



## MEETING OF THE TOWN BOARD

Town Board Room  
807 Mountain Avenue  
Town of Berthoud, Colorado  
Tuesday, January 22, 2019 6:00 p.m.

- I. **REGULAR MEETING CALLED TO ORDER** – Mayor William Karspeck Called into session 6:01 p.m.
- II. **PLEDGE OF ALLEGIANCE** – Mayor William Karspeck
- III. **ROLL CALL** – Mayor Karspeck, Mayor Pro Tem Hindman, Trustee Tomassi, Trustee Hardy, Trustee Dower and Trustee Laak were present. Trustee Alaback was not present
- IV. **CITIZEN PARTICIPATION –**

Karen Fletcher of Berthoud a member of Berthoud Concern Citizens. A group that was formed for the threats to this community and the quality of life. They have identified serious threats to our community and our way of life. They would like to work with the Town to address these threats and to offer insight and suggestions on how this matter can be handled and settled.

Catherine Scott of Berthoud would like to know why the Farmstead Final Plat Phase I was approved especially when so many opposed it. Berthoud Development Code 30-6-108-C-2 states “The development complies with this Code, The Comprehensive Plan and the PORT Plan.” Along with other criteria. The Farmstead Plat does not comply. To start seven properties where not notified. The neighbors and the Berthoud Concern Citizens have no reconciliation of a sign being posted near the property boundaries or anywhere in the area.

Joe Rogers of Berthoud would like to address the absence of a neighborhood park in the Farmstead Final Plat Phase 1. The Berthoud Development Code states every residential development shall provide land for and or develop a neighborhood park. A neighborhood park shall be at least three acres in size and include active play areas, shelter/s, paths and irrigation necessary to establish landscaping and maintain it in a live condition. There is also an issue with open space that is to be seven percent. Farmstead is using the out-lots to fulfill their seven percent. If you take away the out-lots, it leaves them with less than 6.53 percent. That is a violation of the Open Space requirements. There is also a trail that is 1225 feet in length with three access points. The two end points direct trail users to streets at mid-block creating unsafe crossing. The trail also has no set destination.

Mike Dougherty of Berthoud would like to address the right-of-way in the Farmstead Final Plat Phase 1. Nebraska Avenue has been designated as a minor collective. The packet from Planning Commission meeting on 10/11/18 states the Final Plat complies with all technical standards and was also reviewed by the Town Engineer. Nebraska is considered a minor collector as per the transportation plan, and only requires a 67' ROW. Berthoud Development Code 30-2-105-11 states Street designs not identified in this section shall be in accordance with the Larimer County Urban Area Street Standards as amended. The LCUASS 67' Right-of-Way is for minor Collector Loveland only. Nebraska Avenue does not comply with the Berthoud Development Code or the LCUASS. The Tree Lawn is also not in compliance with the Berthoud Development code it is showing 4.5 feet. The Berthoud Development Code states “Where developed tree lawns must be a minimum of seven feet in width.

Steve Schoo of Berthoud continued what Mr. Dougherty stated. He also mentioned that the curb and gutter does not complement the Town’s Historic development pattern. The standard for Historic Berthoud neighborhood is 6” vertical curb and gutter and not rollover curb and gutter as shown in the Farmstead Final Engineering Plans. Rollover is used on streets in newer subdivisions to eliminate driveway cuts. As a collector, Nebraska would not have driveways. He moved over to the issues with 4<sup>th</sup> Street. The approved Final Plat Mary’s Farm dedicates East 4<sup>th</sup> Street with a Right-of-Way width of 54’. The Farmstead First Filing Final Engineering drawings, sheet number TY01, shows the 4<sup>th</sup> Street Right-of-Way as 56.50’. The Farmstead approved final plat does not dedicate the additional 2.5’ Right-of-Way to accommodate the improvements proposed on the Final Engineering Plans. The problem it creates is 4’ public side walk along the east side of East 4<sup>th</sup> Street as located on the Final Engineering Plan will have only one-half (2’) of its width within a dedicated Right-of-Way. The other one-half will be on private properties effecting fifteen lots. Schoo stated that is an engineering violation that needs to be looked into.

Paul Fletcher of Berthoud addressed drainage of East 4<sup>th</sup> Street. It is well known to Mary Farm residents that 4<sup>th</sup> Street after heavy rains creates a small lake. The existing drainage ditch along the east edge of East 4<sup>th</sup> Street carries storm water from north to south to the existing detention pond. The completion of East 4<sup>th</sup> Street will eliminate this ditch. Water conveyed by this ditch and the non-historic flows from the proposed Farmstead lots facing East 4<sup>th</sup> Street will be added to existing flows at 4<sup>th</sup> Street. These additional flows will increase the flooding which occurs at East 4<sup>th</sup> Avenue and Nebraska Avenue. This will go from a nuisance to property damage. Fletcher stated the drainage issue needs to be addressed. He also stated there are traffic issues through Mary's Farm, which has narrow streets. The streets were designed as destination traffic not through traffic. He concluded that they (Berthoud Concern Citizens) would like the Board to take the facts into consideration. They would like the Board to take three immediate actions...

- Revoke the approval of Farmstead Phase 1 Final Plat and order a stay on all construction activity at the site.
- Re-Plat the Farmstead Phase 1 Final Plat with citizen input, to bring it Code using proper standards, proper planning, and respecting the Berthoud Comprehensive Plan.
- Place a moratorium on all new construction within town boundaries. Until the Berthoud Development Code has been brought up to date to be uniformed for all developers and builders.

Jeannie Aiello of Berthoud asked if the Board was going ahead with the Recreation Center. She also asked why we put it on the ballot if we were going to go forward anyway. She also stated that she was very concern.

David Leonard of Berthoud stated he wanted to show his support for the Non-Profit Berthoud Concern Citizens. He feels that there has been a lack of transparency and lack of community notification and lack of community input and the disregard of purposes outlined in the Berthoud Development Code. These are only a few of the purposes outlined in the Berthoud Development Code that are being disregarded...

1. Encourage the most appropriate uses of land of the town. That is to protect agricultural land and sensitive, natural historic areas.
2. Ensure the streets facilitate safe, efficient, pleasant walking, biking, driving, and reduce the dependency on private vehicles.

In his closing he asked that the Board reflect on both their ability and motives serving as trustee.

Mike Patrick of Berthoud stated statute 31.23.202 that it Grants power to the municipality to create a Planning Commission. In another statute 31.23.227 is a provision that says the governing body of a municipality may, by ordinance, assume and exercise any duty place upon the planning commission. Second part to delegate to the planning commission provided that the right to appeal to the municipal governing body is retained in any such delegation. Feels that there is a fundamental problem with the way the Development Code is written. Would like the Board to take a strong look at how this procedure looks, to take it back to where the community has the ability to speak to each one of them in a public forum. Nothing should be finalized until all input from town citizens and good planning staff is taken into consideration. There should be a right of appeal thereafter. The Board should hear the things that citizens have to say. There is nothing more important than the Board hearing what the community has to say about the development of this town.

Greg Bell clarified Appeals and Rights Vested. When a final plat is submitted we have 30 days according to statute to respond or is granted. Denial is appealable. The rights vested preliminary stage before a developer spends millions of dollars to carrying it out. They have to know they have something to develop on, otherwise they are unable to move forward. That is a property rights issue.

## **V. SCHEDULED ITEMS**

1. **Consent Agenda**
  - a) Approval of January 22, 2019 Agenda
  - b) Approval of Minutes – January 8, 2019
  - c) November 2018 Financial 1nf ormation

**Trustee Laak Motioned to combine and approve the items on the Consent Agenda removing Habitat for Humanity to a separate item on the agenda. Trustee Dower Seconded the Motion. WITH ALL IN FAVOR THE MOTION CARRIED.**

2. **Habitat for Humanity Fee Waiver Request**

Jan Dowker and Mike Cook with Habitat for Humanity thanked the Board for the previous year's support. Thompson Valley and Loveland High School Geometry and Construction Program along with the 250-sweat equity hours of the partner families build these homes. They asked that the board continued their much-appreciated support for the requested waiver. In Addition, they stated there is a fund raiser for Habitat for Humanity on February 2, 2019 at 5p.m. and the theme was Lumber Jack.

**Trustee Tomassi Motioned to waive building and impact fees for the Habitat for Humanity homes at 1750 and 1752 N 4<sup>th</sup> Street, with the exception of fees related to water and wastewater utility systems. Trustee Hardy Seconded the Motion. WITH ALL IN FAVOR THE MOTION CARRIED.**

3. **Town Board Code of Conduct**

Trustee Laak introduced the Code of Conduct. He stated that they needed to clean their own house. He brought this before the Board to have their input of what they like and don't like.

Milan Karspeck a citizen of Berthoud read the proposed Code of Conduct. He felt that it was in conflict with state statute. Berthoud is a statutory town. Berthoud is a Mayor Council form of government. The voters pick the mayor and the council. The Council then picks a Town Administrator, that is not required. The Town Administrator is not a central figure in a mayor council form of government. He was not in agreeance with 1,2,3 because they conflict with statute.

1. States the Board is charged with developing town policies. The Town Administrator is responsible for the achievement for those policies goals and objectives.

That is not mentioned in statute at all. Statute has the Board in charge of everything.

2. States the Board has authority only over one employee, the Town Administrator. All communication regarding questions or concerns that involve a particular department or staff member will be routed through the Administrator. Town Board members will not visit town facilities or individual staff members.

That limits Board authority over staff and communication with staff, which is not part of state statute.

3. States All legal questions or requests for legal information from the Board should be routed through the Town Administrator. Limit communication with Town Attorney. The Town Attorney is there to hear and support the Board.

He is not against a City Manager form of government. It needs a vote from the citizens to make that decision.

If we want to change it, we should go through the proper channels.

Mr. Karspeck went on with three more items in The Code of Conduct.

1. Item number six where it states Board members shall refrain from public campaigns or statements that undermines the position of the Board authority.

Board members should be vocal and speak their peace, not to be affected by group think. Be authentic.

2. Item number seven states Public statements by Board members undermining the majority's decisions will lower the Town's credibility with constituents or potential investors.

Your credibility is best when you allow people to speak and not keep things under cover. Credibility is when you are authentic.

3. Item number eleven states The Board agrees that individual members not adhering to the Board member code of conduct may be subject to censure.

He would like to know what censure consist of, because you can not take away the full functions of a Board Member. It was given to them by the people.

Attorney Bell stated that he did not feel it is in conflict with statute. He also agreed that it is a lot like the CML handbook.

The Board discussed the following concerning the Code of Conduct each voted on...

- Special Board of Conduct Meeting. Mayor Karspeck and Trustee Tomassi agreed. Mayor Pro Tem Hindman, Trustee Dower, Trustee Hardy and Trustee Laak disagreed. **The item did not pass.**
- To meet with employees, you go through Town Administrator. Mayor Pro Tem Hindman, Trustee Dower, Trustee Hardy and Trustee Laak agreed. Trustee Tomassi and Mayor Karspeck disagreed. **The item passed.**
- Item 6 of Code of Conduct draft: Board members shall refrain from public campaigns or statements that undermines the position of the Board majority. Mayor Pro Tem Hindman, Trustee Dower, and Trustee Laak agreed. Mayor Karspeck and Trustee Tomassi disagreed. Trustee Hardy abstained.
- Open Campaigning as long as you are not disparaging. Mayor Karspeck and Trustee Tomassi agreed. Mayor Pro Tem Hindman, Trustee Dower, and Trustee Laak disagreed. Trustee Hardy abstained.
- Cell Phones to be silenced and show respect and no videoing. Mayor Pro Tem Hindman, Trustee Dower, Trustee Hardy and Trustee Laak agreed. Trustee Tomassi and Mayor Karspeck disagreed. **The item passed.**
- Attorney Bell to review before vote and bring back February 12, 2019 for final approval. All agreed. **The item passed.**
- Mayor enforces proper decorum. All agreed. **The item passed.**
- Executive sessions being private unless otherwise notified. All agreed. **The item passed.**

#### 4. Weld County RE5J School District IGA Revision

Town Administrator Kirk introduced this item. The Weld RE-5J School District provides public education services for the residents of the Town of Berthoud that live within the District's boundaries. Generally, the District covers Berthoud residents living east of County Road 7. Currently this includes the Serenity Ridge neighborhood and the planned, but yet to be constructed, Wilson Ranch development area.

Currently, the Town collects the District's cash in-lieu fees via an Intergovernmental Agreement (IGA). That IGA requires the Town to hold a public hearing prior to approving updates to the fees requested by the District.

Becky Samborski Chief Financial Officer of Weld County RE5J was present. She stated from 2008-2018 they have collected \$35,000.00 dollars from the Town of Berthoud. They have used it to add classrooms to the High School and Pioneer Ridge. They have been using cash-in-lieu payments to pay for the expansions. They dedicate that money strictly to expansions as stated in the IGA.

**Mayor Pro Tem Hindman Motioned to approve the first amendment to the IGA between the Town of Berthoud and the Weld RE-5J School District. Trustee Hardy Seconded the Motion. WITH ALL IN FAVOR THE MOTION CARRIED.**

##### **5. Metro District Informational Presentation**

Alan Pogue of Icenogle Seaver Pogue, Pinnacle Consulting, and John Turner from Heron Lakes presented the information to the Town Board.

Metro Districts provide two or more specific services, including **but not limited to:**

- Domestic Water
- Sanitary Sewer
- Roadways
- Irrigation Water
- Parks and Recreation
- Transportation
- Traffic and Safety Controls

The City approves, denies or approves with conditions the Metro District Service Plan. The service plan limits the districts authority and sets parameters within which the district can operate. **Title 32** establishes powers and limits.

From the developer's point of view a Metro District is more stable than an HOA. HOA cannot solve big issues. Large mix use projects or commercial Metro Districts are the best for all parties involved. In order for a Metro District to be successful it has to be regulated very well. A developer can not cut corners if they want it to be successful.

The Board would like to see what our Service Plan and Check-List would look like. Also, would like to see other communities' service plans and checklist.

Alan Pogue Attorney for the Town stated he could put together a comparison for the Board to see.

##### **6. Case Annexation Findings of Fact and Substantial Compliance**

Curt Freese introduced this item. This past November, Berthoud voters overwhelmingly approved the ability for the Town Board to consider the Case Property Annexation. Notice of the proposed annexation must be published on four consecutive weeks prior to the public hearing. A public hearing will be set for February 14, 2019 for the Planning Commission and February 26, 2019 for the Town Board.

**Mayor Pro Tem Hindman Motioned to approve Resolution 1 of 2019. Trustee Hardy Seconded the Motion. WITH ALL IN FAVOR THE MOTION CARRIED.**

##### **7. Berthoud Forestry Department and Tree Committee Recommendations**

Josh Embrey Town Forester presented this item on behalf of Town Staff and the Tree Advisory that are in agreement with the recommendations. There are three items...

- **Town owned and maintained tree nursery:** They recommend that it be located at Hillsdale Park. It has easy access and it has a current irrigation system. There is also a Public Restroom there for the volunteers to use. They are recommending an initial planting of 50 trees of diverse species. The initial installment will occur on Arbor Day of 2019 as the Community, Tree Advisory, Volunteers and Town Staff will attend.
- **Street Tree Work Permit:** For all trees located in the Town's right-of-way implementing a work permit program. This would give Town Staff notice to regulate removals and inadequate pruning and maintenance of street trees. This would help effectively manage the Town's canopy.
- **Street Tree Replacement Program:** This program is intended to assist Berthoud property owners in replacing lost and or removed trees within right-of-way. They would like to add any potential unforeseen tree epidemics into the newly drafted application process. This application process and future program will ultimately provide replacement trees for any trees removed within right-of-way with good cause and impact from the Town Forester.

Ryan Berry of Berthoud stated he thought this was a good idea. However, he did have a concern with the pruning and requesting a permit could be costly to the homeowner.

Town Administrator reassured that there is a reasonable and practical enforcement.

**Mayor Pro Tem Hindman Motioned to approve the draft street tree work permit, street tree removal application and tree nursery at Hillsdale. Trustee Dower Seconded the Motion. WITH ALL IN FAVOR THE MOTION CARRIED.**

## 8. Non-Statutory Board Appointed Committees

This item was tabled.

**Mayor Pro Tem Hindman Motioned to postponed this to the February 12, 2019 when Trustee Alaback could be a part of this discussion. Trustee Laak Seconded the Motion. Mayor Pro Tem Hindman, Trustee Dower, Trustee Hardy and Trustee Laak agreed. Trustee Tomassi and Mayor Karspeck disagreed. THE MOTION CARRIED.**

## 9. Administrator Review Process

Mayor Pro Tem Hindman introduced this item. It has been in the past the responsibility of the Board to evaluate the Town Administrator. It is the one-year anniversary of the Town Administrator. There will be the same questions given to the Board, Town Department Heads and Town Administrator (for self-evaluation) to evaluate Administrator Kirk. The evaluations will go out January 23, 2019. Evaluations are due February 1, 2019.

There will be an Executive Session on February 5, 2019 for the board to review the evaluations for Administrator Kirk. Then February 12, 2019 they would review the Evaluation with Administrator Kirk and come back to a Board meeting should anything need voted on.

## VI. ELECTED OFFICIAL REPORTS

Trustee Tomassi had nothing to report.

Trustee Laak attended a Youth Advisory meeting. YAC is re-writing their By-Laws. He also stated he loved the newsletter from the Town that was in the newspaper.

Trustee Hardy had nothing to report.

Trustee Dower went to the last PORT Committee meeting. They have a lot of good things going on there that they will be bringing to the Board. On a recent trip took pictures of things in another town that we could possibly do in our town.

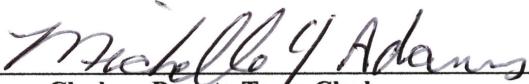
Mayor Pro Tem Hindman would like us to plan a beginning of the year retreat. Mayor Pro Tem would like to see it in February. After discussion agreed to May.

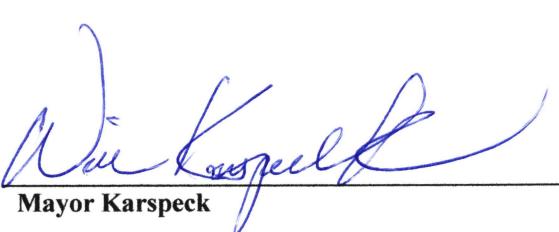
Town Administrator Kirk reported that today was his official one-year anniversary with the Town of Berthoud.

Attorney Bell had nothing to report.

Mayor Karspeck reported that he is on the Mental Behavioral Health Policy Council along with other Mayors, directing the new tax. He is wanting to bring in some Non-profits along with House of Neighborly Service from Berthoud to have some local input. He also attended an Eaton Fiber Optics meeting. They want us to talk about regional fiber optics. Allo came and spoke with them. The ones who attended was Eaton, Severance, Greeley, Johnstown, and Windsor. He also stated he would be at a retreat with the Mental Behavioral Health Council.

## VII. ADJOURN AT 11:02 p.m.

  
Town Clerk or Deputy Town Clerk

  
Mayor Karspeck

