

**BOARD OF TRUSTEES  
REGULAR MEETING  
FEBRUARY 18, 2014  
BOARD ROOM  
6:30 P.M.**

Board Members Present:	Mayor David Gregg Mayor Pro Tem Jan Dowker Trustee Suzie White Trustee Dick Shepard Trustee John Bauer Trustee Paul Alaback
Board Members Absent:	Trustee Thomas Jones
Staff Members Present:	Town Administrator Mike Hart Town Clerk Mary Cowdin Attorney Greg Bell Attorney Bruce Fickel Business Development Manager Ron Schneider Engineer Stephanie Brothers Parks and Recreation Director Jeremy Olinger Planner Tim Katers Administrative Clerk Jory Haslett

Mayor Gregg led the Pledge of Allegiance.

**Citizen Participation**

Meg Sanders, of 2245 Grape Avenue in Boulder, addressed the Board with a proposal to introduce recreational marijuana to the Town of Berthoud and outlined the financial potential that a retail shop could have to the Town.

Bob Kennard, 502 S. 9<sup>th</sup> Street, addressed the Board regarding the current state of affairs in Berthoud, specifically the trust issues and dissent in the Town. He does not believe that the Town Administration has the best interest of the Town at heart. He next addressed the police department issue and asked that Police Chief report directly to the Board when the police department was realigned. He would also like a contract administrator to oversee the contract with Larimer County Sheriff's Office.

Jeff Hindman, 348 Turner Avenue, addressed the Board regarding the police department changes. He asked that the Board revisit the issue as the contract is not signed. He feels that it is in the best interest of the Town to rebuild the police department.

Trustee Bauer noted that there is still a police department in Berthoud and there has not been an impact to the services to the Town.

### **Consent Agenda**

The consent agenda consisted of the January 28, 2014 minutes.

**Mayor Pro Tem Dowker moved to approve the Consent Agenda. Trustee Shepard seconded the motion. The motion passed unanimously.**

### **Rural Alternative For Transportation**

Engineer Brothers addressed the Board regarding the Rural Alternative For Transportation (RAFT). Ruth Fletcher-Carter addressed the Board with an update regarding the RAFT program. She asked that the Board consider shared publicity for RAFT and the BATS program. She also asked that the Town consider including the van that RAFT is hoping to acquire for fleet status.

### **BMX Update**

Administrator Hart gave a brief history of the BMX facility to the Board and its current status. Kevin Jones, the Berthoud BMX track operator, addressed the Board and gave an update of the program's recent history and the volunteer support that the program enjoys in Berthoud. There are over 1,200 BMXers in the state that have at one time or another raced on the Berthoud track. The track also attracts revenue to Berthoud businesses during events.

Mr. Jones addressed the alternative sites and their suitability for the track relocation. He asks that if they are required to relocate to another site, that the Town provide support and assistance. There are resources available, such as volunteers and donations, which will not require a large financial commitment from the Town. The current track was built and supported by volunteers, and a future track would also be self-supporting, but they will need some assistance in the beginning.

Administrator Hart stated that the track needs a permanent site and he believes that there will be a home for it in the Town.

Mr. Jones stated that water at a new facility would be essential and he also asked that the Town provide electricity to the new site if the track is required to move. He stated that the season typically starts in late April or early May, but he thinks that the open date could be delayed if necessary.

Mayor Gregg stated that the Town wants to find a permanent home for the BMX track, preferably on Town-owned property.

Administrator Hart stated that the Town has done what it can to support the track.

Trustee White asked Mr. Jones how many acres a track would require. Mr. Jones stated that it would depend on the type of facility that is built. A national event facility would require about 500 parking spots and the facility would have to be completely fenced with permanent lighting. A local use facility would require about 50 parking spots. The track surface is about 5 acres no matter the type of facility.

Trustee White asked if the volunteers would be willing to assist with the physical building of the track. Mr. Jones stated that they have the ability to rebuild the track. Trustee White stated that she is confident that people in Berthoud will be willing to help. She then asked if the track would be able to be built in stages, if necessary. Mr. Jones replied that it could be a possibility, but there are some things that will be required in the beginning.

Mayor Pro Tem Dowker asked Mr. Jones if the track has a business plan in place that would allow the Town to help create alliances with outside entities for assistance in building the track. Mr. Jones stated that he would be willing to provide a business plan and that he has also talked to architects that were willing to provide a draft of the facility that may be helpful to the Town to understand the vision.

Mr. Jones stated that he believes that missing a season would be detrimental to the program as it is a weekly event.

Administrator Hart stated that the Richardson property may be an option for a temporary track because there is already power and water at that site.

Trustee Bauer thanked Mr. Jones for keeping the BMX program going in Berthoud. He asked if Mr. Jones was willing to relocate to a temporary facility while a permanent facility is located. Mr. Jones stated that keeping the program going is the goal.

Administrator Hart stated that there could be a possibility for partnering with other regional entities.

Mark Miller, of 4074 Buffalo Drive in Loveland, addressed the Board and stated that after visiting the Berthoud track when he first moved here, he noticed that there is a very solid support system. He provided Rockford BMX as an example of what a Berthoud facility could be in the future. He pointed out that now BMX is an Olympic sport and that college scholarships for BMX are available. He stated that it is important to keep the facility going regardless of the location.

Frank Vogle, of 3025 23<sup>rd</sup> Street in Boulder, asked if the track would be decommissioned immediately. He encouraged the Board to talk to Boulder officials about the Valmont bike park development.

Melanie Crane, of 211 10<sup>th</sup> Street, addressed the Board and stated that the track operators have been very good and respectful neighbors. She does not want the track to be displaced without an alternative location.

Jeff Hindman, 348 Turner Avenue, addressed the Board and stated that it is essential for the Town to support the Berthoud program. He volunteered his services to rebuild a track at another location. He also asked why the proposed contract for sale of the BMX property was just now coming to public light.

Jason Krisensky read the Board a poem he wrote about BMX changed his life and stated that he would not like to see the track move from the current location.

Toby Young addressed the Board. He has lived in Berthoud his entire life and he is passionate about BMX and the track has been a blessing to him. He stated that not having an alternative location for the track would be a detriment to him and his fellow riders.

Adam Watson, of 326 5<sup>th</sup> Street, addressed the Board and gave a history of his involvement with BMX in Berthoud.

Steve Page, of 3495 Revere Court in Wellington, stated that he prefers the Berthoud track to other tracks in the area. He stated that his father is a nationally ranked BMX rider and he is an example of how BMX not only helps the youth riders, it can also help adult riders.

John Rickard, of 3795 Armer Ave in Boulder, encouraged the Board not to underestimate the impact a good quality track can have on the Town of Berthoud.

Brad March, an attorney from Fort Collins, outlined his concern about the state statute regarding property that is available for park services. According to Mr. March, the statute states that properties used as parks cannot be sold without a public vote. He believes that selling the property without a public vote is in violation of state law.

Shelly Jones of 2707 Glade Road addressed the Board and proposed that the property sale closing be delayed until the end of the BMX season to allow for time for consideration of a relocation site.

Darrel Bradly of 4110 Onyx Place in Loveland addressed the Board and spoke in support of keeping the facility. He stated that Kevin Jones and Adam Watson have been instrumental in redeveloping the BMX track. He asked that the Town allow for time for the track to relocate.

Nathanial, of 2405 Oak Meadow Street in Longmont, addressed the Board and stated that BMX has been a positive influence in his life. He would like to see a contingency plan to allow the track to stay in its current location until a new location can be found.

Shawn Jung of Berthoud stated that he uses the track on a daily basis during the summer. He would like it to be a thoughtful process in relocating the track.

Zack Miller of 4074 Buffalo Mountain Drive addressed the Board and stated that he hopes that the track relocation is a good place for everyone involved.

Mayor Gregg asked that a working group be put together with Town Staff and the BMX supporters to move forward. Mr. Jones stated that he would put together a group of directors to meet with the Board. He asked for clarification of the current status of the track.

Mayor Gregg stated that there is no sale or closing scheduled for the property and that the Board is committed to keeping the program going in Berthoud, but that the current site has always been a temporary location.

Mr. Jones asked for a commitment for the next meeting to discuss the BMX relocation. Mayor Gregg asked that the working group, including Town Staff and the BMX directors, meet as soon as possible.

Mr. Jones asked for volunteers to participate in the working group. Trustee White volunteered to be the Board liaison to the BMX working group.

#### **Berthoud Common Purchase Offers**

Administrator Hart introduced the purchase offer for the Town-owned Berthoud Common and gave a brief history of the property.

Business Development Manager Schneider briefed the Board on the history of the property. The 8.6 acres was initially purchased as a possible location for a recreation center. In the time since the purchase of this property the Town has acquired or been gifted several other properties. After preliminary design of the recreation center was completed, it was determined that several other Town-owned properties may be more suitable locations for a recreation center and that the Berthoud Common property should be offered for sale.

Upon direction from the Board, staff solicited bids for the property and received an offer from Richard Coulson and Don Burns for a sales price of \$600,000, which is equal to \$69,751.22 per acre. Both Mr. Coulson and Mr. Burns are from Loveland.

Manager Schneider pointed out that the property would still be subject to Planning Commission and Town Board review and approval. If the property is not approved in the planning process, the purchaser is allowed to terminate the contract.

Trustee Alaback stated that there should have been community conversation regarding the density of the property. Mayor Gregg noted that now begins the public process in the planning stages.

Trustee Bauer stated that the Comprehensive Plan outlines density, but now is an opportunity to revisit what is the right density for the property.

Administrator Hart stated that after advertising the property on the open market and receiving no interest, the Town solicited bids from developers in the Berthoud area. The Town received three bids. Manager Schneider outlined the other two bids the Town received, both of which required significant investment by the Town.

Trustee Alaback asked for clarification on the building permit fees and the principal reduction. Administrator Hart reviewed the fees and explained which fees were discounted and which fees were increased.

Trustee White asked for clarification on the vesting rights associated with the contract. Attorney Fickel explained that the vesting relates to the fee structure only.

Trustee Bauer asked for clarification on the legal status of the property as a publicly used property. Attorney Bell stated that according to information he has received, the property has been leased to a private party and has never had a governmental use or been used as a municipal park.

Attorney Fickel reviewed the lease contract with the Berthoud BMX Association.

Trustee Bauer stated that he wants to make sure that the development is successful and that the developer delivers a good product. He stated that it is difficult to assess those factors without seeing the site plan.

Trustee Shepard clarified that 29 units was proposed by the developer.

Trustee Alaback stated that he would like the Planning Commission to have the ability to make flexible decisions based upon what is best for the community.

Administrator Hart clarified that the contract just stipulates that the first 29 units will pay back the loan; it does not stipulate a certain number of homes. Attorney Fickel clarified that the 29 units is only related to the payment of the loan and building fees.

Mayor Gregg asked why the principal and interest payments were tied to the building fees. Administrator Hart stated it was the contract concept to bundle the fees with the payments.

Trustee Bauer asked about the Town's remedy for default. Attorney Fickel stated that there is a small amount of risk due to the structure of the deal. Attorney Fickel stated that the vested rights transfer with the property.

Trustee Bauer asked about the timing of vacating the BMX track. Manager Schneider stated that the buyer plans on closing before the entitlement process. However, if the entitlements are not approved, the contract can be voided. Attorney Fickel stated that during the rescission period it would not be in the buyer's best interest to make modifications to the property and that according to Planner Katers, the entitlement process could take up to 6 months.

Mayor Gregg asked why the contract wasn't contingent upon entitlement approval. He stated that there may be a possibility for seasonal overlap with the BMX track.

Mayor Pro Tem Dowker stated that based upon her experience with Coulson Excavating, she couldn't think of a better partner for this project.

John Clarkson of 1100 Jefferson Drive addressed the Board and asked that he be allowed to have some time to deliver a letter of intent to build on the property.

Milan Karspeck of 766 6<sup>th</sup> Street addressed the Board and questioned the allocation of the fees. He questioned the use of Handy Ditch Company for these lots instead of Colorado-Big Thompson Water. He also stated that there could be some middle ground when it comes to density. He would like to see full fees, with more density that is still appropriate for the area.

Patricia Karspeck 1000 Massachusetts addressed the Board and stated that that R-3 could be a good fit for the property. She would like to let the market determine the use and density. Ms. Karspeck also questioned the reduction of park fees.

Jeff Hindman, 348 Turner Avenue, addressed the Board and clarified his support of the BMX track. He explained the history of the property and the initial proposed use of the property for a recreation center. He asked why there wasn't planning for moving the BMX track before now if this contract has been worked on for several months. He stated that he does not believe that the sale of the property was a public process, as it should have been. He also believes that the property would be suitable for R-3, but there should be public input on the density. Mr. Hindman also questioned the fee reductions when the Town needs funding. He would like the process to begin again more transparently and with public input.

Brad March, an attorney from Fort Collins, addressed the Board again and restated his argument that the BMX track is supported by the Town for a public use.

Larry Crane of 1130 Monroe addressed the Board and stated that the process does not seem open to the citizens and that it seems that it has been done without public knowledge or input.

Kevin Jones addressed the Board and clarified some statements that were made on behalf of the BMX Association. He stated that he was asked to not fence the property so that the property could be enjoyed by the public as a park and the public has perceived the property as a park. The Town has also provided maintenance for the track. He also clarified the issues regarding the contract and the lease payments.

Melanie Crane 211 10<sup>th</sup> Street reiterated that the BMX track has been good neighbors. She also stated that she thinks that the public perception is that the property is a park, especially given that the property was initially purchased for the recreation center. She feels that there should be more public input on the process.

Bob Kennard 502 S. 9<sup>th</sup> Street addressed the Board and stated that the lights of the high school property could be an issue for new properties. He asked that the contract be reviewed to prevent further problems in the future.

Attorney Fickel stated that the Board has not begun the process of approving the final plat of the property. It could be 3-6 months before the process is complete and the Board has final approval of the project, which will allow for public input. Attorney Fickel stated that it was within the Town's authority to ask for public use for the property, which is allowed under the state constitution.

Trustee Bauer stated that tonight is the first time that the Board is discussing the contract.

Trustee Alaback stated that often there is a "first reading" that allows the Board to review more fully and give time for public input. He would also like to allow the maximum opportunity for local developers to bid on the property and he feels that the process has been a little rushed.

Trustee Shepard stated that because the contract provides for a bundled deal with building fees, that the perception is that there will not be any public input, when there will be the full approval process that will allow for public input. His proposal is to approve the contract with a condition to postpone closing until the BMX season is over and allow for a new lease with the BMX track.

Attorney Fickel summarized Trustee Shepard's proposal that possession would not be until final plat approval and enter into a new lease with the BMX track for the season.

Mayor Gregg pointed out that typically these discussions occur in Executive Session and that the Town is trying to find the right balance for the property. He stated that he is not comfortable closing on the property before the entitlement process is completed and would prefer that the permit fees were detached from the deal. He stressed the importance of the stewardship of the \$500,000 endowment for the recreation center.

Attorney Fickel stated that the Town could take up back-up offers on the property.

Administrator Hart clarified that the Board wanted to have triggers including in the contract regarding the BMX season.

Administrator Hart stated his concern regarding the legal ramifications of selling the property and would like it addressed in the contract. He stated that credibility is an issue for Berthoud when attracting developers to the Town.

Attorney Fickel suggested that Mr. Coulson receive legal advice regarding the park issue.

**Trustee Bauer moved to approve the contract presented by Mr. Coulson for the sale of Lot 8 Berthoud Common with the following changes:**

1. **Closing will take place after final plat approval to be processed and paid for by the Buyer;**
2. **Remove the building permit fees from the contract and make them part of the development agreement with the same vesting as presented in the contract;**
3. **Possession not earlier than two weeks after closing.**

**Mayor Pro Tem Dowker seconded the motion. The Board was polled with Mayor Gregg, Mayor Pro Tem Dowker, Trustee Alaback, Trustee Bauer, Trustee Shepard and Trustee White voting in favor. Trustee Jones was absent. The motion passed unanimously.**

#### **Heron Meadows & Heron Lakes Agreements**

Administrator Hart presented an introduction to the Board of the Heron Meadows Development Agreement and Water Agreements.

Jim Birdsall addressed the Board and explained that the development agreement is the standard Town development agreement with site-specific provision with Heron Meadows on pages 16 and 17. He also stated that they are currently in negotiations with a builder for the lots in front of the board.

Trustee Bauer asked about the Xcel agreement in regard to the property. Attorney Bell stated that the agreement was finished, but not yet signed.

**Trustee Shepard moved to approve the Heron Meadows Agreement and the Intergovernmental Agreement for availability of water for public golf course irrigation. Trustee Bauer seconded the motion. The motion passed unanimously.**

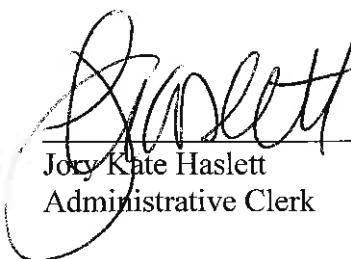
Administrator Hart presented a letter of support from the Town outlining the Town's support of hosting the Republican National Committee in the region. The consensus was approval for Mayor Gregg to sign the letter of support.

Mayor Gregg adjourned the meeting at 11:45 PM.



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Mayor David Gregg



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Jory Kate Haslett  
Administrative Clerk