Petition and Waiver, the Engineering Report, plans and specifications, map, schedules and cost estimate relating to the District, has waived notice, publication, and hearing pursuant to C.R.S., §31-25-503(4.5), and now desires to formally create the District; and

WHEREAS, on March 19, 1985, the Board met in open session, at which time it considered and approved a Resolution and Preliminary Order declaring its intention to create the District and adopting preliminary plans and specifications, relative to the District; and

WHEREAS, the Board finds and determines there exists a necessity for creation of the District, and the construction and installation of the Improvements will constitute an overall benefit to the Town.

Receptn. 85015247 Date 4-2-85
County of Larimer State of Colorado
Book _____ Page _____
Int. O.P.

*Original
in Bein's
Records*

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

1. Creation of District. That a special improvement district for the construction and installation of the Improvements is hereby created and organized in accordance with Colorado law, and shall be known and designated as the "Bein Special Improvement District No. 1985-1". All proceedings previously held and actions taken in connection with the District are hereby ratified and approved.

2. Engineering Documents. The Engineering Report, plans and specifications, map, cost estimate, and other related documents (the "Engineering Documents") on file with the Town Clerk are approved and adopted.

3. Description of District Property. The property included within the District is described on Exhibit "A" attached hereto and incorporated herein by reference.

4. Description of Improvements. The Improvements are described as follows:

DISTRICT IMPROVEMENTS

Streets. The street improvements, consisting generally of grading, base course, asphalt, curb, gutter, and sidewalk, have been separated into six distinct projects which are more particularly described below:

Project St-I (Mayo Court, Munson Court and Section I of Eighth Street) - MAYO COURT from its intersection with Fifth Street west to its terminus at the center point of its cul-de-sac, a total distance of approximately 435 feet, having a width of 36 feet from curb to curb.

MUNSON COURT from its intersection with Eighth Street east to its terminus at the center point of its cul-de-sac, a total distance of approximately 425 feet, having a width of 36 feet from curb to curb.

Section I of EIGHTH STREET from its intersection with existing Minnesota Avenue north to a point on the westerly boundary near the northwest corner of Berthoud Heights Subdivision, a distance

of approximately 1,092 feet, having a width of 40 feet from curb to curb.

Project St-II (Section II of Eighth Street) - Section II of EIGHTH STREET from a point on the western boundary near the northwest corner of Berthoud Heights Subdivision northerly to the southeast corner of Berthoud Business Park, a distance of approximately 1,053 feet, having a width of 40 feet from curb to curb for the southerly most 1,023 feet, and changing to a width of 44 feet over the northerly most 30 feet of this section of Eighth Street.

Project St-III (Section III of Eighth Street) - Section III of EIGHTH STREET adjacent to the east side of Berthoud Business Park from the Business Park's southeast corner northerly to Mountain Avenue, a distance of approximately 656 feet, having a width of 44 feet from curb to curb. There will be no sidewalk improvements on the east side of Eighth Street south of Welch Avenue.

Project St-IV (Section I of Welch Avenue and Section I of Mountain Avenue/U.S. Highway 287) - Section I of WELCH AVENUE from the extension of the existing Welch Avenue starting approximately 195 feet east of Eighth Street and running westerly to Tenth Street, excluding its intersection with Eighth Street, a distance of approximately 1,133 feet, having a width of 40 feet from curb to curb from its easternmost point westerly to its intersection with Eighth Street, and a width of 44 feet from curb to curb from Eighth Street westerly to Tenth Street. Sidewalk improvements will not be constructed on the south side of Welch Avenue east and west of Eighth Street.

Section I of MOUNTAIN AVENUE from its intersection with Eighth Street westerly to the middle of its intersection with Tenth Street, a distance of approximately 1,018 feet. This section of Mountain Avenue is to be widened on the south side of the existing roadway an additional 28 feet to the new curb line to accommodate acceleration lanes, deceleration lanes, and turning bays.

Project St-V (Section II of Welch Avenue and Section II of Mountain Avenue - U.S. Highway 287) - Section II of WELCH AVENUE from its intersection with Tenth Street westerly to the District boundary, a distance of approximately 138 feet, having a width of 44 feet from curb to curb. Sidewalk will be constructed on the north side of the street only.

Section II of MOUNTAIN AVENUE from the middle of its intersection with Tenth Street westerly to a point of transition back to the existing roadway, a distance of approximately 510 feet. This section of Mountain Avenue for the first 150 feet west of Tenth Street is to be widened on the south side of the existing roadway an additional 28 feet to the new curb line and then gradually taper back to the existing roadway section over the westerly 360 feet.

Project St-VI (Tenth Street) - TENTH STREET from its intersection with Mountain Avenue southerly through its intersection with Welch Avenue to just beyond the southern boundary of the District, a distance of approximately 815 feet, having a width of 44 feet from curb to curb.

Sanitary Sewer System. The sanitary sewer system, consisting generally of 8-inch or 12-inch PVC sewer mains, 4-inch diameter manholes, 6-inch underdrain, concrete encasement where crossing under water lines and the drainageway, and 4-inch PVC service lines, has been divided into six distinct projects which are more particularly described below:

Project S-I - approximately 1,390 feet of 8-inch main and appurtenances in Berthoud Heights Subdivision, from its connection on the east side of said subdivision with the existing 12-inch sewer main extending northerly along the west side of Fifth Street and under Mayo Court to provide service to lots on both sides of Mayo Court; from its connection on the east side of said subdivision with the existing 12-inch sewer main extending southwesterly and under Munson Court to provide service to lots on both sides of Munson Court; and service lines extended from the existing sewer mains to the remaining lots in said subdivision.

Project S-II - approximately 2,045 feet of 12-inch main and appurtenances north of Berthoud Heights Subdivision, from a connection to the existing 12-inch sewer main near the northwest corner of Berthoud Heights Subdivision extending northwesterly to the western boundary of the District.

Project S-III - approximately 532 feet of 8-inch main and appurtenances within Berthoud Business Park, from a connection to the new 12-inch sewer main in Project S-II extending northerly and under a portion of Welch Avenue to provide service to lots on both sides of Welch Avenue, and new service lines from the new 12-inch

sewer main in Project S-II to serve additional lots on the south side of Welch Avenue in Berthoud Business Park.

Project S-IV - approximately 450 feet of 8-inch main and appurtenances west of Berthoud Business Park from a connection to the new 12-inch sewer main in Project S-II extending northerly under Tenth Street to a point south of Mountain Avenue, to provide service to commercial lots on both sides of Tenth Street.

Project S-V - approximately 148 feet of 8-inch main and appurtenances west of Berthoud Business Park from a connection to the new 8-inch sewer main in Project S-IV extending westerly under Welch Avenue to the District boundary, to provide service to the two commercial lots on either side of Welch Avenue.

Project S-VI - approximately 205 feet of 8-inch mains and appurtenances northwest of Berthoud Heights Subdivision stubbed from the new 12-inch sewer main in Project S-II into the three multi-family parcels adjacent to said 12-inch sewer main to provide service to the three parcels and the residentially-zoned lots east of Eighth Street and south of Welch Avenue.

Water Distribution System. The water distribution system, consisting generally of a 6-inch or 8-inch PVC water line, fire hydrants, valves, tees, crosses, and other appurtenances and 3/4-inch service lines stubbed to each lot, has been divided into seven distinct projects which are more particularly described below:

Project W-I - approximately 1,090 feet of 8-inch and 1,319 feet of 6-inch water lines and appurtenances in Berthoud Heights Subdivision, from a connection with the existing 8-inch water line at Minnesota Avenue northerly under the entire length of Section I of Eighth Street to provide service to lots on both sides of Eighth Street, from a connection with the existing 8-inch water line in Fifth Street extending westerly under Mayo Court to the new 8-inch water line under Section I of Eighth Street to provide service to lots on both sides of Mayo Court; and from a connection with the existing 8-inch water line in Fifth Street extending westerly under Munson Court to connect with the new 8-inch water line under Section I of Eighth Street to provide service to lots on both sides of Munson Court.

Project W-II - approximately 1,066 feet of 8-inch water line and appurtenances extending from the water line of Section I of

Eighth Street northerly under Section II of Eighth Street adjacent to Berthoud Business Park to the southern boundary of Section III of Eighth Street to serve the four residentially-zoned parcels adjacent to Section II of Eighth Street. Additionally, approximately 150 feet of 6-inch water line will be stubbed into these residentially-zoned parcels to provide water service for their future development.

Project W-III - approximately 287 feet of 8-inch water line extending from the water line in Section II of Eighth Street northerly under Section III of Eighth Street to a connection with the existing 8-inch water line in the intersection of Welch Avenue and Eighth Street.

Project W-IV - approximately 1,076 feet of 6-inch water line from a connection with the existing 8-inch water line in the intersection of Welch Avenue and Eighth Street westerly under Welch Avenue to connect with an existing 8-inch water line in Tenth Street to provide service to lots on both sides of Welch Avenue in Berthoud Business Park.

Project W-V - approximately 151 feet of 6-inch water line from the existing 8-inch water line in the intersection of Welch Avenue and Tenth Street westerly to the District boundary serving the commercially-zoned parcels on both sides of Welch Avenue.

Project W-VI - adjustments to the existing 8-inch water line and appurtenances in Tenth Street within the District, including lowering approximately 305 feet of the water line in the vicinity of the new drainageway crossing at the southern edge of the District, to provide service to Berthoud Business Park on the east side of Tenth Street and the two commercially-zoned lots on the west side of Tenth Street.

Project W-VII - adjustments to the existing 8-inch water line and appurtenances in Section I of Mountain Avenue, including relocation of an existing fire hydrant and relocation of an existing water service meter and line.

Storm Drainage. Storm drainage improvements, consisting generally of a subdrain (4-inch underdrain) below the drainageway running through the District from the western boundary in a southeasterly direction to the eastern boundary, a 5-foot wide by 1/2-foot deep concrete trickle channel, parallel triple 36-inch reinforced concrete pipe culvert crossings under Eighth Street and Tenth Street, slope protection for the roadway embankment at the

drainageway crossings, and overlot grading improvements consisting generally of clearing and grubbing, topsoil removal, earthwork excavation, placement of structural fill, and replacement of topsoil, have been divided into two distinct projects which are more particularly described below:

Project SD-I - in Berthoud Heights Subdivision, approximately 934 feet of trickle channel with underdrain extending from the northwestern corner of the subdivision in a southeasterly direction to the eastern boundary of the District, and a total of approximately 17,000 cubic yards of in-place fill throughout the subdivision.

Project SD-II - northwest of Berthoud Heights Subdivision approximately 1,518 feet of trickle channel with underdrain running from the western boundary of the District southeasterly to the northwestern corner of Berthoud Heights Subdivision; approximately 180 feet of triple 36-inch reinforced concrete pipe culvert crossings under Eighth Street and Tenth Street; a total of approximately 15,000 cubic yards of in-place fill (requiring approximately 21,000 cubic yards of excavated material available within Project SD-II); removal of existing fences, trees, building structures and any other obstruction to the storm drainage construction and grading.

5. Improvements Authorized. The construction and installation of the Improvements in accordance with the Engineering Documents and as provided for in the map, plans and specifications heretofore adopted by the Board be, and they hereby are, authorized and ordered.

6. Cost of Improvements. The estimated total cost of the Improvements, including but not limited to, construction, engineering, surveying, project management, legal and appraisal costs, title insurance, Town administration, interest during construction and until assessments are made by ordinance against the property benefited, interim financing, marketing of the bonds and other incidental costs, is approximately \$1,578,700.00, plus an additional amount for the cost of inspection, collection, incidentals, and interest on the bonds issued to the time the first installment of the assessment is made payable. The total cost shall be apportioned upon completion of the Improvements and approval and acceptance of the same by the Town in an assessment roll against each property to be assessed. Assessments shall be

levied by an assessing ordinance. The total cost of acquiring, constructing, and installing the Improvements shall be assessed against the District properties in accordance with the benefits derived from the Improvements, as more particularly set forth in the Resolution and Preliminary Order passed and adopted by the Board on March 19, 1985, and incorporated herein by reference.

7. Reallocation of Assessments. Before any tract or parcel of Property subject to assessment is divided into smaller parcels or other property interests, the Owners shall prepare and present to the Town Board of Trustees for its approval an equitable plan for reallocating such assessment against each such smaller parcel or other property interest. The reallocation plan shall generally provide that the assessment against each such smaller parcel or other property interest shall bear the same ratio to the original assessment against such tract or parcel as the proportionate interest in such smaller parcel or other property interest bears to the interest in saleable land in such original tract or parcel as so divided into smaller parcels or other property interests.

8. Special Assessment Bonds. Pursuant to Colorado law, the Town shall issue negotiable special assessment bonds to pay all of the cost of the Improvements, including but not limited to, construction, engineering, surveying, project management, legal and appraisal costs, title insurance, Town administration, interest during construction and until assessments are made by ordinance against the property benefited, interim financing, marketing of the bonds and other incidental costs, plus an additional amount for the cost of inspection, collection, incidentals, and interest on the bonds to the time the first installment of the assessment is made payable. The bonds shall be issued upon estimates approved by the Board and as authorized by the bond ordinance to be passed by the Board at a later date. The maximum net effective interest rate for the special assessment bonds shall not exceed eighteen percent (18%) per annum. Such bonds shall be payable out of the monies collected on account of the assessments made for the Improvements whenever three-fourths (3/4) of said bonds have been paid and cancelled and for any reason the remaining assessments are not paid in time to pay the remaining bonds and the interest due thereon, the Town shall pay the bonds when due and the interest due thereon and reimburse itself by collecting the unpaid assessments due the District.

9. Benefits. The Board finds and determines that the Improvements proposed to be constructed and installed will confer a special benefit upon the District property and a general benefit upon the Town as a whole.

10. Statutory Compliance. Pursuant to Part V, Article 25, Title 31, of the Colorado Revised Statutes, the Board has heard

and determined all complaints and objections made in writing concerning the District improvements, the Board finds that all Colorado statutory provisions regarding creation of the District have been fully complied with or properly waived.

11. Master Agreement. The Mayor is authorized to execute the Master Agreement with the Owners on behalf of the Town setting forth the respective rights and responsibilities of the parties in the formation of the District and the construction and installation of Improvements.

12. Repealer. All acts, orders, resolutions, ordinances, or any parts thereof of the Town that are inconsistent or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency or conflict. This repealer shall not be construed to revive any act, order, resolution, ordinance, or part thereof heretofore repealed.

13. Severability. Should any one or more sections or provisions of this Resolution and Preliminary Order be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining portions.

14. Recording. This Ordinance, after its passage, shall be recorded in the book kept for that purpose, shall be authenticated by the signature of the Mayor and Town Clerk, and be published in accordance with Colorado law.

15. Declaration of Emergency. Because it is necessary and for the public benefit to commence construction of the Improvements as soon as possible so as to complete them within a single construction season, it is hereby declared that an emergency exists, that this Ordinance is necessary to the immediate preservation of the public health and safety, and that it shall be in full force and effect upon adoption and compliance with C.R.S., §31-16-104 (1973, as amended).

16. Ordinance Irrepealable. This Ordinance shall be irrepealable until the indebtedness provided for herein, when created, has been duly paid, satisfied, and discharged as provided herein.

ADOPTED AND APPROVED THIS 19TH DAY OF MARCH, 1985.

Tommy D. Elbow
Mayor

ATTEST:

Ossabelle Patterson
Town Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

OF

DISTRICT PROPERTIES

Berthoud Heights Subdivision to the Town of Berthoud

1. Lots 1 through 9, Block 1
2. Lots 1 through 17, Block 2
3. Lots 1 through 13, block 3

Berthoud Business Park

1. Lots 1 through 19

Bein Fifth Addition to the Town of Berthoud

1. Blocks 1 through 5
2. Lots 1 and 2

Rocky Mountain Addition to the Town of Berthoud

1. Lots 3 and 4, Block 1
2. Lots 5 and 6, Block 1
3. Lots 9 through 12 and the northerly 77 feet plus or minus of Lots 13 through 16, Block 4 and the vacated alley Right of Way adjacent to said lots.
4. Lots 13 through 16 except the northerly 77 feet plus or minus thereof, Block 4; Lots 9 through 12, Block 5 and the vacated street and alley Rights of Way adjacent to said Lots.