

**BOARD OF TRUSTEES
REGULAR MEETING
March 29, 2016
6:30 P.M.**

Board Members Present: Mayor David Gregg
Mayor Pro-Tem Jan Dowker
Trustee Dick Shepard
Trustee Chris Buckridge
Trustee Jennifer Baker
Trustee Suzie White
Trustee Paul Alaback

Staff Members Present: Town Administrator Mike Hart
Town Attorney Greg Bell
Town Accounting Technician Melissa Colucco
Town Accounting Technician Carla Gustafson

Mayor Gregg led the Pledge of Allegiance.

Citizen Participation

Pete Cowdin of 605 7th Street thanked the Town employees and neighborhoods for working together in regard to the recent storm clean up. Mr. Cowdin, who is running for Mayor in the current election, spoke to the Board of his gratitude for their hard work especially when being faced with difficult decisions.

Jeff Hindman of 348 Turner Avenue expressed concern about the non-compliance water treatment notices that had been sent out as well as using water dedication funds to purchase a new Town Hall. Mr. Hindman also felt that the process to purchase the new Town Hall was communicated poorly.

Tim Hardy of 740 8th Street agreed with comments mentioned by Mr. Hindman and felt the decision seemed rushed. Mr. Hardy also suggested the Town consider waiting until there were appropriate funds for the purchase.

Mariah McKinney of 1543 Glacier Avenue voiced concerns on water quality and that there is a film on the water in her home. Ms. McKinney also asked the Board for direction on steps that could be taken within the home to ensure better water quality.

Mayor Gregg directed Ms. McKinney to contact Town staff assistance with her specific situation with the water quality in her home.

Bill Gilmore of 520 8th Street disagreed with some of the comments mentioned in regard to the cost of the Guaranty Building for the new Town Hall. Mr. Gilmore mentioned that in his experience the cost was a good deal and that it would be foolish not to move forward.

Milan Karspeck of 706 8th Street felt that a 2.4 million cost for the Town Hall purchase was a big decision and voiced his opposition to using the utility capital fund. Mr. Karspeck felt the general funds should be used for such a purchase and not from funds needed for water improvements. Mr. Karspeck also gave some other options for building funding.

Margaret McCreary of 706 8th Street felt the decision to use the water fund was irresponsible and the timing was inappropriate.

Steve Steinbicker of Architecture West appreciated what the present Board has done for the Town especially with picking the community back up after hard financial times. Mr. Steinbicker explained that in his experience the Guaranty Building is a great opportunity and timing is very important.

Bob Dean explained his experience as a builder and compared the higher costs involved with a new construction of the same building versus purchasing the discussed Guaranty building. Mr. Dean agreed that this is a smart decision and that the Board was voted in to make decisions and this is a decision before them today.

Peder Thorstensen of 848 8th Street, a previous Town Board trustee, asked to hold off and wait on using funds that should be used for water.

Patrick Dillon of 230 North 2nd Street felt that the optics would be bad for the citizens and their relationship with the Town.

David Sampson of 911 Kansas felt that there was a lack in communication and notification to the citizens.

Maureen Dower of 1608 Hollyberry felt the building is a good deal but disagreed with using water funds. Ms. Dower also agreed the Town should take their time with the purchase.

Michelle Ballinger of 825 NCR 17 gave a history of her business in Town and as a tax payer. Ms. Ballinger felt that the Board was voted in for a reason and trusted they will make the right decision. Ms. Ballinger also addressed the comments of waiting to have the citizen's vote for the building explaining that there would not be enough time and the building might no longer be there.

Len Guldenpfenning of 1000 Lake Ave felt the Board is doing a great job and thought it was great to see involved citizens. Mr. Guldenpfenning agreed with previous comments around not using funds that should be dedicated for water to purchase the new Town Hall.

Larimer County Open Space

Kerri Rollins with Larimer County Open Lands presented the Board with an opportunity to partner with a purchase of agricultural property located one mile southwest of Berthoud. The property currently known as Malchow Farms sits north of the Little Thompson River adjacent to the west side of Hwy 287 and south side of CR 6. The request before the Town was a contribution of \$100,000.00 from the Town's Open Space Tax Dollar fund to help pay for the land acquisition.

Other speakers included the Program Manager for Colorado Water Conservancy Board Craig Godbout and Open Land Agent Alex Castino.

Trustee Alaback moved to direct staff to pursue a joint project with Larimer County to purchase the Malchow Farms property. Mayor Pro-Tem Dowker seconded the motion. The motion passed unanimously.

Water Quality

Public Works Director Stephanie Brothers explained that the levels of Total Organic Carbon (TOC) were slightly above state standards causing a violation. Ms. Brothers stated that this happened because the Town adds sodium hydroxide at the water treatment plant to increase the PH level and reduce lead and copper. While this reduces the amount of lead in older plumbing, it also causes a removal of TOC. Ms. Brothers also added that there were never any safety issues and if there were the state would require a boil order. Since the issue occurred the Town has purchased a TOC analyzer at the treatment plant.

Mayor Gregg asked if there were presently any concerns with the water.

Ms. Brothers explained there is not and also provided her email address of sbrothers@berthoud.org to address any questions the public had on the matter.

Guaranty Bank facility purchase

Town Administrator Hart gave a brief history in regard to the recent approval to purchase the Guaranty Bank building. Mr. Hart explained that the original purchase agreement specified an ordinance be approved by the Town Board to complete the transaction. Being that the ordinance takes 30 days to go into effect the closing date would be pushed to April 23. There had been a previous emergency clause presented at the March 22, 2016 Board meeting that would have waived the 30-day period allowing the original closing date of March 31. The ordinance failed to be passed. Guaranty Bank had agreed to accommodate the later closing date but in order to proceed with the merger with Home State Bank there had been a request to move back to the original closing date of March 31. Guaranty Bank offered to reduce the price by \$50,000 leaving the new price at \$2.35 million if the trustees would be willing to repeal the original ordinance and pass the resolution presented which would accommodate the original closing date.

Nathan Klein, broker for LC Real Estate read a memo from Guaranty Bank and Trust CEO Paul Taylor. The memo explained that keeping the original closing date of March 31 needed to be met in order for the two banks to receive federal approval of the merger.

Debbie Davis, Branch President for Guaranty Bank, expressed their commitment with the Town of Berthoud and that they do intend on staying at the location. Ms. Davis also added they are very excited for both the merger and the opportunity to partner with the Town.

Trustee Alaback asked staff to clarify the allocation of enterprise funds that are being used for the purchase.

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Town Administrator Hart explained that in Berthoud all of the Town's business including water and wastewater is done at Town Hall. The Town has water and wastewater facilities, but those departments are government-run businesses. Mr. Hart also added that other than treating the water and fixing the pipes, all of the related business is done at Town Hall. Mr. Hart felt that this is an appropriate use of the funds and referred to Town Attorney Bell for a legal standard.

Attorney Bell added that by legal standards, buying a facility is a statutory use of those funds.

Mayor Gregg reminded the audience that while there had been quite a bit of discussion the specific question tonight is in regard to whether or not to honor the original closing date and accept the reduction in purchase price.

Mayor Gregg opened the item to public comment at 8:09 p.m.

Mr. Karspeck again opposed the funding for the purchase. Mr. Karspeck proposed the transfer of funds be a loan that would be repaid to the utilities with interest instead of a depletion of funds that should be used for water infrastructure improvements and to pay down debts related to the system.

Harry Devereaux, President of Home State Bank, spoke briefly about the upcoming merger between Home State Bank and Guaranty Bank. Mr. Devereaux mentioned that after the merger there will be only one location. Mr. Devereaux also felt that the Board was making a good decision with the move into the Guaranty Bank building.

Jeff Hindman and Margaret McCreary who spoke earlier during citizen participation expressed that the Board should think of other options for funding and not rush the closing.

Bill Markham of M & M Farms mentioned the history of his family and growing up in Berthoud. Mr. Markham felt that it was time for a change. Berthoud is growing with new industry and the golf course and this is a golden opportunity. Town Hall needs to improve their image. Mr. Markham also mentioned the good that both Guaranty Bank and Home State Bank do for the community.

Mayor Gregg closed public comments at 8:28 p.m.

Trustee Baker asked staff to confirm that the funding will not have an impact on the future recreation center or water and wastewater treatment.

Mr. Hart confirmed that there will be no impact.

Mayor Gregg summarized that the decision to purchase the Guaranty Bank building was already determined and a motion was needed in regard to honor the request from Guaranty Bank to close on the original contract closing date.

Mayor Gregg also mentioned looking into some of Mr. Karspeck's earlier suggestions.

Trustee Buckridge moved to repeal Ordinance 1214. Trustee White seconded the motion. The motion passed unanimously.

Trustee Buckridge moved to approve Resolution 9-16 approving the purchase of the Guaranty Bank and Trust Facility at 807 Mountain Avenue, along with a supplemental budget appropriation necessary to complete the transaction. Mayor Pro-Tem Dowker seconded the motion. The motion passed 6-1 with Trustee Alaback voting against the motion.

Mayor Gregg called for a short recess returning at 9:02 p.m.

Rose Farm Landscape Water Variance/Waiver Applications

Attorney Bell explained that his role for this agenda item is for advisement on behalf of the Board of Adjustments. Town Water Attorney Paul Zilis will be presenting on behalf of the Town. Mr. Bell explained this is a request for a variance or waiver on an existing ordinance and is not an appeal on a previous ruling. The request is by the Developer of Rose Farm subdivision requesting a variance of water dedication requirements of the Town for a portion of the property. This is not a public hearing, however the Town Board of Trustees is acting as Board of Adjustment.

Mayor Gregg called to order the Berthoud Board of Adjustment and requested a motion to accept the rules of procedure for variance/waiver hearing.

Trustee Shepard moved to accept the Rules of Procedure for Variance/Waiver Hearing. Trustee Baker seconded the motion. The motion passed unanimously.

Town Water Attorney Zilis explained the process to the Board. Both sides will be given an opportunity to present opening statements, provide evidence and present closing arguments.

Steve Schmidt of 810 Marshall Place is the Developing Manager for Rose Farm and presented his opening argument by explaining that he believes two sections which he refers to as section A and B of the property have proven high ground water levels and a proven ability to grow and sustain native and non-native grass with no irrigation.

Mr. Zilis presented his opening argument by explaining the applicable law, current process and procedure for determining irrigation requirements. Mr. Zilis explained that the Board worked very hard on these procedures and worked closely with developers and also an expert to provide irrigation requirements. Two categories that Mr. Zilis highlighted were zero irrigation for wetlands and .8 acre feet irrigation required for the detention area itself to establish and maintain the native grasses.

Mr. Schmidt presented a power point that gave an overview map and history of the property. Mr. Schmidt showed the location of the areas in question which were referred to as section A and B. Documentation presented included a previous determination from the Army Corps of the property showing it was formally classified as a delineated wetland area by the Army Corps of Engineers in 2000. Mr. Schmidt explained that he contracted the services of Engineering Consultants, LLC (ECC) and Cedar Creek & Associates to determine the ground water depths in the referenced sections. Mr. Schmidt presented copies of these studies.

Mike Phelan, Senior Environmental Biologist for Cedar Creek, presented photos and explained the testing that was conducted and qualifications that determine wetlands. Mr. Phelan felt that the area did not need and was sustainable without irrigation.

Mr. Schmidt summarized by citing codes 30-3-108 Appeals and Variances and 30-3-109 Waivers explaining that he felt those codes applied to the Board of Appeals granting an exception.

Mr. Zilis explained that a critical piece of evidence missing was in regard to the result on the area if irrigation ceased once development begins. Mr. Zilis called upon testimony from several sources.

Community Development Director Curt Freese explained that the codes Mr. Schmidt was referring too were related to zoning and design issues. This is a water issue and the code for Appeals and Variances and Waivers are not applicable to this situation.

Public Works Director Stephanie Brothers gave her experience with the property. Ms. Brothers had received calls from neighbors complaining of flooding that occurred in the upper northern section of the property. Ms. Brothers later stated that the complaints she received were for both the north and south areas of the property.

Consulting Water Engineer Bruce Kroger provided a brief background of his experience and was asked to evaluate the three reports submitted by Mr. Schmidt. Mr. Kroger determined that the reports from ECC and Cedar Creek were inconclusive and did not factor time fluctuations, drought years, opinions on the result of an irrigation cease in the northern area and could not make determinations on whether to irrigate.

Senior Land Planner for AGPRO Deanne Fredrickson provided her experience and history working with the Town on development requirements for irrigation. Ms. Fredrickson addressed the issues with the property if it was not irrigated. She explained that she could see why Mr. Schmidt was under the impression the property could get a waiver on irrigating due to the high groundwater but disagrees with that determination. The purpose of the .8 acre feet was in regard and established to address disturbed areas which this area would be disturbed with development and retention ponds.

Both parties provided closing arguments and the Board considered all the information presented. The Board found that there had not been sufficient evidence provided in the reports submitted by Mr. Schmidt to adequately determine that irrigation was not needed.

Trustee Shepard moved for denial of both the variance and waiver request. Trustee Buckridge seconded the motion. The Board agreed with no one opposing.

Development Code Process

Attorney Bell explained that there has been some clean up in regard to the Development Code. Staff realized that attention and revision was needed in regard to the standard Development Agreement form.

Mr. Freese explained that staff realized in reviewing the current standard Development Agreement form, the process and ordinance with similar communities is for staff to approve Development Agreements instead of the Board. This process will also assist with shortening the time frame for Developers.

There was some discussion in regard to time frames and legal notices. Becky Hemmann mentioned that there is a statewide website for legal notices and would forward that information to staff.

Development Code Change

Mr. Freese presented the Board with a detailed analysis of each of the proposed changes to the Development Code. The amendments address the following issues 1) Noticing requirements which had become a burden for platting actions; 2) Flaws in the current appeal, variance, and waiver requirements and 3) Moving to a new standard Development Agreement form and process.

Trustee Shepard moved to approve Ordinance 1217 amending portions of Section 30, Chapter 1, regarding Hearing and Notification Requirements; amendments to Section 30, Chapter 3, Zoning regarding Appeal and Waiver requirements; and amendments to Section 30, Chapter 6, regarding Development Agreements. Trustee Baker seconded the motion. The motion passed unanimously.

Reports

Mr. Freese reported on the first findings from GreenPlay on the Port Plan Surveys and there was a good amount of responses. Mr. Freese went over some of the findings. Mr. Hart added that they wanted to get the draft out to the Board for review tonight and it will be presented to the new Board sometime in May. Mr. Freese mentioned that there will still be some future public meetings to view the draft and the packet is on the website now.

Del Hunter confirmed that the webcasting is working and the new website is coming along.

Mr. Hart reported that staff tried something new with downed branches from the recent snow storm. Staff had citizens put the clippings curbside and a chipper came around. The process worked out well. Mr. Hart also mentioned there needs to be a motion to allow him to sign closing documents for the building purchase on Thursday.

Trustee Baker moved to approve the Town Administrator as the representative to sign closing documents for the Guaranty Bank Building. Trustee Buckridge seconded the motion. The motion passed unanimously.

Trustee White expressed her gratitude working alongside the members of the Board.

Mayor Pro-Tem Dowker stated she will attend the April 7th North Front Range MPO meeting. She is also attending a symposium on State of Fracking in Colorado on Thursday the 31st at 6:30 p.m. at the Longmont Plaza Event Center.

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Trustee Alaback reported that the Tree Advisory Committee had found a way to upload Berthoud's tree inventory to the website. Arbor Day is April 30th at Fickle Park. Mr. Alaback also mentioned he was glad to see all the previous and current agenda packet items on the website.

Pete Cowdin attended the Denver Metro Economic Development Corporations annual meeting and walked away with some good information. Colorado was mentioned as a leader for regionalism when it comes to economic development.

Mayor Greg adjourned the meeting at 11:32 p.m.



Mayor David Greg

Melissa Colucco
Accounting Technician