

ORDINANCE NO. 859

AN ORDINANCE ESTABLISHING THE RAW WATER DEDICATION FEE AND THE METHODS FOR ACQUIRING RAW WATER OR MONETARY PAYMENTS FOR THE ACQUISITION OF RAW WATER IN THE TOWN OF BERTHOUD, LARIMER AND WELD COUNTIES, COLORADO.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, LARIMER AND WELD COUNTIES, COLORADO:

Section 1. Purpose and Scope.

The Board of Trustees has determined that it is in the best interests of the Town to continually acquire raw water sufficient to provide for the needs of current and future development. The Board has determined that in some cases it is difficult, if not impossible, to obtain at a reasonable price sufficient raw water for persons needing only a few acre feet of water. The Board has also determined that it is not in the best interests of the Town to receive cash in lieu of raw water for larger developments. It is therefore necessary to adopt this ordinance to accommodate the water needs of both large and small developments as well as those developments which can only be served with treated water through a supplier other than the Town of Berthoud.

Section 2. Developer Defined.

For the purposes of this ordinance, a developer is defined as an individual, an association of individuals, a partnership, corporation, limited liability company or other group of individuals or legal entity, which individuals or entities are associated for purposes of construction of residential structures, which seeks approval of a project where phasing in a development agreement calls for four (4) or more building permits for single family equivalent structures from January 1 through December 31 of any year.

Section 3. Water Dedication for Subdivisions.

A. Prior to or concurrent with the approval of the final plat for a subdivision or P.U.D. or comparable development of four (4) lots or more by the Board of Trustees, the Town shall have received 1.43 units of Colorado Big Thompson Project

water (CBT) which is the equivalent of one (1) acre foot of water; or, the Town shall receive one-half (1/2) of a unit of CBT (.35 acre feet) and one (1) acre foot of Handy Ditch water, plus all transfer costs set forth in paragraph 3.B. below, for each dwelling unit within the subdivision and such other raw water as is necessary to provide for the anticipated requirements of commercial or industrial uses within the development. The amount of water which a developer will receive credit for relative to the Handy Ditch will be based upon the least water delivered in any of the preceding 25 years by the Handy Ditch Company (the dry year yield). However, if the property cannot be served by water processed at the Town's water treatment plant then the only raw water acceptable to the Town to comply with this ordinance for raw water dedication will be units of CBT. Other sources of raw water may be acceptable to the Town in its sole discretion provided they are available in volume, timing, delivery and adjudication.

(1) To establish the amount of raw water required for a dwelling unit it shall be presumed that the raw water usage for each dwelling unit shall be one (1) acre foot. A dwelling unit is defined in the current edition of the Uniform Building Code as adopted by the Town. Thus, it would be presumed that a single family residence would have a raw water compensation requirement of one (1) acre foot while a duplex would have a raw water compensation requirement of two (2) acre feet. Raw water requirements for estate sized lots, apartment complexes, commercial, industrial and other uses would be evaluated on a case by case basis as required in subsection A above.

(2) Upon determination of the amount of raw water usage as required by this section, the requirement shall be rounded off to the nearest acre foot. Calculations which result in a fraction of an acre foot equal to or greater than .500 shall be rounded up to the next higher acre foot and those fractions less than .500 shall be rounded down.

B. The amount and suitability of a given raw water source necessary to provide one acre foot of firm yield shall be determined by the Town at its sole discretion. Conveyance of any water to the Town must be made in a manner that warrants free and clear title to the water. The applicant shall also execute or cause to be executed a dry-up covenant or covenants acceptable to the Town in cases where such covenants are deemed necessary by the Town. Transfer costs and related expenses shall be paid by the transferor. Related expenses may include title examination and engineering analyses of the historic use of the water to be conveyed, court costs and attorney's and engineering fees. The transferor shall be responsible for all transfer costs including the costs of Water Court proceedings to change the

use of a water source to municipal use, as necessary. The Town, at the transferor's sole cost, and in the Town's sole discretion, may authorize the transferor to process the transfer. A developer which elects to provide any source of raw water acceptable to the Town besides units of CBT shall provide a financial guarantee acceptable to the Town, generally a letter of credit, or deposit of securities or cash sufficient to guarantee that the legal conditions to effect the transfer are finalized thereby assuring availability of the water for domestic purposes. The financial security shall also be sufficient to purchase units of CBT to replace the credit received for the Handy Ditch Company water.

Section 4. Raw Water Dedication Fees.

A. Properties Currently Served by the Town's Water Treatment Plant.

Those properties currently receiving water treated through the Town's water treatment system shall be exempt from water dedication and water dedication fees except to the extent that the usage of the property changes, for example a residence to a restaurant at which point the Town may reevaluate the usage and require additional raw water to be transferred to the Town.

B. The Board of Trustees recognizes that the acquisition of partial shares of Handy Ditch Company stock and a few units of CBT is difficult. For persons who are not defined as developers and whose property can be provided water service or treated water through the Town's treatment plant, the fee will be \$9,500.00 per acre foot of water.

C. For subdivisions or applicants which cannot be provided with treated water through the Town's water treatment plant, the fee shall be based upon the current price of one (1) acre foot of CBT. In all cases the current price of one (1) unit of CBT shall be established by the Town's Utility Director or Town Administrator. They shall base the current price upon the records of the Northern Colorado Water Conservancy District for the highest, most recent transfer approved by its board prior to the date the request for a water tap or a building permit is made.

Section 5. Repealer.

All ordinances, or portions thereof, which are in conflict with this ordinance are hereby repealed.

Section 6. 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 thirty (30) days after publication.

At its meeting June 13, 2000, a public hearing was set by the Board of Trustees of the Town of Berthoud for its meeting held on the 27th day of June, 2000. After the public hearing, the Ordinance was read, passed and ordered published by the Board of Trustees at its meeting this 27th day of June, 2000.

TOWN OF BERTHOUD:

ATTEST:

Milan Karspeck
Milan Karspeck - Mayor

Mary K. Cowdin
Mary K. Cowdin - Town Clerk

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