

**BOARD OF TRUSTEES
REGULAR MEETING
November 17, 2015
6:30 P.M.**

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

Absent: Trustee Suzie White

Staff Members Present: Town Administrator Mike Hart
Town Clerk Mary Cowdin
Town Clerk/Assistant Town Administrator Alisa Darrow
Community Development Director Kurt Freese
Sargent Jim Anderson
Accounting Technician Melissa Colucco

Mayor Gregg led the Pledge of Allegiance.

Citizen Participation

None.

Oath of Office for New Trustee

Town Clerk Mary Cowdin gave the oath of office to newly appointed Trustee Richard "Dick" Shepard.

Appeal RE: Bargain Storage Site Plan

Mayor Gregg introduced an appeal of a Planning Commission decision for the Bargain Storage site plan. Mayor Gregg explained that this was not a public hearing but a quasi-judicial appeal hearing before the Board of Adjustment that would be open to the public.

Mayor Gregg suspended the meeting of the Board of Trustee and opened the hearing to the Board of Adjustment at 6:39 p.m.

Town Attorney Greg Bell introduced the hearing that involved an appeal of official action taken by the Planning Commission. Attorney Bell explained that the defense of the Planning Commission action would be handled by Community Development Director Curt Freese and that Attorney Bell would only be available to the Board for legal advice on matters of concern to the Board and may not intervene in

the conduct or presentation of the hearing. Attorney Bell provided guidance regarding the responsibilities for the Board of Adjustment.

The Board of Adjustment will determine whether action taken by the Town Planning Commission should be reversed. In making the decision the Board owed no deference to the Town's Planning Commission determination of facts. The Board has the authority to weigh and interpret the evidence which was before the Planning Commission differently than the Planning Commission did and may come to a different conclusion. The Board must conduct the hearing in a quasi-judicial manner and may establish any rules of procedure which were fair to the presentation of argument by all parties. After all the evidence is received, closing arguments have been made, and deliberations have completed, the Board will then be asked to decide the following questions:

- 1) Was the intent of the Berthoud Town Code or the rules legally adopted under that code properly interpreted and implemented by the Planning Commission?
- 2) Were the site plan considerations allowed by the Town Code properly applied by the Planning Commission?
- 3) Did the Planning Commission abuse its discretion in its handling of the evidence before it?

It was up to the appellant to demonstrate that the answer to one of those questions was no. If no decision was made in the meeting, the decision made by the Planning Commission would stand, the Board had the ability to reverse or remand the decision back to the Planning Commission if they required additional information. Decisions do not need to be made at the conclusion of the hearing, instead, the Board may choose to deliberate and give a written decision with a summary of the findings at the following meeting.

Attorney Bell suggested adopting the rules for the procedure for the appeal hearing unless the appellant had any additions or changes.

Mayor Gregg asked the applicant, Russell Eason, if he had read the rules and procedures and if there were any issues with adopting them.

Applicant Eason did not have any issues with adopting the rules and procedures.

Representative for the applicant, Mickey Leyba, asked to address the Board with a concern.

Mickey Leyba, 625 Main Street, Longmont, explained that there was a great deal of concern regarding discretion related to a fair decision being made when two of the Planning Commission members, Jan Dowker and Dick Shepard, voted on the denial of their application and were also acting on the Board of Trustees in which they would be voting in their role on the Board of Adjustment.

Mayor Gregg referred the concern to Attorney Bell, Mayor Pro-Tem Dowker and Trustee Shepard.

Attorney Bell explained that it was not a disqualifying factor so long as the parties' participating believed they could evaluate the evidence solely on the basis of what was presented in the appeal. The question in the appeal hearing was different than that requested of the Planning Commission. Attorney Bell restated that the question was whether the Planning Commission had adequate evidence in front of them, abused their discretion or exceeded its authority when denying the application made by Bargain Storage. The Board members present at Planning Commission had the choice of recusing themselves or, if they believed they could make a decision solely based on the evidence presented, could remain and vote in the hearing.

Mayor Pro Tem Dowker stated for the record that as a Board liaison to the Planning Commission she was present at the Planning Commission when the matter was previously presented. Mayor Pro-Tem Dowker stated "Participation to the Planning Commission proceedings has in no way influenced me in my capacity as a Town Board member this evening and I will make my decision and cast my vote solely on the evidence presented during public hearing."

Trustee Shepard stated for the record that as a Town Board liaison to the Planning Commission he was present at the Planning Commission when the matter was previously presented. Trustee Shepard stated "My participation in the Planning Commission proceedings has in no way influenced me in my capacity as a Town Board member this evening and I will make my decision and cast my vote solely on the evidence presented during public hearing."

Attorney Bell asked Miss Leyba if there were any objections to the rules for procedure before moving forward.

Miss Leyba did not request any changes or express any concerns.

Mayor Gregg requested a motion to adopt the rules for procedure process.

Trustee Buckridge moved to adopt the rules of procedure for the appeal process. Mayor Pro-Tem Dowker seconded the motion. The motion passed unanimously.

Mayor Gregg read the statement of purpose to the rules of procedure which involved the following: the rules were to assure a fair, impartial and orderly resolution of appeals brought pursuant to the Berthoud Land Use Code. Any reference to "Board" herein shall mean the Town of Berthoud Board of Adjustment. The Board has a quorum and are convening in a public hearing as it is open to the public, but the public is not able to add testimony. At the request of either party, and at such party's sole expense, the proceedings may be recorded verbatim by a shorthand reporter. The cost of transcription would be borne by any person who requested such services. In the absence of a shorthand reporter, the proceedings will be recorded electronically.

Mayor Gregg asked if there were any objections to the official record of proceedings being electronic or under preliminary matters of the rules of procedure.

Miss Leyba asked about time limits on testimony and restrictions of submission of evidence.

Mayor Gregg explained there were no time limits.

Seeing no objections to the rules of procedure, Mayor Gregg proceeded to opening statements.

Mickey Leyba began with her opening statement by explaining a timeline of what happened. Miss Leyba explained that her client tried to be proactive in researching the property and in meeting with staff prior to any submittals to ensure the project was feasible and allowable at the site based on zoning by the Town of Berthoud. She added that prior to meeting with her, Mr. Eason met with staff to present the intended use of cargo containers for storage on that particular lot to make sure it met current zoning. A site concept was laid out after initial discussion with staff. A pre application meeting was set with staff and no initial concerns came up other than landscaping, it met M2 zoning for industrial uses which included cargo containers and no variances were being requested. He moved forward and submitted an application to staff. The comments that came back were to include additional landscaping and fencing around the site. After the site plan was resubmitted and the concerns of staff were met, Miss Leyba stated they were told it was approved. Staff Planner Sarah Chmielak informed them that they could move forward and submit final documents for approval and they would be forwarded to Mr. Hart for a signature. Miss Leyba believed they were directed to apply for the required permits and could move into the construction phase of the project. She stated that they had received a letter that the design for the site did not meet architectural standards and the site plan was not signed by Mr. Hart. Miss Leyba believed that the architectural standards in the code were in relation to buildings and argued that the proposed containers were not buildings. She explained that at the Planning Commission hearing she and the owner felt it was a misinterpretation by the Commission that the cargo containers were buildings. She felt that landscaping or fencing could be used to get around the code. She explained that they proceeded to present the use of 8^{ft} fencing and pillars as a solution to the argument that the design did not meet architectural standards. Miss Leyba responded to the questions before the Board of Adjustment in the appeal hearing:

- 1) Was the intent of the Berthoud Town Code or the rules legally adopted under the current code incorrectly interpreted by the Planning Commission? Yes. Miss Leyba felt they were incorrectly interpreted by the Planning Commission and that the applicant did meet architectural standards.
- 2) Did the Planning Commission abuse its discretion in its handling of the evidence before it? Yes. Miss Leyba felt the fencing and vegetation requirements from Planning Commission and staff were met and that they met the requirements of the code.
- 3) Were the site plan considerations allowed by the Town Code improperly applied by the Planning Commission? Yes. There was one Planning Commission member requesting to speak to the attorney and did not feel comfortable voting. The vote should not have been

made and it should have been continued on until further evidence or discussions with the Town Attorney could be had.

Miss Leyba concluded that the development was consistent with the code. It did meet zoning M2 industrial use, and that cargo containers and outdoor storage was allowed on the property. Policies of the comprehensive plan were met as well as land use and architectural standards under 30-2-117 B and F were met by this application.

Community Development Director Curt Freese presented his opening statement. Director Freese repeated the questions before the Board of Adjustment in the appeal hearing:

- 1) Was the true intent of the Berthoud Town Code or the rules legally adopted under that code incorrectly interpreted by the Planning Commission? He believed the record and evidence was clear there was not an improper finding.
- 2) Were the site plan considerations allowed by the Town Code improperly applied by the Planning Commission? He explained the importance in making the decision and that overturning a Planning Commission decision could only be made if there was evidence to show the Planning Commission was in error.
- 3) Did the Planning Commission abuse its discretion in denying the applicant site plan approval in light of the evidence before it? Director Freese urged the Board to look at the evidence that was submitted into the record.

He further explained that the applicant had brought in a lot of elements he would consider hearsay that were not germane to the case before them. He noted it was the job of the Board to just look at the evidence of that meeting in which the Planning Commission made its decision. That evidence included the pictures and the site plan. He noted those items were what was discussed at that particular meeting. He believed the matter was clear and that the Planning Commission did not make an error in that decision.

Mayor Gregg moved into testimony. Mayor Gregg reminded the Board that the decision was to be based on evidence that was presented to the Planning Commission on that night.

Attorney Bell added that what is being looked at is exactly what was presented to the Planning Commission that night and the questions that night were whether it was clear that the Planning Commission either exceeded its jurisdiction or had no competent evidence to support its decision.

Mayor Gregg further explained that the Board was not to make an amended decision, but to determine whether the decision made on the evidence presented was appropriate or not.

Miss Leyba used the Town's exhibits by stipulation. Director Freese handed the Board copies of materials from the Planning Commission meeting and explained that Exhibit A was the approved

meeting minutes from the Planning Commission meeting and Exhibit B was the packet with exact documents that were used in that meeting with nothing having been changed.

Miss Leyba questioned the meeting minutes stating that there was information left out of the minutes. Miss Leyba stated there was a request for a copy of the official recording that showed strong materials indicating the decisions were made without all the facts in hand and should have been continued. She asked how to enter that into evidence if they had not received the information requested from the Town.

Attorney Bell stated any evidence on the appeal was due that evening. There had been no request for a continuance or questions on how to address evidence the applicant did not have in hand.

Miss Leyba explained they were requesting a recording of that meeting and that copy should be at Town Hall.

Attorney Bell responded that it had not been entered in as evidence and this is the first he is hearing of it.

Miss Leyba explained that she submitted a written request for a copy.

Director Freese explained that they received the written request the day before the hearing.

Miss Leyba explained that Mr. Eason requested a copy of the minutes at the end of that night's Planning Commission meeting. She stated that she did not get a call back until yesterday informing her that a form needed to be filled out for an Open Records Request.

Mayor Gregg stated that if those involved in the hearing did not have the evidence through whoever's fault, the only remedy would be a continuance if that evidence was important to the applicant's case.

Attorney Bell added that if there was a problem related to contacting staff and requesting evidence, the applicant had ample time to bring that to his attention. He explained further that there is a three day turnaround on a properly made Public Records Request under State of Colorado law. He also noted that he was not aware that such a request had been made.

Miss Leyba stated that there were Planning Commission members present, Jan Dowker and Dick Shepard, she believed they could testify to the fact that there was a Planning Commission member that did not feel comfortable at the time of the decision and had suggested there was information that should be discussed with the Town Attorney before making a decision.

Mayor Gregg swore in Miss Leyba. Under oath, Miss Leyba stated that in going back to architectural standards they were told they had staff support on their application and they met architectural design for their development by vegetation and fencing. There was no discussion from staff stating the applicant did not do that prior to sending a letter requiring a meeting with the Planning Commission.

She believed they had met the code requirements by having fourteen trees and fencing along the property to screen the storage that was allowed on the M2 zoning which included storage containers. Miss Leyba wanted to point out that the property was left vacant because it is a very narrow property, 150 feet wide, and she explained it is too narrow to support laboratories or buildings. There was no access allowed off of First Street and they had complied with the requirement by having access off of Franklin Street. Miss. Leyba also added that the visual area is industrial, the current chain link fencing would be replaced by vinyl fencing and pillars. There had been no concerns from residents to their knowledge. She did not believe that the Planning Commission had all the evidence or they were going off facts that were incorrect to the code.

Mayor Gregg swore in Community Development Director Curt Freese. Under oath, Director Freese wanted to address the earlier accusation that the appellant did not receive the request of the meeting minutes in a timely manner. He asked if they received the minutes after they were reviewed and approved.

Miss Leyba answered yes, they had received the written minutes that were presented.

Director Freese stated that he was not aware, nor was anyone on his staff, of a request for a recorded copy other than the request made on Monday afternoon for the audio recording. He asked Miss Leyba if that was correct.

Miss Leyba replied that no, what Director Freese stated was not correct. She stated that Mr. Eason had spoken to Patti following the Planning Commission hearing and that her assistant inquired as to how one would obtain a copy of the recorded minutes. The requests were made via email and voice mail.

Director Freese asked if she had evidence to support that.

Miss Leyba responded she did not.

Director Freese stated that he felt the accusations against Town staff were unfair.

Mayor Gregg commented that it was interpreted that the project met the Town Code, but it was denied based on not meeting architectural standards. Mayor Gregg asked for supporting documentation that gave them the indication the project met the code in full.

Miss Leyba stated that all was identified in the site plan and staff did not inform the applicant of any variance requirements.

Mayor Gregg swore in the applicant, Russell Eason, 625 Gould Road, Berthoud, Colorado. Under oath, Mr. Eason presented an email to the Board. Mr. Eason mentioned that he requested a copy of the meeting minutes and was told by the Chair of the Board he would receive them and he did not. What he received was the summary that was presented as the meeting minutes, those were the same as

those being presented as part of the appeal hearing. It was explained that those were the minutes and that minutes were a summary and not a verbatim transcript.

Mr. Eason read an email that was replied to by Director Freese. The email asks for the recorded meeting minutes and to discuss the issues that came up at the Planning Commission.

Attorney Bell asked if this email was sent after the events of the Planning Commission meeting.

Mr. Eason stated yes, it was.

Attorney Bell stated that this could not be relevant to the action the Planning Commission took.

Mayor Gregg indicated he would like to hear and see evidence indicating why the reasons of denial were inaccurate instead of issues after the fact.

Mr. Eason stated that it was his belief they were off track at the last meeting and that at no time did they discuss the actual code. He reminded the Board that this was M2 zoning which was industrial and included storage yards which include shipping containers. Mr. Eason read Chapter 30.1 of the Berthoud Municipal Code which gave a description of shipping containers. Mr. Eason also read from the code that containers may not be permitted as storage or building storages without site plan approval or building permit approvals. Mr. Eason believed they should be exempt from building codes since they were not buildings. Mr. Eason also read Section 30-2.117 B9 explaining landscaping features to offset issues. He explained that he originally started with 282 containers but reduced the number to 160 to meet the Berthoud Code along with fencing, fourteen trees and one hundred bushes. He stated that was when they were given the okay to put in the storage yard. Mr. Eason also read 30-2.114 C2 of the Berthoud Code which permitted screening, buffering and landscaping to offset views of loading areas. He then read 30-2.117 relating to commercial and industrial standards with regard to wall articulations and table 2.7 regarding fencing requirements for different zoning.

Trustee Baker asked when the applicant submitted the application to staff.

Mr. Eason responded that the application was submitted on June 8th.

Director Freese stated that a lot of what was being said was attempting to make the current hearing into a rehearing of the Planning Commission. He explained that all of the code requirements were in the packet that were before the Planning Commission when the initial decision was made. He mentioned section 30-1-116.81 regarding container definitions that was recently adopted by the Town Board in May. The Code stated that containers may not be used as storage or buildings without site plan approval and/or building permit approval. He explained that site plan approval did not approve the project for all permits. The Town Administrator, under section 30-6-110 B, had authority to refer a site plan to the Planning Commission for review and action, so approval was not given by staff. Storage containers themselves required permits, they need foundations and are considered structures and once those requirements were satisfied, the Town could issue a building permit. The applicant had to meet

the architectural standards of the code in order to proceed in the process. He explained that the Town Administrator referred the site plan to the Planning Commission and the Planning Commission used the six criteria in section 30-2-110 C to make the decision.

Director Freese noted the Board could find all of the requirements in exhibit B on page 4. He believed that the Planning Commission based their decision under number six and that the site plan did not meet the criteria of the Development Code or the Comprehensive Plan. Looking at the architectural standards there was a lack of wall articulation, the containers had flat roofs and would not meet roofing standards, and they do not have architecturally attractive features. The applicant himself admitted these were containers, they were not buildings and therefore could not meet architectural standards. Director Freese also mentioned that the site plan did not satisfy the employment standards, and also did satisfy land use goal five for visual character.

Director Freese concluded that the applicant did not provide any evidence that the site plan conformed to the Comprehensive Plan. The applicant himself mentioned they would hide the fact they couldn't meet those standards by using landscaping. He argued that the Planning Commission made very clear findings on the ordinance and had made their decision correctly.

Mr. Eason pointed out where his property was within the GMA (Growth Management Area) compared to other properties, specifically another property using shipping containers as storage.

Director Freese added that other sites mentioned had no bearing on the decision and that it was based on the site plan.

Miss Leyba stated that Director Freese did not appear to be in support of their application in the hearing, but she felt he had indicated support leading up to the decision causing the application to go in front of the Planning Commission. Miss Leyba voiced that it was unfortunate that there was a turn of events and issues couldn't be addressed before going to Planning Commission. The fact that these were not buildings was irrelevant because the code allows vegetation and fencing to comply with architectural issues. Miss Leyba referred to 30-2-114 of the Berthoud Municipal Code.

Director Freese stated that staff did not have the power to give approval, and that the Town Administrator was within his purview in referring the matter to the Planning Commission. All that mattered was the decision the Planning Commission made at the September 24, 2015 meeting. He believed the Planning Commission made the correct decision.

In closing, Mr. Eason mentioned he had submitted the appropriate paperwork and applications, he was told he would be approved with the fencing and landscaping. He felt that he had worked to resolve the issues brought forward by the Town and he had given staff what they requested.

Mr. Freese closed by stating there was nothing presented that would contradict the Planning Commission's decision.

Mayor Gregg asked if they needed to deliberate with what was presented, if they were ready to make a decision and if anyone was uncomfortable with anything presented during the hearing.

Mayor Gregg restated the questions being asked and opened up deliberation of the Board.

- 1) Was the true intent of the Berthoud Town Code or the rules legally adopted under that code incorrectly interpreted and implemented by the Planning Commission?
- 2) Were the site plan considerations allowed by the Town Code improperly applied by the Planning Commission?
- 3) Did the Planning Commission abuse its discretion in denying the applicant site plan approval in light of the evidence before it?

Trustee Buckridge stated that he saw a lot of discussion and attempts to make the project work and that the referral to the Planning Commission was allowed. There were a lot of deficiencies that the Planning Commission said it would consider. They had the right to say yes or no. The Planning Commission has the right to say no. As much as he would like to see this come together he did not think the Planning Commission had overstepped its bounds.

Trustee Baker mentioned there was a little bit of a gray area in the fact that the site plan was submitted in June and the code was updated around the same time. When looking at the reasons for denial she did not think the Planning Commission abused their power or misinterpreted the code.

Trustee Alaback stated it was clear the Planning Commission made a decision with information they had and was well within the bounds of what they could do.

Mayor Pro Tem Dowker stated that in looking at the meeting minutes it was clear that the reasons the applicant did not get approval were very specifically laid out relative to building codes, development standards, comprehensive plan, land use, and placement of development impact to neighborhoods. She did not think the Planning Commission was out of bounds. Also, based on the meeting minutes the applicant had the ability to reapply.

Trustee Shepard stated that it was specifically stated in the motion that was made, what the reasons were for denial. The site plan did not conform to the rules and policies of the comprehensive plan, there were development code issues and issues with articulation with the walls which was all reflected in the meeting minutes. No other discussion was really needed with all items laid out.

Mayor Gregg stated he believed the rules were correctly interpreted. The appellant gave the definition of containers and what the definition said was that the containers were not allowed for storage without site approval. The site plan was the applicant's time to provide that the requirements of the code were met. In his opinion, the use of containers as storage, did not meet the comprehensive land use plan. The purpose of the hearing was not to rehear this or to suggest how it could have worked better, but to

determine whether they used good judgment based on the codes and laws of the Town in making a decision.

Mayor Gregg moved to uphold the findings for the reasons of denial by the Planning Commission for the matter at force. Trustee Buckridge seconded the motion. The motion passed unanimously with Trustee Shepard abstaining.

Mayor Gregg adjourned from the Board of Adjustment and reopened the regular Board of Trustee meeting at 8:04 p.m.

Public Hearing Rose Farm Rezone, Final Plat and Development Agreement

Community Development Director Curt Freese presented the Board with three requests related to the Rose Farm property. There was a request to change zoning with an amended map, final plat to create 123 lots and the development agreement. The request was from applicant Steve Schmidt to rezone a 45.5 acre property from agricultural to single family R-1 and 8.75 acres of property from agricultural to multi-family R-3. Director Freese gave background on the history of the property and annexation. The property is located south of Spartan Road, east of Larimer County Road 17 and north of Dry Creek.

Director Freese explained that the criteria findings of the Development Code for amending the official zoning map required at least one of the six criteria listed. The applicant met criteria 2, 3, 4 and 5 and if approved, the motion should reflect those criteria. He pointed out that the Planning Commission voted unanimously to approve the rezoning and final plat. Director Freese explained that the zoning criteria was met under Section 30-3-110 B of the Town's Development Code, and was consistent with the Town's Comprehensive Plan and Preferred Land Use Map.

Applicant Jim Birdsall, of the Birdsall Group, discussed the concept plan, street connections with an addition out to Taft, and connectivity. The trail would connect to Hillsdale and that the project would provide a different feel than the adjacent neighborhood and there was also a town home component. He noted that the open space would be maintained by the HOA (Home Owners Association).

Mayor Gregg opened the public hearing at 8:42 pm. Seeing no one wishing to speak, the public hearing was closed at 8:42 pm.

Trustee Shepard moved to adopt Ordinance 1206 rezoning property known as Rose Farm Acres, parcel 1 from agricultural to R-3 multi-family and parcel 2 from agricultural to R-1 single family with reference to rezoning criteria 2, 3, 4 and 5 on page 2:

- 2) To rezone an area or extend the boundary of an existing district because of changed or changing conditions in a particular area or in the Town generally; or

- ✓ The town has approved a number of multi-family, commercial and single family residential development within the area, including Ludlow PUD and Heritage Ridge, therefore changing the conditions to a denser more residential area.
- 3) The land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the Town Comprehensive Plan; or
 - ✓ The Agricultural District is not consistent with the preferred land use of moderate density residential of the Comprehensive Plan, while the proposed districts would be consistent.
- 4) The proposed rezoning is necessary to provide land for a community-related use that was not anticipated at the time of the adoption of the Town Comprehensive Plan, and the rezoning will be consistent with the policies and goals of the Comprehensive Plan; or
 - ✓ The rezoning is consistent with the Preferred Land Use Map.
- 5) The area requested for rezoning has changed or is changing to such a degree that it is in the public interest to encourage development or redevelopment of the area; or
 - ✓ Development has been recently approved in this area, including the Ludlow ODP, and Heritage Ridge, changing it to one of a residential, not agricultural nature.

Trustee Buckridge seconded the motion. The motion passed unanimously.

Trustee Shepard moved to approve the Rose Farm Acres Final Plat based on criteria on page 4 as outlined by staff:

- 1. The plat represents a functional system of land use and is consistent with the rationale and criteria set forth in this code.**
 - ✓ The proposed plat represents a functional system of land uses, with lower density residential platted along lower order streets and more difficult topography, and multi-family platted along the more level area along Spartan Road. The plat is consistent with the applicable criteria of the Development Code, with the exception of the block length standard, discussed below in the Design Standards section.
- 2. The application is consistent with the approved concept plan and incorporates the town's recommendations and any conditions of approval.**
 - ✓ The Concept Plan conditions and considerations found earlier in this report, have all been taken into consideration and met by the Applicant in this Final Plat.
- 3. The land use mix within the project conforms to Berthoud's Zoning District Map and Preferred Land Use Map and furthers the goals and policies of the Comprehensive Plan and PORT Plan.**

- ✓ The Plat is in agreement with each, as per the aforementioned findings in the Rezoning section above.
- 4. **The utility and transportation design is adequate, given existing and planned capacities of those systems.**
 - ✓ Staff finds that the proposed and planned utility and transportation systems are adequate and will provide services to meet the needs and demand that result from this development.
 - ✓ Utility extensions to serve the site will be over-sized to provide service for Heritage Ridge (to the east). A reimbursement agreement for sharing the costs of utility oversizing with these future developments will be included in the Development Agreement for this subdivision, but has yet to be worked out, due to issues with the ALFA/Dry Creek line.
 - ✓ Improvements to Spartan Road, extending South 10th Street with sidewalks, building the intersection of Spartan and South 10th, along with extending and interconnecting Greenwood Drive with Hillsdale, should provide a workable and well-connected road network (and pedestrian network) for the South end of Town. The project was also reviewed by the Town's Traffic Engineer, who found no issues with the current plan.
- 5. **Negative impacts on adjacent land uses including, but not limited to: solar access, heat, dust, glare, traffic and noise have been identified and satisfactorily mitigated.**
 - ✓ The applicant has mitigated the negative impacts on adjacent land uses, through extension and connectivity of roads, utilities, and trails.
 - ✓ While view-sheds of houses in the Hillsdale Subdivision will be impacted, providing lower density single family development with a significant amount of open space mitigates this impact.
- 6. **There is a need or desirability within the community for the applicant's development and the development will help achieve a balance of land use and/or housing types within Berthoud.**
 - ✓ The development does offer a mix of multi-family (81 future not to be approved with this phase) and single family development. While the first portion of this development is for single-family lots, the future phase will be multi-family, satisfying the need for a mix of affordable housing options in Berthoud.

Mayor Pro-Tem Dowker seconded the motion. The motion passed unanimously.

Trustee Shepard moved to approve the Rose Farm Acres Development Agreement. Trustee Buckridge seconded the motion. The motion passed unanimously.

Humane Society Agreement

Chief Jim Anderson presented the Board with the 2016 agreement between the Town and Larimer County Humane Society. Chief Anderson explained that the contract was the same as the previous 2015 contract and there had been no changes to the agreement or to the cost.

Trustee Buckridge moved to approve and authorize the Town Administrator to sign the 2016 agreement between the Town of Berthoud and Larimer County Animal Control. Trustee Alaback seconded the motion. The motion passed unanimously.

Reports

Mayor Gregg reported that he was contacted by the Loveland Council to put together a coalition of resolutions among northern front-range communities in support of work that would be done at the state level regarding CDOT (Colorado Department of Transportation) priorities. Trustee Baker added the importance of working together since transportation was a regional issue and affects all of us, especially with the population along the northern front-range increasing.

After providing the Board with copies of the proposed resolution, Mayor Gregg asked if there were any questions or concerns.

Trustee Baker moved to adopt Resolution 22-15. Mayor Pro-Tem Dowker seconded the motion. The motion passed unanimously.

Trustee Shepard reminded the Board of the upcoming Christmas in Berthoud event.

Town Attorney Bell reported he is working on land use and code enforcement. Attorney Bell added that if there was an interest in expanding the Berthoud sales tax to include lodging there would need to be an ordinance to place the question on the ballot in April. He explained they would need to move quickly so that he could prepare an ordinance for a January Board meeting.

Town Administrator Hart reported that Trustee Henning was an alternate for the North Front Range MPO (North Front Range Metropolitan Planning Organization) and the I-25 Coalition. The Board would need to appoint a new alternate between now and April. Mayor Gregg offered to be the alternate for both. Administrator Hart added that the December 8, 2015 Board Meeting agenda was getting full and the next meeting after December would be the fourth Tuesday of January.

Trustee Alaback had no report.

Trustee Buckridge had no report.

Trustee Baker reported she would be attending the Northern Colorado Annual Regional Open Space meeting on November 18th. There would be a discussion related to the recent Bison release.

Mayor Pro-Tem Dowker reported she would be attending the North Front Range MPO finance committee meeting and agenda review on Friday. She noted that there would be discussion of the Executive Director's annual review for Teri Blackmore from the MPO with further discussion in December.

Mayor Gregg adjourned the meeting at 9:02 pm.



Mayor David Gregg

**Melissa Colucco
Accounting Technician**