



MEETING MINUTES OF THE TOWN BOARD

Town Board Room
807 Mountain Avenue
Town of Berthoud, Colorado
Tuesday, May 28, 2019 6:30 p.m.

- I. **REGULAR MEETING CALLED TO ORDER** – Mayor William Karspeck Called into session 6:30 p.m.
- II. **PLEDGE OF ALLEGIANCE** – Mayor William Karspeck
- III. **ROLL CALL** –Trustee Laak, Trustee Dower, Trustee Alaback were not present.

IV. **CITIZEN PARTICIPATION** –

There was none.

V. **SCHEDULED ITEMS**

- 1. **Consent Agenda**
 - a) Approval of May 28, 2019 Agenda
 - b) Approval of Minutes -May 14, 2019
 - c) Xcel Energy Berthoud Parkway Easement

Trustee Tomassi Motioned to combine and approve the items on the Consent Agenda. Trustee Hardy Seconded the Motion. WITH ALL IN FAVOR THE MOTION CARRIED.

- 2. **Town of Berthoud Street Tree and Tree Maintenance Program, 2nd Reading**

There is going to be more edits based on citizen feedback. It will be brought back June 11, 2019.

- 3. **Bein Park Equipment Replacement Bid Award**

Jeremy Olinger introduced. The Parks Department recently concluded an open RFP Bidding process and received four quality submittals for the playground renovation project a Bein Park. The RFP was for removal of the old equipment, design, and installation of new playground equipment. Staff vetted those submittals and is recommending option number 1 of the Churchich designs. Churchich was the original company that put the equipment in. They gave us a 40 percent discount for this project. The estimated time for completion is August.

Trustee Tomassi Motioned to award Churchich Recreation, LLC the Bein playground project and authorize the Town Administrator to authorize any necessary change orders up to a minimum of 5% of the proposed cost. Mayor Pro Tem Hindman Seconded the Motion. WITH ALL IN FAVOR THE MOTION CARRIED.

- 4. **Special District Model Service Plan**

Town Administrator Kirk introduced **Alan Pogue** for this topic.

Alan Pogue of Icenogle Seaver Pogue, P.C.: He is special counsel to the Town of Berthoud for Special District related matters. He reminded everyone that a while back we had a meeting over this matter and took what was discussed in that meeting. He gave the Board a memo regarding three specific areas. He stated the First Fundamental question that you all would need to address is number one do you want to allow Metropolitan District to continue to use as a vehicle to assist in financing and development of new projects. He suggested that the policy contain the key items and then address each application on a case by case basis, because no two developments are alike. The three key items to discuss would be the Special District Policy, Gallagher Adjustment, and Disclosure Notice.

Gallagher Adjustment:

The Gallagher Amendment to the Colorado Constitution divided the state's total property tax burden between residential and commercial property. Because of the Gallagher Amendment, 45% of the total amount of state property tax collected must come from residential property, and the remaining 55% must come from commercial property. In addition, the Gallagher Amendment fixed the assessment rate for commercial property at 29%, while the residential assessment rate is annually adjusted to maintain the 45/55 Special District Policies May 7, 2019 split between residential and commercial property. The assessment rate is the percentage of the property's actual value that is taxed. Because of the increasing residential property values since the adoption of the Gallagher Amendment, the assessment rate for residential property has decreased substantially to maintain the constitutional ratio of 45/55. The mill levy imposed by a special district is a property tax based on the dollars per thousand of assessed value. Consequently, if the assessed value of a property declines, the amount of revenue collected by the special district pursuant to its mill levy declines. In order to stabilize the revenue of a special district, service plans often contain language that the mill levy caps established in the service plan are subject to Gallagher adjustment, such as follows:

In the event of legislation changing the ratio of actual valuation to assessed valuation for residential and commercial real property, the mill levy limitations will be increased or decreased so that the actual tax revenues generated by the mill levy are neither diminished or enhanced because of such changes.

Such a provision is revenue neutral on a district-wide basis and allows the special district to proportionally adjust its mill levy to allow it to continue to collect the equivalent amount of revenue each year despite a decreased residential assessment rate. He recommends allowing Gallagher adjustments in all service plans.

Disclosure Notice:

The information that is needed is part of the title along with disclosure statements that is required by State Statute. They are suggesting an additional requirement. It is an obligation placed on the proponent of the District or the Developer. The Developer would enter into an agreement with the Town at the time the service plan is approved. The agreement would be recorded along with the disclosure statements. That copy would be given to every prospective purchaser before buying. It is an obligation that runs with the property that is beyond State Statute. The information is detailed and would have contact information for questions, what the Mill Levy is, what services and facilities are provided and a comparison on the back that shows what the tax bill is going to look like.

His suggestion on the governance piece with a multiple District structure the way those districts interact with one another and the way the improvements are financed, built, operated and maintained. That the agreement would be part and parcel of what's submitted with the service plan and reviewed by staff and outsiders that the Town would hire to review the service plan. Any specific concerns that the board might have about the structure of the service plan could be addressed at that time before the district is formed. In addition to that the Town can take the Service Plan requirement and take many of the key provisions of the service plan and import to another Intragovernmental agreement between the Town and the District. What that does is if there is an action that the District takes that is inconsistent with the service plan there is a statutory remedy for the Town. This gives the Town a stronger remedy because now they would have a breach of contract claim if somebody did something they were not allowed to do.

He also suggests that the applicant seeking approval of a service plan should be required to pay all costs and expenses incurred by the Town in the process of reviewing the service plan. The Town currently requires an applicant to reimburse the Town for the expense of outside legal counsel reviewing the service plan and providing advice to the Board in connection with its consideration of a proposed service plan. In addition to retaining legal counsel, he recommends that the Town retain an independent third-party financial adviser to review the financial plan required by state statute. The applicant should be required to pay a deposit at the time the proposed service plan is submitted in an amount sufficient to cover the Town's costs in retaining a consultant to review the financial plan.

The Board summarized what the policy should look like:

- No one size fits all policy
- Provision that de-fees after a certain amount of time upon development completion
- Gallagher Adjustment
- Model Fort Collins Agreement for seller. Metro Tax information must be provided before contract is signed.
- Provide right of rescission clause
- Town Ordinance that disclosure be part of sale
- IGA created from Service Plan with Town and the District
- Financial Advisor be included in review
- Financial Advisor be compensated by the Applicant
- Maximum interest percentage in borrowing be made clear in documents
- Exclusion of the powers be case by case

This item will be brought back to the Board.

VI. ELECTED OFFICIAL REPORTS

Administrator Kirk: Clean up day on May 18, 2019 was a success. Wagner Design Project 25 percent design will come to the Board in June. We are advertising for Requirements for Qualifications for Engineering Firms to help with development processes. We are reviewing insurance options. Also looking at modification to Town Hall to improve customer service and additional office space and improve security. Also working on Franchise agreements that will be coming to the Board in a couple of months. ICSC (International Council of Shopping Centers) Trade Show that Walt attended, had twenty-seven meetings with hotels, general retail, restaurants and real-estate community. Berthoud Day the Town will have a booth.

Attorney Bell: MPO sent out a notice about a court of appeals case from April regarding Open Records and Open Meetings.

Mayor Pro Tem Hindman: Attended the CML District meeting in Fort Collins. The Director highlighted the Legislative session that just concluded. He was also able to touch base with the Windsor and Fort Collins Representative about developing their own guidelines and regulations on Oil and Gas. He felt it was a great networking opportunity. He also felt that the Legislative session was very positive and beneficial for Local Government.

Mayor Karspeck: Brought an Ordinance regarding Puppy Mills and would like to see it at the June 11, 2019 meeting. He also stated that Hops and Harley that represent Harley's Dream would like to be present to answer any questions the Board may have.

Trustee Tomassi: Commended staff and everyone involved for a phenomenal job on Clean-Up Day. Memorial Day the Mayor and himself attended the Memorial Day Observance at Green Lawn Cemetery. Gabe Conde's parents spoke along with his platoon leader. There were veterans and people from the town there. What added to the experience was Main Street being lined with flags that created the unique experience.

Trustee Hardy: Glenwood Springs is a 100 percent wind power. He would like us to look at Chemical use and Chemical disposal in Town.

VII. EXECUTIVE SESSION

- VIII. Trustee Tomassi Motioned to Move into Executive Session Pursuant to C.R.S. § 24-6-402(4)(e)(I) to determine positions relative to matters that may be subject to negotiations, developing a strategy for negotiations, and instructing negotiators. The following is provided for informational purposes: Potential Property Purchase Seconded by Trustee Hardy. WITH ALL IN FAVOR THE MOTION PASSES.**

IX. ADJOURNED after Executive Session.



Town Clerk or Deputy Town Clerk





Mayor Karspeck