

TOWN OF BENNETT, COLORADO
BOARD OF TRUSTEES
Regular Meeting
October 12, 2021

1. CALL TO ORDER

The Board of Trustees of the Town of Bennett met in regular session on Tuesday, October 12, 2021 via hybrid meeting. Mayor Royce D. Pindell called the meeting to order at 7:09 p.m. The following persons were present upon the call of the roll:

Mayor: Royce D. Pindell

Trustees Present: Kevin Barden
Darvin Harrell
Whitney Oakley
Denice Smith
Donna Sus
Larry Vittum

Staff Present: Trish Stiles, *Town Administrator*
Rachel Summers, *Deputy Town Administrator*
Taeler Houlberg, *Assistant to the Town Administrator*
Alison Belcher, *Assistant Communications Director*
Sara Aragon, *Community Development Manager*
Tom Pitchford, *Chief Building Official*
Robert Chappel, *Electrical/Building Inspector*
Adam Meis, *Finance and Technology Coordinator*
Steve King, *Special Projects Coordinator*
Dan Giroux, *Town Engineer*
Melinda Culley, *Town Attorney*

Public Present: Kathy Smiley, Gary Vance, Bud O'Neill, Adams County Sheriff Rick Reigenborn
Karl Smalley

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Royce D. Pindell.

3. APPROVAL OF AGENDA

TRUSTEE VITTUM MOVED, MAYOR PRO TEM HARRELL SECONDED to approve the agenda as presented. The voting was as follows:

YES: Harrell, Oakley, Pindell, Smith, Sus, Vittum, Barden
NO: None

Mayor Royce D. Pindell declared the motion carried by unanimous vote.

4. CONSENT AGENDA

MAYOR PRO TEM HARRELL MOVED, TRUSTEE VITTUM SECONDED to approve the consent agenda as presented.

YES: Oakley, Pindell, Smith, Sus, Vittum, Barden, Harrell
NO: None

Mayor Royce D. Pindell declared the motion carried by unanimous vote.

- A. Action: Approval of September 28, 2021 Regular Meeting Minutes
- B. Action: Approval of Resolution No. 887-21
- C. Action: Approval of Resolution No. 890-21

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Phillip "Bud" O'Neill, 45700 Highway 36, Bennett, Colorado shared concerns of snow plows leaving large drifts of snow therefore blocking his property leaving him without the ability to exit or enter his drive.

5. REGULAR BUSINESS

A. Action/Discussion

1. Public Hearing

Building Code Appeal – 215 Kiowa Avenue, Tymanike Apartment Decks

Mayor Pro Tem Darvin Harrell called the matter of a Building Code appeal filed by Gary Vance. The hearing is begin held pursuant to Section 113 of the International Building Code for an appeal of the Building Official's decision regarding the property at 215 Kiowa Avenue. The public hearing was opened at 7:16 p.m.

Taeler Houlberg, Assistant to the Town Administrator, stated that in accordance with Colorado State Statute, notice of the public hearing was properly posted and published in the Eastern Colorado News on October 1, 2021. Legal #2525.

Mayor, Royce D. Pindell, recused himself from the public hearing. Dr. Gary Vance is a family member.

Dr. Gary Vance, 2545 Haskell Place, Watkins, Colorado 80137, reported to the Board of Trustees, he was a dentist in the Town of Bennett for 20 years. Dr. Vance paid for his dental schooling by framing and trimming homes while in college. Dr. Vance was the general contractor on his dental building and apartment building at 215 Kiowa Ave. He also built the concession stand garage and dugouts

at the Bennett ballfield. Dr. Vance reported to the Trustees the apartment decks have a few joists rotting. Dr. Vance decided to replace the entire deck to eliminate future repairs and having to paint the railings. The decks are made of pressure painted wood. On August 13, 2021 after completing 3-1/2 decks and 12 railings, he received a stop work order from the Town of Bennett. Dr. Vance was unaware he was required to pull a permit to repair and replace the decks. Dr. Vance met with Tom Pitchford, Chief Building Official. Mr. Pitchford informed Dr. Vance an Engineer's drawing and building permit would be required. Mr. Pitchford explained to Dr. Vance he could create a "hand" drawing in order to save money.

Sara Aragon, Community Development Manager, communicated to Dr. Vance the top priority of the Chief Building Official is life and property safety. Tom Pitchford, Chief Building Official, communicated to Dr. Vance the Engineer's drawing does not meet the Town Code minimum requirements. The siding must be removed where the decks attach to the building.

Trish Stiles, Town Administrator, and Dr. Vance met two weeks later. Ms. Stiles informed Dr. Vance the Town would look into the functional method of engineering instead of the prescriptive method of engineering, as stated in the Town Code.

Dr. Vance hired a general contractor, licensed by the Town of Bennett. On September 10th, Dr. Vance's General Contractor received an email from Tom Pitchford. The email stated a detailed narrative, including page numbers, details, a complete set of plans, etc.

Dr. Vance stated the *2018 IRC (International Residential Code) Chapter 5 Floors Table R507.9.1.3(1) "That sheathing shall be permitted to be wood structural panel, gypsum board, fiberboard, lumber or foam sheathing. The connection details are 1/2" diameter bolt with 1" maximum sheathing". Per the 2018 IBC (International Building Code) Chapter 16 Structural Design 1604.8.3 Decks "Where supported by attachment to an exterior wall, decks shall be positively anchored to the primary structure and designed for both vertical and lateral loads as applicable. Such attachment shall not be accomplished by the use of toenails or nails subject to withdrawal. Where positive connection to the primary building structure cannot be verified during inspection, decks shall be self-supporting. Connections of decks with cantilevered framing members to exterior walls".* The International Codes complement each other and are open to interpretation.

It is Mr. Vance's belief the code has been misinterpreted. He reported he has positive connection to the building. The decks were reconstructed in the manner they were built in a much better level.

Sara Aragon, Community Development Manager, reported to the Board per Sec. 18-1-10 of the Bennett Municipal Code, the Town has adopted by reference the 2018 International Building Code (IBC) as the Town of Bennett Building Code. This includes Section 113.1 of the IBC, which requires the Town to have a Building Code Board of Appeals to hear and decide appeals of orders, decisions or determinations made by the Building Official relative to the application and interpretation of the IBC. In Bennett, the Board of Trustees serves as the Building Code Board of Appeals. See Section 18-1-20(i) of the Bennett Municipal Code. When an application to the Board of Appeals is made, it shall be based on a claim that: 1. the true intent of the IBC or the rules legally adopted thereunder have been incorrectly interpreted; 2. the provisions of the IBC do not fully apply; or 3. an equally good or better form of construction is proposed. The Board does not have authority to waive requirements of the IBC. See IBC 113.2. Discussion of the Appeal In the Town of Bennett, building permits are

required for many projects. When a permit is not obtained and a contractor and/or property owner are found to be commencing with work, a "stop work order" will be issued. A stop work order requires that work cease immediately after securing the project site in a way that does not jeopardize life or property safety. The building code appeal being brought to the Mayor and Board of Trustees is in regard to 215 Kiowa Ave, which is a two-story apartment building owned by Gary Vance. There was a deck replacement project that commenced without building permits and a stop work order was issued, requiring the contractor and/or owner to obtain building permits for the project. As part of the building permit process, Mr. Vance submitted construction plans for the decks. The plans showed how the decks would be anchored/connected to the apartment building. For this case, the section of the IBC in question is 1604.8.3 Decks. Below is an excerpt from that section:

Where supported by attachment to an exterior wall, decks shall be positively anchored to the primary structure and designed for both vertical and lateral loads as applicable. Such attachment shall not be accomplished by the use of toenails or nails subject to withdrawal. Where positive connection to the primary building structure cannot be verified during inspection, decks shall be self-supporting. Connections of decks with cantilevered framing members to exterior walls or other framing members shall be designed for both of the following:

- 1. The reactions resulting from the dead load and live load specified in Table 1607.1, or the snow load specified in Section 1608, in accordance with Section 1605, acting on all portions of the deck.*
- 2. The reactions resulting from the dead load and live load specified in Table 1607.1, or the snow load specified in Section 1608, in accordance with Section 1605, action on the cantilevered portion of the deck, and no live load or snow load on the remaining portion of the deck.*

The plans submitted for this project does not meet the IBC requirements referenced above. It does not have positive attachment to the primary structure. Between the deck and the primary structure there is Masonite Siding as well as PW Sheathing. Though this design was stamped by an engineer, it does not meet the requirements of the IBC.

The plans submitted for this project does not meet the IBC requirements referenced above. It does not have positive attachment to the primary structure. Between the deck and the primary structure there is Masonite Siding as well as PW Sheathing (see the plan below). Though this design was stamped by an engineer, it does not meet the requirements of the IBC. Based on this, the building official informed Mr. Vance that his plans were not approved and that he must submit new plans for the decks that conform to the requirements of IBC Section 1604.8.3. Mr. Vance is appealing the building official's decision. The basis for Mr. Vance's appeal is set forth in his September 24, 2021 email to Ms. Stiles (attached), which states: The code you refer in the IBC only addresses positive attachment to the building. I have positive attachment and the decks are built better than before and the building dept. have not provided me with the code I have violated. I feel that they have misinterpreted the code and I am requesting an appeal.

The timeline of events leading up to the appeal:

Stop Work Order Issued

8/13/2021 Bob Chappel (Town Building Inspector) posted a stop work order at 215 Kiowa Ave (Tymanike Apartment Building) for work taking place to replace decks without a permit. The contractor that was on site was the building owner's son. Bob talked with Mr. Vance on his son's (also Mr. Vance) phone and instructed them to secure the door going

out to the balcony, shore up the corner and to cover the unfinished deck before they left the site.

Building Official Meeting with Owner

8/17/2021 or 8/18/2021 The Building Official met with Mr. Vance in the lobby of Town Hall. Mr. Pitchford reviewed the options to get the stop work order resolved as well as what would be possible solutions for the decks that had already been replaced without approval or permits.

Owner Email Requesting Deck Information

8/18/2021 Mr. Vance contacted me via email to discuss decks at the apartment building, I was out of the office and forwarded it to Savannah Vickery (our permit tech) to have her answer his questions.

Contractor License Applied For

8/19/2021 Nick Bradley (Owner of Colorado General Contracting) submitted a Town contractor license application to me and I forwarded it on to our Building Department main email address. This license still has not been issued, because we are waiting on proof of worker's compensation insurance (or waiver for it) and payment.

Permit Application and Plans submitted to the Building Department

8/23/2021 The permit was put in "plan review" status. At the time, Mr. Pitchford was on vacation but as a courtesy to Mr. Vance, I emailed Mr. Pitchford the plans and we discussed them over the phone.

Letter to Community Development Manager from Owner

8/23/2021 A letter was dropped off at Town Hall by Mr. Vance. I responded via email to Mr. Vance on August 24, 2021. It did take me a day to get back to him as I was gathering all of the information associated with the situation.

Plan Review Update

8/30/2021 Around August 30, I notified Mr. Vance by phone that the plans would not be approved with the drawing submitted because it did not meet the code minimum (either positive attachment or using supports). He was also emailed the same information from the Building Department email address on the same day.

Owner Request for Meeting with Town Administrator

9/1/2021 I was notified by the Town Administrator that Mr. Vance wanted to meet to discuss the result of the plan review Meeting with Mr. Vance 9/8/2021 The Town Administrator and Community Development Manager met with Mr. Vance to hear his concerns and see if we could find a mutual agreement regarding this matter.

Research on claims of misinterpretation of code and engineer stamps related to plan approval/review

9/8/2021 Much of Mr. Vance's concern in our meeting appeared to be related to our approval process in regard to having an engineer stamped drawing. It was his opinion that if it has an engineer stamp, it should essentially be approved and that our Building Official was being unreasonable by not making an exception in his case. I did reach out to both our Town Engineer and Charles Abbot and Associates (the Town's back up for

building services) and was able to confirm with them that regardless of an engineer's stamp, the code minimums must still be adhered to.

Follow up with Mr. Vance

9/11/2021 I emailed Mr. Vance on September 11 to update him with the outcome of our research and consultation with the individuals listed in the previous section.

Email Communication

9/10/2021 to 9/20/2021 Throughout these dates, there were multiple email communications between Town Staff and Mr. Vance (or a representative of his team) regarding the code in question and the appeals process. Those emails have been included as an attachment to this report.

Notice of Hearing

9/24/2021 The official request for an appeal was received.

Notice to Newspaper

9/28/2021 The public hearing notice was submitted to the Town Clerk for a hearing on October 12, 2021.

Notice to Tenants

9/29/2021 A notice to each tenant in the apartment building was delivered to each door.

Notice to Appeal Applicant

9/30/2021 The public hearing notice was sent via Certified Mail to the address on file for Mr. Vance.

Staff finds that the plans submitted by the applicant do not meet the requirements of IBC Section 1604.8.3. There is no positive attachment for the decks to the primary structure nor are they self-supporting. Staff reached out to Charles Abbot and Associates as well as the Town Engineer and they confirmed that the Building Official's interpretation is just and follows the intent of the IBC. Furthermore, after extensive code research and discussion with both parties previously mentioned, it was determined that an engineer stamp does not automatically qualify a project for approval. The requirements of the IBC must still be met.

Staff recommends that the Town Board of Trustees does not grant this appeal and include the following conditions moving forward:

1. The owner/applicant submit new permits and plans that meet the code requirements for this project within 14 business days.
2. The owner shall complete the approved scope of work no longer than 30 days after obtaining a building permit.
3. If the owner/applicant does not comply, they shall be cited for "work without a permit."

Trustee Sus asked Dr. Vance when he began construction on the decks. Dr. Vance replied he began work on August 9th, 2021. Trustee Sus also asked Dr. Vance why the engineer stamped drawings had a date of August 19th, 2021 when the stop work order was issued on August 13th, 2021.

Trustee Oakley asked Tom Pitchford if he had an opportunity to review the engineer stamped drawings. Mr. Pitchford reported he has not seen the stamped drawings.

Tom Pitchford, Chief Building Official, reported to the Board the decks are not being repaired, but rather replacing the decks, therefore the building must be inspected to verify if the decks are secured to the primary structure. The concern the ability going back to the primary structure and what material the primary structure is. Adams County records show the building was built in 1996.

PUBLIC COMMENTS

There were no public comments presented.

CLOSING STATEMENTS

Dr. Vance believes he covered the true intent of the IBC and positive attachment to the building and would "be happy" to remove a piece of the siding to show the material underneath which may be a 1/2" of sheathing. Dr. Vance believes the construction is as good as what was originally there. Dr. Vance feels even though he did not obtain a permit for the decks he feels as though he is being punished by all means possible by the Bennett Building Department.

1. Misinterpretation of the Code.
2. Not allowing an engineering stamped set of plans.
3. Why is an engineering stamp required if it's not approved?
4. Didn't know what Code he violated for six (6) weeks.
5. Was not allowed to speak to Trustees before the hearing.
6. Does not believe the health and safety of the occupants is at risk.

Melinda Culley, Town Attorney reviewed the rules of a Quasi-Judicial Hearing.

Sara Aragon, Community Development Manager, reported the Board of Trustees adopted the 2018 IBC on November 24, 2020. The 2018 IBC states any structural replacement is to follow the adopted IBC as if was built as a new structure. The Town relies on engineers to determine the load a structure can carry i.e. roof, deck or primary pour to ensure the safety of individuals. An engineer can waive the requirements of the code. In the event of personal or property damage the Town can be held liable. Mr. Chappel, Town Building Inspector, required the work to stop after the site was secured, per requirements of the stop work order. Safety is the Building Departments number one priority.

Mayor Pro Tem Darvin Harrell closed the public hearing on 215 Kiowa Avenue, Tymanike Apartment Decks at 8:32 p.m.

Trustee Oakley asked for confirmation if the Building Department would accept Dr. Vance's invitation to remove a portion of the siding to view the structural material. The Building Department stated they would need to inspect what is underneath the siding to determine the structural material.

Trustee Sus asked if Dr. Vance has the original 1996 building documents. Dr. Vance stated he does and will share them with the Building Department.

Trustee Vittum stated there has been an escalation of conflict between the Building Department and Dr. Vance closing off the possibility of a resolution. Mr. Vance has been pushed into a corner solely for replacing the decks of his apartment building. The correct role of the Town should be attempting to find a way to assist Dr. Vance with the repair or replacement his decks not making it impossible for Dr. Vance.

Ms. Stiles expressed the safety of the Town's residents are of utmost importance. There is no discrimination whether the building is 19 stories or three stories when safety could be a factor.

TRUSTEE VITTUM MOVED, TRUSTEE BARDEN SECONDED no action be taken this evening for the purpose of allowing the Building Department to inspect the original architectural drawings of this property and also to allow the Building Department to after removing siding to inspect material that the lag bolts will be driven into. The voting was as follows:

YES: Smith, Sus, Vittum, Barden, Harrell, Oakley

NO: None

RECUSED: Pindell

Mayor Pro Tem Darvin Harrell declared the motion passed unanimously.

Mayor Pro Tem Darvin Harrell called for a 15-minute recess at 8:57 p.m.

The meeting resumed at 9:09 p.m.

2. Intergovernmental Agreement (IGA) between Adams County, Colorado and the Town of Bennett for Law Enforcement Services

Resolution No. 889-21 - A Resolution Approving an Intergovernmental Agreement with Adams County for the Provision of Law Enforcement Services

Trish Stiles, Town Administrator, reported to the Trustees, the largest single expense to the Town of Bennett annually is the law enforcement contracts with both Adams and Arapahoe Counties. The Town enters into Intergovernmental Government Agreements (IGA) with each county to serve as the Town of Bennett Law Enforcement Agency for Bennett in the geographic area of the Town for each separate county.

The Board of Trustees directed staff at the end of 2020 to review the law enforcement IGA with the Adams County Sheriff for services in 2022. Staff also presented information regarding costs for Law Enforcement services to be provided internally through the creation of a Police Department. After review, the Board concluded that it is in the best interests of the Town to continue the IGA with Adams County Sheriff for Law Enforcement Services in 2022. In addition, the Board requested that Staff work with the Sheriff and County staff to explore a flat rate contract for 2022.

In addition to the IGA, the Town Board approved two full-time Community Service Officers (CSOs) for the Town of Bennett who will assist in not only code enforcement and animal control but will also serve in some duties such as parking enforcement and neighborhood patrol to alleviate duties with both the Adams and Arapahoe County Sheriff Offices. The program aims to provide more assistance to Town residents as well as build support with the Sheriff Offices.

The Adams County Sheriff, County and Town Staff worked to change the contract to a flat rate and the following updated IGA is proposed for consideration and approval by the Board this evening.

The level of service does not change from 2021 to 2022 and still includes the following:

- Two full-time patrol deputies
- Part-time services of a detective (37.5% of full-time work schedule)
- Sergeant (25% of full-time work schedule)
- Commander (25% of full-time work schedule)

The base fee for the 2022 IGA will be Three Hundred Ninety Thousand Dollars (\$390,000.00) in quarterly installments.

Sheriff Reigenborn reported to the Board Ms. Stiles and Town staff invested many hours of communication defining what the importance of the community means while re-evaluating how to simplify and make fair the contract for law enforcement provisions. Items i.e.: vehicles, bullets, computers, etc. Adams County has already purchased therefore those types of items have been removed from the contract.

Mayor Royce D. Pindell expressed his gratitude to Sheriff Reigenborn and working with Staff in order to create an improved contract.

Trustee Vittum also expressed his gratitude to Sheriff Reigenborn. Trustee Vittum recognized the many hours and efforts invested to redesign the contract. Trustee Vittum conveyed his gratefulness to our law enforcement.

Mayor Pro Tem Harrell shared that he wrote a letter of recommendation, in the last week commending, an Adams County Deputy who assisted a tire change.

Trustee Smith also echoed Mayor Pindell and Trustee Vittum's comments.

MAYOR PRO TEM HARRELL MOVED, TRUSTEE VITTUM SECONDED to approve Resolution No. 889-21 - A resolution approving an Intergovernmental Agreement with Adams County for the provision of law enforcement services. The voting was as follows:

YES: Pindell, Smith, Sus, Vittum, Barden, Harrell, Oakley
NO: None

Mayor Royce D. Pindell declared the motion passed unanimously.

3. Public Hearing

Town of Bennett 2021 Comprehensive Plan

Resolution No. 888-21 - A Resolution Approving the 2021 Town of Bennett Comprehensive Land Use Plan

Mayor Royce D. Pindell called the matter of the Town of Bennett 2021 Comprehensive Land Use Plan to order. The public hearing was opened at 9:28 p.m.

Taeler Houlberg, Assistant to the Town Administrator, stated that notice of the public hearing was published in the Eastern Colorado News on September 3, 2021 and in the I-70 Scout on September 7, 2021.

Trish Stiles, Town Administrator, reported to the Trustees, she is presenting the updated and final version of the Town of Bennett 2021 Comprehensive Land Use Plan.

PUBLIC COMMENTS

There were no public comments presented.

Mayor Royce D. Pindell closed the public hearing at 9:43 p.m.

TRUSTEE VITTUM MOVED, MAYOR PRO TEM HARRELL SECONDED to approve Resolution No. 888-21 - A resolution approving the 2021 Town of Bennett Comprehensive Land Use Plan. The voting was as follows:

YES: Sus, Vittum, Barden, Harrell, Oakley, Pindell, Smith
NO: None

Mayor Royce D. Pindell declared the motion passed unanimously.

6. TOWN ADMINISTRATOR REPORT

Trish Stiles, Town Administrator, reported on the following:

- Staff has received several complaints from Antelope Hills regarding possible unauthorized motor vehicles in the open space. Staff is looking into the complaints and will be reaching out to Arapahoe County Sheriff's Office as well as assigning the area to the Town Community Service Officers for additional documentation and reporting to Arapahoe County Sheriff's Office.
- Sum Financial, a new Bennett business is requesting a ribbon cutting on November 9th time to be determined.
- Town staff attended ICMA in Portland, Oregon.
- Ms. Stiles attended a field excursion regarding a large scale water project.
- Ms. Stiles will be enjoying a family vacation from October 15th through October 23rd. Rachel Summers, Deputy Town Administrator, will be available in Ms. Stiles absence.

TRUSTEE COMMENTS AND COMMITTEE REPORTS

Kevin Barden

Trustee Barden reported on the following;

- Expressed his gratitude to Town staff and the BeNNt Water Creek Authority for the update and education.
- He will not be at the next board meeting.

8. ADJOURNMENT

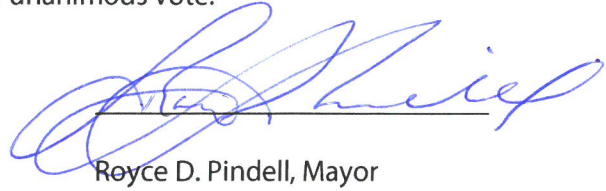
MAYOR PRO TEM HARRELL, TRUSTEE VITTUM SECONDED to adjourn the meeting. The meeting was adjourned at 9:50 p.m. Voting was as follows:

YES: Vittum, Barden, Harrell, Oakley, Pindell, Smith, Sus

NO: None

Mayor Royce D. Pindell declared the motion carried by unanimous vote.


Christina Hart, Town Clerk


Royce D. Pindell, Mayor

