






**BRECKENRIDGE TOWN COUNCIL
WORK SESSION
Tuesday, April 14, 2009**

ESTIMATED TIMES: *The times indicated are intended only as a guide. They are at the discretion of the Mayor, depending on the length of the discussion and are subject to change.*

2:00 – 2:45pm CARTER MUSEUM PREVIEW **Meet There**

3:00 – 3:15 pm **I. PLANNING COMMISSION DECISIONS** **Page 2**







3:15 – 3:30 pm **II. LEGISLATIVE REVIEW ***

-  Solar Panel Ordinance Modification** **Page 87**
-  House Cleaning / Liquor Code **Page 94**
-  Mountain Pine Beetle **Page 30**
-  Defensible Space **Page 46**
-  Rollovers / Appropriation** **Page 99**


3:30 – 4:30 pm **III. MANAGERS REPORT**

-  Public Projects Update **Page 12**
-  Housing/Childcare Update **Verbal**
-  Committee Reports **Page 13**
-  Financials **Page 15**
-  Sanitation District IGA **Page 26**

4:30 – 5:45 pm **IV. PLANNING MATTERS**

-  Mountain Pine Beetle **Page 30**
-  Defensible Space **Page 46**
-  Valley Brook Plat **Page 72**
-  Sunsetting Density **Page 75**
-  Lift Ticket Tax **Page 76**
-  Deed Restriction / Realtor Fees **Page 79**

6:00pm **V. OTHER**

-  Executive Session (Dinner will be served to the Town Council & Staff)

***ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA** **Page 81**

NOTE: Public hearings are not held during Town Council Work Sessions. The public is invited to attend the Work Session and listen to the Council's discussion. However, the Council is not required to take public comments during Work Sessions. At the discretion of the Council, public comment may be allowed if time permits and, if allowed, public comment may be limited. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item. The public will be excluded from any portion of the Work Session during which an Executive Session is held.

Report of Town Manager; Report of Mayor and Council members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items.

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: April 8, 2009

Re: Town Council Consent Calendar from the Planning Commission Decisions of the April 7, 2009, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF April 7, 2009

CLASS C APPLICATIONS:

1. Miner's Candle Unit 6 Window (CK) PC#2008119; 106 Broken Lance

Add a skylight to one unit of an existing thirteen unit condominium complex. Approved.

2. Equipped Fitness and Cross Fit of Breckenridge Change of Use (CK) PC#2009008; 1805 Airport Road

Change of use to a small group and personal fitness training facility. Approved.

PLANNING COMMISSION MEETING

THE MEETING WAS CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Dan Schroder
Jim Lamb

Rodney Allen
JB Katz

Michael Bertaux
Dave Pringle

Leigh Girvin was absent.

APPROVAL OF MINUTES

With the no changes, the minutes of the March 17, 2009, Planning Commission meeting were approved unanimously.

APPROVAL OF AGENDA

With no changes, the April 7, 2009, Planning Commission agenda was approved unanimously (6-0).

Mr. Neubecker mentioned the change in date for the Locomotive Train Park which was listed on the agenda, and recommended May 5th for the potential hearing.

CONSENT CALENDAR:

1. Miner's Candle Unit 6 Window (CK) PC#2008119; 106 Broken Lance
2. Equipped Fitness and Cross Fit of Breckenridge Change of Use (CK) PC#2009008; 1805 Airport Road

Commissioner Questions/Comments on Item 1, Miner's Candle Unit 6 Window, PC#2008119:

Mr. Pringle: The reason that the dormer was rejected in the first application was because it didn't fit with the comprehensive plan and neighborhood compatibility. What makes this window better? Was there a staff reason why we can approve this rather than the previously proposed dormer? (Mr. Kulick: At a planning staff meeting there was consensus that the threshold of architectural compatibility was met by the proposed window design.) On a multi-family building where there are multiple units that may be affected by this. For future applications, recommended that the HOA would need to determine a technique for other window or roof additions to agree on a style for future and create an agreement. (Mr. Neubecker: Not sure we can require HOA to do an agreement, but can contact them to discuss.)

Mr. Bertaux: Shouldn't there be a way to make future proposals consistent with this proposal?

Mr. Allen made a motion to call up PC#2008119, Miner's Candle Unit 6 Window, 106 Broken Lance. Ms. Katz seconded, and the motion was carried unanimously.

Mr. Bertaux: As Mr. Pringle said, if there is a proposal to update a multi-family building there should be a way to ensure that the theme is established for the building and other future proposals for future units.

Mr. Lamb: Windows with uniform units aren't likely to have dissimilar patterns. Wouldn't be surprised if future units come in with the same request. Seemed like a simple solution.

Ms. Katz: We can make this a precedent and mention that this proposal was precedent.

Mr. Allen: Problem was with the asymmetry of the proposal because there won't be another window to balance.

Mr. Schroder: Talking about Policy 5/R, architectural compatibility. This is held together by Policy 5/R, because the window will be the new architectural standard for the building. We have regulations in place.

Mr. Pringle: We need an agreement that other units in the building will be modified in the same way if they decide to pursue a similar application. (Mr. Neubecker: We are establishing a precedent for this building and will review future applications with regard to Policy 5/R.) Go to the HOA and establish that the unit proposing this window is creating the precedent for future HOA proposals.

Mr. Allen opened the hearing to Public Comment.

Marianne Cohn, Miner's Candle Unit 6 (Applicant): In point of fact, our proposal has been voted on and passed significantly strongly in the HOA. One of the units recused himself because he was on the board, the other unit

threatened a lawsuit if they weren't allowed to have what we are proposing, and another unit supported it. The lower units supported it. What we were allowed to submit to the Town was negotiated with the HOA. The entire complex voted on putting in a window anywhere on the building, and letting us have our window, and the parameters in which we were allowed to have our window. The impact to our unit is unique. There are 12 units total, and only 2 units were impacted. We had to fight for this. There are minutes for the meetings if needed. Five windows have been individually added over the years, and previous Planning Commissions just approved those proposals.

There was no more public comment and the hearing was closed.

Mr. Pringle: Do we have an HOA sign off on this proposal? (Mr. Neubecker: Yes we have a sign off with the original application; this was a modification to the original. It is still part of the original application.)

Mr. Pringle made a motion to approve the Miner's Candle Unit 6 Window, PC#2008119, 106 Broken Lance. Mr. Lamb seconded and the motion was approved (5-1) with Mr. Allen voting no.

With no other motions for call up, the remainder of the consent calendar was approved as presented.

PRELIMINARY HEARINGS:

1. Silverthorne House (JP) PC#2007004; 300 North Main Street

Ms. Puester presented an application to construct one duplex building, one single family building, relocate and convert the existing barn to a deed restricted residential unit, move the Silverthorne House 20' west, add a parking area in the rear of the lot, install landscaping, remove the curb cut from Main Street, install a new trash enclosure, and locally landmark the Silverthorne House and barn.

Changes from the November 6, 2007 Submittal:

The applicant has proposed the following changes:

- The Silverthorne House is proposed to be moved 20' west (previously 10' was proposed).
- The new single family rear structure has been altered to resemble a barn type of structure with natural stain rough sawn siding.
- The duplex, building B, has been made slightly larger.
- Both the duplex and single family structures have lower plate heights to achieve density in the roof and steeper roof pitches and better meet Historic Standards.
- Eaves have been pulled out of the side setbacks.
- Solar hot water panels have been proposed to be located on the new single family structure and solar PV panels have been proposed on the duplex.
- Additional landscaping has been added, including balsam poplars.
- The varied wood fence has been modified to have a guardrail on the south side to prevent parking issues at the adjacent property.
- Site perspectives were included in the Planning Commission packet.
- The letter regarding the deteriorating health of the trees by A Cut Above Forestry (from the May 20, 2008 worksession) was included in the Planning Commission packet.

This application has been advertised as a preliminary hearing. Staff appreciated the changes made since the last application; however, Staff believes that the application may be failing a few priority policies including the policy regarding module size. The application appears to pass a preliminary point analysis which was included for Planning Commission review with +5.

Staff had specific questions on the following:

1. Did the module size of 1,670 square feet meet the intent of Priority Policy 178?
2. Was the building height/material of the duplex appropriate on this site?
3. Did the Commission find that the revised site plan met Policies 4, 103, 104, and 108 regarding the relocation of the historic buildings (per May 20, 2008 worksession discussion)?

4. Was the material for the new buildings acceptable in this Character Area? Should rough sawn be used for both new structures to achieve an outbuilding appearance?
5. What comments do Commissioners have on the proposed fence (height and spacing)?
6. Did the Commission have any comments regarding the landmark status of the house and the barn and renovation plans for the historic structures?
7. Would the Commission be supportive of granting a waiver to the parking standards with the removal of the Main Street curb cut?
8. Did the Commission agree with the preliminary point analysis?

Staff also welcomed any additional comments from the Commission.

Mr. Bobby Craig with Arapahoe Architects presented on behalf of the applicant. In response to Staff's presentation, the duplex is 9' taller than the Silverthorne House, believes that other projects have been approved over the maximum module size such as Legacy Place, Great Western and his own building. Concerned with the -5 points for relocating the structures because those policies do not apply to this project as the structures are still on site. Also concerned with negative points for no buffer when other projects do not receive negative points. The snow stack meets the square footage requirements and does not believe that negative points should be assessed for functionality.

Commissioner Questions/Comments:

Mr. Bertaux: Can we take a closer look at the employee housing unit? There are currently no windows in the historic outbuilding, and this is a major change that we need to understand. (Ms. Puester: Provided the existing barn elevation and explained restorations and window additions. There are glass additions on the south side. No windows on the north side. On the west side (facing Main Street) there would be two windows added.) Why can't the buffer area on the north side of the duplex be a snow storage area? (Ms. Puester: Buffer was intended to screen from the adjacent property. Not able to access that area for snow storage.) Are there some other projects that we have approved that exceed the module of 1,600 sf? (Ms. Puester: We haven't typically approved variances in module size.) (Mr. Mosher: Building is rated as contributing; Priority Policy 76 suggests no added windows.)

Mr. Pringle: Concerned that proposed windows / doors are not functional. Would be better off to build it functionally for unit, and not pursue a true historic preservation and for a more reasonable adaptive reuse. Is the rough sawn siding to differentiate between primary and secondary proposed to be painted? (Ms. Puester: Stained, and to meet Priority Policy must switch to four.) Are primary and secondary buildings categorized separately? Code is in conflict. We'd like to see adaptive reuse, but according to the code we can't add windows to it. Can we landmark the Silverthorne house without the barn? (Ms. Puester: yes.) Priority policies must be complied with to comply with 5/A. How to make the secondary building less predominant? Is there proper drainage in place for a heated driveway? (Ms. Puester: There will be dry wells in the snow storage areas.)

Mr. Lamb: I was under the impression that adding windows to a historic structure was not recommended. (Ms. Puester: You shouldn't do it, but we wanted to promote adaptive reuse. We haven't done something exactly like this before. With proposed changes, we might not be able to landmark the historic building.) How much taller would the duplex be than the main house? Five to six feet? (Ms. Puester: I don't know. There are perspectives provided that show the roof peaks of the buildings.) Are there any solar heated parking areas in town? (Ms. Puester: One of the banks is looking at it.) Concerned with size of solar panels to heat that square footage of parking. (Mr. Neubecker: Providing solar which is positive points; negative points for heating the driveway. The points offset each other.) (Ms. Puester: New solar panel policy has stipulation that it regarding maintenance.)

Mr. Schroder: Landmark status and density were also in conflict. Questions about fencing, snow stack, and parking. The fence runs along the property line three feet from parking; concerned with cars pulling in far enough and snow storage from adjacent property. (Ms. Puester: There is a snow storage issue at the adjacent property.) (Mr. Neubecker: parking requirement is 9' x18', and 25% for snow stacking.)

Mr. Allen: Are there historic buildings in the area that are over 1,600 square feet? What is the "typically" in the policy? (Mr. Mosher: There is a range in the handbook.) The range is the high and low. Density will count if it isn't historic? (Ms. Puester: Yes, density would count and it would probably be over

density.) What is the natural grade on the site? (Ms. Puester: The site is flat and the fence steps in height.)

Mr. Allen opened the hearing to Public Comment. Present for Public Comment were Bobby Craig, Arapahoe Architects (Architect and Applicant) and Dave Hartman (Owner).

Ms. Katz disclosed that the Hartman's have been clients. Currently nothing is pending. The Planning Commission agreed there was no conflict since the previous relationship between the Owner and a member of the Planning Commission was disclosed.

Mr. Craig (Architect and Applicant): Started project in 2006 and have done several iterations to date. There has been an incredible amount of discussion with staff and consultants. Applicant explained existing conditions plan; including existing access, gravel, beetle kill trees, etc. Over 60% of the site is already disturbed with the existing condition. By relocating the building forward, able to increase landscape on Main Street and streetscape. Historic building location provides view to Main Street and a better contribution to historic character. (Mr. Berteaux: Will Silverthorne house have basement?) Yes there will be a basement. Historic building conversion to deed restricted unit. There are a few approvals in this specific character area that exceed the module size - Great Western Lodging (2,400 sf), my building (1,871 sf), Legacy Place building exceeds also. The duplex building footprint is smaller than module size; the additional 1.5 story puts the square footage over the module. Duplex is 23'-10" to mean height on duplex. (Ms Puester: 29' to top). Silverthorne House is 20' or less. (Mr. Pringle: Difference is 9' or more.) 3D model shows the height difference accurately from alley, adjacent property, Main Street. (Mr. Berteaux: Is there an over main there on the building?) Yes, it should be a foot to 18". Sandborne Map (fire record map) shows that a two story building was once on site, no longer there. Regarding materials, we can change siding to 4" if necessary. We wanted two buildings to have similar but subordinate look to main structure. Regarding point system, had concern with negative five (-5) points for relocation. Referred to page 25 in the staff report (page 103 in the packet). Relocate the building within its original site is what we're doing here is second item and benefit to community. Also meet policy point 4. Also concerned also with negative points for lack of buffering. Existing condition show no buffer at all. Adding landscape and fence makes buffer better between adjacent project. We would be willing to change fence height, pickets, etc. Went and surveyed building heights and couldn't find a new building that wasn't taller than existing structure. Last negative point concern was the snow stack. We met snow stack minimum square footage, and all within 10' of where it would be plowed from. Also included heated parking for maintenance. (Mr. Allen: Address concerns with pushing up against barn.) Currently the barn is against the alley and getting beat up already. The relocation helps improve the existing condition. Also the drainage is away from the barn, and dry wells would be located in storage area. Best way to protect and landmark two historic structure, and improves streetscape and provide deed restricted housing.

Commissioner Questions/Comments for Applicant:

Mr. Pringle: Policy 103 is a good point regarding relocation. (Mr. Mosher: 103 is a Priority Policy and is either pass or fail – no points.) Mr. Craig: 108 and 104 do not apply with our interpretation. (Mr. Mosher: Idea is to move the building as little as possible to improve.) Is the original site the lot it sits on? Then 103 and 108 don't apply. (Mr. Mosher: Disagreed. Relocation is supposed to be as little as possible. Specifically says don't move the building so far to accommodate other development. Keep it as original as it is.) (Mr. Neubecker: Site = original lot.) Yellow color would need to fall within the chroma and hue. (Mr. Neubecker: That is what the current code says, but would prefer to follow historic settlement patterns.)

Ms. Katz: Have to read the entire policy – talks about moving it to another site. Goal would be to keep them on the original lot, not moving them to a different physical lot. Kind of agreed with Mr. Craig because the policy was ambiguous. (Mr. Mosher: Passing policy 103.) Need to look at the intent of the policy – doesn't say you can't. (Mr. Mosher: There is precedent to move it as little as possible.) (Mr. Neubecker: moving it to the front yard wouldn't be appropriate.) (Mr. Craig: Had considered moving it off property to accommodate a bigger building, but didn't.) (Mr. Mosher: Best way is to leave it where it is. Staff interpreted 104 with negative points due to relocation to make room for parking lot.) (Mr. Hartman: I'm trying to look for a use for this structure that will help the community, and employee housing is better use that just putting it on the alley. Moving is makes it more functional.) When you come back for final, please provide height survey, Sandborne survey to Planning Commission. Could minimize the damage to historic building with snow melt.

Mr. Schroder: Great adaptive reuse – great place to live. Can you please reconsider the yellow color?

- Mr. Allen: Snow stacking potential for a couple extra feet of heat for snow melt. (Mr. Hartman: Am doing this in other locations in town. Will look at extending heated concrete / asphalt. Snow stacking is the correct amount for blacktop that's there, and heating half of lot.) How do plows get in and out? (Mr. Craig: Straight in and out.)
- Mr. Lamb: Concerned with snow melt against historic structure. Snow will get stacked up and pushed with the plow. Can we add trees / bollards to protect structures? (Mr. Craig: Will look into it.)
- Mr. Berteaux: What is the current surface? (Mr. Hartman: Could heat grass instead of turning it concrete / asphalt.)

There was no more public comment and the hearing was closed.

Commissioner Final Comments:

- Mr. Berteaux: Concerned with points, 5/R should be negative five (-5) points. Solve fence problem to deal with point issue. Don't create a conflict with your neighbor. Fence is going to make snow on both sides of the fence, and little to no maintenance on neighbor's side. Bigger issue is the negative four (-4) points for buffering. What could they do to avoid the negative four (-4) points? Have to have those egress window wells due to code requirements. No landscaping and pedestrian way in that area that would be at the applicant's disposal. They are doing the right thing and getting negative points. If they increase the heat melt system there is more potential for point change, maybe / maybe not. Cementitious is not a good appearance, rough sawn is better. Consider potential for other materials – rough sawn or other barn wood. Agreed on local landmarking, not sure if State would go. A real door would be more in keeping with historic district rather than glass. 1,600 square feet on module should be met. Building height difference between duplex and primary building was great. Denial for Summit Foundation storage building for only one foot. Policy 104, 108 was no. Parking waiver would be fine.
- Mr. Pringle: Need to hit 1,600 square feet for module. Height requirements should be met. Materials siding should be 4" lap. Another discussion needed for semantics for relocation of building, seems like relocation was being met because it is on the same site it is on currently. Policy 108 is same orientation of original setting because it is behind and to the side as its original orientation – meet that. Didn't agree that rough sawn siding should be allowed for new buildings in the historic district that will have the same architectural detailing as the original structure. Maybe use board and batten. Wanted to prohibit painted rough sawn. New buildings should be 4". Differentiate between primary and secondary with other techniques – combination of horizontal and vertical board and bat, different material, introduce a different dimension would be counter to what we've done in the past. Fence should stay at 3', but can ratchet up to provide privacy, but not necessary to screen for 60'. Allow height taper – would like to see a greater spacing than 1" for pickets. Would like more criteria met for landmark status for house. Can we go for landmarking for changes in barn, hope that we can with proposed changes to promote adaptive reuse? Sliding doors would not be functional – put a real door in the building that functions. Grant waiver on parking. Concurrent with staff on preliminary point analysis. Can the fence be a wider spacing the whole length, and then double side it where the unit would be in conflict? (Mr. Mosher: We'll look at it.) (Mr. Neubcker: We have precedent for height.)
- Mr. Lamb: Get to 1,600 square feet for module. Landmarking information is needed. Would like to make sure if windows aren't cut on side facing road then policy is met. Agree with staff's point analysis. Policy 103, 104, and 108 thinking you lose the points if you move the historic building. Module size should be met and reduced by 70 sf. Building height no issue. Okay with material. Make siding 4". Okay with parking waiver. Concerned with tandem parking. Concerned with snow stacking and historic building damage from plow. Would prefer fence to be 3', 6' seems high. Transition from 3' - 5' would like to see what that looks like.
- Ms. Katz: Start at the end – we need to understand landmarking regulations for adaptive reuse / addition of windows / density. Can staff provide the answer? If it is up to the Planning Commission, then I can live with the windows because of adaptive reuse and we want people living in town. Benefit on site outweighs negative. Building is too tall, but would like to see survey from Mr. Craig. Module size difference is okay off 70 square feet. Policy 103 – overall the benefit of relocation on the site is agreeable. Okay on 108. Policy 90 – wanted 4" lap and preferred rough sawn materials, particularly if we give on the height. Don't want 6' fence (too high), 5' is better, 3' is historic. Ok with different heights. Barricade would be purpose of fence? (Mr. Hartman: Trying to provide privacy for

employee unit with taller fence.) We can decide if it can have a window and be landmarked? (Mr. Neubecker: Staff can look into it.)

Mr. Schroder: Module size doesn't meet Priority Policy 178, but there is a caveat that 9 UPA comes into play (could be some leniency). Overall it is only excess of 70 square feet so ultimately meets the intent of 178. Building height was too tall to meet settlement patterns. Liked perspective but too high. Policy 103, 104, 108 concerned with moving a historic structure with intent to develop policy 104. Historic patterns are being applied to site plan, so Policy 108 would be met. The historic structure was being left on the lot, so it would be meeting the relocation policy 103. Materials in character area – there is precedent for cementitious siding. Want siding to be at 4" and would prefer rough sawn. Fence height is 3' for historic pattern, but proposed 6' is too high, maybe 5'. Okay with differentiated heights on fence. Landmark status was encouraged for both house and barn. In favor of curb cut from Main Street, but concerned with parking layout (tandem spaces). Preliminary point analysis is overall positive five (+5) recommendation, and comfortable with staff analysis.

Mr. Allen: Policies 103 and 108 were met / not applicable. Policy 104 not applicable because it wasn't being moved from the original site. Architectural 5/R - need to have building materials match historic buildings, work hard on differentiating between primary and secondary structures. Can live with building height, because would prefer building to go up rather than out and adjacent properties are possibly higher. Thinking of it contextually from Main Street. Would like to look at precedent for other buildings square footage for module size. Probably okay with 70 square foot difference. Requested staff look at Great Western and Arapahoe Architects buildings. Materials agreed with Mr. Lamb and Mr. Pringle, maybe no rough sawn siding for duplex but secondary color instead. Didn't like yellow. Find a way to make it look secondary. Fence okay with higher in middle, but right around the building not so long. Achieved objective with minimal segment of height. Provide more spacing between pickets. Opposed to solid fence. Not opposed to stepping of fence. Landmark status of house – great job. Struggled with barn. Policy 76 states no windows visible from street, violation of that policy. Windows may need to be hidden from the street. If it met that policy okay with it. Door versus slider – liked the way the slider looked like a barn, but concerned with slider never being closed. Preferred matching historic regular door. Parking waiver okay. Didn't like tandem, but met code requirement of parking space. Snow stacking issue – need to protect the barn and then points can be updated. Point analysis 5/R concerns, snow storage points if barn was protected. Biggest comment – you guys are almost there. It was a disaster a few years ago, nice job with improvements. On landmarking of barn with windows, what is position? (Ms. Puester: Locally landmarked – not state, etc. Planning commission decides.)

2. Lot 5, McAdoo Corner (MGT) PC#2009009; 209 South Ridge Street

Ms. Katz disclosed that she represented Andrew Johnson (property owner of Lot 5, McAdoo Corner) on a case in 2008, and not doing any work for him currently. The Planning Commission agreed there was no conflict of interest since the previous relationship between the Owner and a member of the Planning Commission was disclosed.

Mr. Thompson presented an application to construct a new 3,365 square foot restaurant on Lot 5 of McAdoo Corner Subdivision.

Staff Questions

1. Did the Planning Commission find that the application met the criteria required to exceed 9UPA (Priority Policy 158)?
2. Did the Planning Commission believe that Priority Policy 80A (use of modules and connector width) was being met?
3. Did the Planning Commission find that the building height was similar to nearby historic buildings as required by Priority Policy 163?
4. Did the Commission find that the application met Priority Policy 164 related to façade width?

Applicant Presentation: Janet Sutterley, Architect

Original design intention dealt with square footage and context of historic buildings. Started with idea that it would step up from small building in front, and wanted upper level seating that looks to west side, so provided a two story structure on rear alley side. Talked with staff about how it won't meet 80/A. Ms. Sutterley provided a sketch of what connector could look like and will make it work. 89 square feet over with the rear module. Didn't redesign yet because wanted to revisit after addressing some other issues first. Provided plan with dimensions showing McAdoo,

Ridge Street Dental office, and the proposed restaurant. Building design is in scale with two adjacent buildings. Same height and module width as blue building at alley. There is a three story building beyond that. Blue building isn't historic but height starts to climb in rear. Question for commission – Policy 80/A what do we use to constitute a module? Provided a north elevation and streetscape showing McAdoo and McAbee which shows a change in scale. Most important is that it is based on overall historic mass and scale of the block – dealing with McAdoo corner, dentist office, the Cellar building. Overlaid the Cellar building on our elevation to show size comparison as well as with McAbee. (Mr. Pringle: McAbee was brought in from a different location.) Looking for ways to mitigate this and meet Policy 158. Third is Policy 163 - primary facades. Policy is very specific to primary façade of the building and it is clearly met. Across the façade it is one story so satisfies both policies. Policy 164 satisfying the intent of what the policy is trying to do. Does call out that you can't exceed the 31' in façade width, but what wasn't specified is how far back you step before you aren't calling it the primary façade anymore. Explained offsets of building façade of historic building compared to new building. Design matched to historic building with design. The real intent of this guideline is looking at the shape of a gable building. Respect the context and align with McAdoo house. Would also like some feedback on the upper story windows. We'd like as much glass on the second floor as possible it is a part of a feature.

Commissioner Questions/Comments:

- Mr. Pringle: Did not agree with Ms. Sutterley's argument about the façade width. (Mr. Thompson: It is clearly similar to the McAdoo, but it appears to be wider than 30'.) McAdoo is 40'. (Mr. Thompson: is the 6.5' setback enough to make it look like another façade?)
- Ms. Katz: Would it be fair for us to compare it to the one next door or the one a few blocks over? (Mr. Thompson: The Planning Commission needs to look at only Character area #3.) (Mr. Grosshuesch: Will look at this in more detail into the precedent on dealing with Priority Policy 164, Façade widths).
- Mr. Schroder: Was there a place where façade width was defined? (Mr. Thompson: No, neither are modules.) Where did we measure from 37? (Mr. Thompson: From one side of the building to the other, foundation to foundation.)
- Mr. Allen: Policy 164 – are the primary and front façade the same thing? (Mr. Thompson: Yes.) Stated that it cannot exceed 30'. (Mr. Thompson: Correct.) Are there any other buildings that have that offset? (Mr. Thompson: Look at Main Street dental.) (Ms. Sutterley: Can look at that.)

Mr. Allen opened the hearing to Public Comment.

Jan Radosevich, Owner of little blue building on alley side, Lot 6, Block 13, Abbett Addition: As the zoning in this area allows for residential and commercial, intent was to eventually turn her building back into a residence. Guidelines say that residential was preferred. She is concerned with parking and density of 12 UPA. She believes 12 UPA is overwhelming the property. She does not think four parking spaces will be enough for a restaurant. Concerned with outdoor seating and is that included in parking requirements? (Matt Thompson: No our parking regulations do not consider outdoor seating). Putting money towards parking district hasn't been successful. Snow stacking has been plowed towards blue building, and sees an issue with it. Compatibility of restaurant and outdoor seating on the deck may not be compatible with residential uses. She knew it was going to be commercial but didn't anticipate a restaurant there.

Separate subject, there is a cardboard dumpster that isn't enclosed and it is supposed to be. Thought it was town owned.

Jason Swinger, Owner in Wendall Square Condos: Similar concerns with mass and density. Also concerned with parking. On the air quality issue was there a negative point? (Ms. Katz: Negative two (-2) points.) Was the grease trap built incurring negative points? (Mr. Thompson: Will need to meet code.)

Ms. Sutterley: Item of clarification on density, not anywhere near the 12 UPA, we'd be at 3,375 of above ground density. Above ground density is 2,830, rest of density is underground. Density overall at 11.18 over entire property (if Lot 1 builds maximum above ground). The applicant is trying to avoid kitchens and bathrooms in the basement. Preferred to have it all above ground, but that would not meet the Town's Historic Guidelines.

- Mr. Lamb: Heard comments from neighbors, but it comes down to 12 UPA would meet code and this proposal would actually be less than that. Can't keep people from reasonably developing their property. Will look into parking concerns. Ms. Sutterley will work with modules. Showed that building height was similar to those in context. McAdoo building is least "historic" historic building in Town. Real gray area with Policy 164. Solid to void areas in windows needs to be addressed.
- Mr. Pringle: Possible to add more downstairs to reduce above ground impact? (Ms. Sutterley: Yes more density could be put below grade). Agreed with Mr. Thompson on reducing amount of glass on back and strengthening solid to void ratio. Façade width was a good argument with the step back of façade. Would there be a way to redo roofing plan to strengthen the separate façade width argument? Asked about moving more density to basement to make square footage balance between front and back. Could the rear module roof line be subordinated a little more, rear roof module seems to dominate too much.
- Mr. Bertaux: Policy 164 argument regarding 6.5' offset makes sense, and agree with Mr. Pringle about strengthening of the front façade. Height of back element bothers me, and seemed like the building was taking off in the alley. Potential to heat parking area to reduce snow stack issue. Agreed with staff regarding reducing the amount of windows and stone elements. Waited to hear more on 164 before decision is made. When there are historic policy decisions to make, a brief history is beneficial to support decision. Liked the architecture. Potentially overwhelming on the block, not crazy about the bay window on the second story. Proceed.
- Ms. Katz: Why was density a question if it is approved? Density fits with other buildings in area. Connector module issue can be dealt with. Solid to void agreed with staff that we need less windows. Streetscape was helpful for Policy 164 and looked okay. Mr. Pringle's comments were helpful to façade changes.
- Mr. Schroder: Feels this application is meeting Priority Policy 158, building scale. The density is allowed under the master plan per square footage and massing seems to fit. Connector module will be met with the changes Ms. Sutterley has agreed to make. Height met maximum without incurring negative points, encouraged it to come down. Smaller building to the right architecturally matches. Appreciated extra research on façade width, and liked the way it was broken up. Continue forward motion on project.
- Mr. Allen: Policy 158 talks about module size and is in violation of this priority policy. Need to get under the 1,300 square feet, could move some density from back module to front module to meet policy. Anything that is usable space should be counted in module size. Policy 80/A on the right track. In scale with area and historic character area, also in scale with height. Façade width leaning towards okay with more information. Something between 6' and 12' will do it, and on the right track with stepping it back. Liked the windows on the east side, match those and add more solid space. Look at other historic buildings in area for context. Answer comment about parking from public. (Mr. Thompson: outdoor space was not included in parking calculation.) (Mr. Mosher: Outdoor would be seasonal.) Looking good and should be able to make it work. (Mr. Thompson: Need to figure out when parking needs to be paved per master plan. Currently not paved and not striped, so you aren't getting the correct number of spaces. Needs applicant to determine the trigger point for paving the parking lot.)

PUBLIC PROJECTS:

1. Locomotive Train Park Site Plan (JP) PC#2009007; 123 North Main Street

Mr. Lamb motioned to continue this item to the May 5th Planning Commission meeting. Mr. Schroder seconded, and the motion was carried unanimously (6-0).

WORKSESSIONS:

1. Historic Structure Setbacks

Mr. Thompson presented. On February 3, 2009, the Planning Staff brought a proposal to the Planning Commission considering a modification to Policy (9/A) and (9/R) "Placement of Structures." The discussion revolved around waiving negative points on proposals to move a historic structure encroaching on an adjacent property back on to the subject property, but not meeting the required setbacks. The Commission generally supported the proposal, but offered ideas on how to implement the policy. The Code currently discourages placing structures within the recommended setbacks on site. The importance is such that a 3 times multiplier is associated with the negative point

assignment, which indicates a policy of average importance. Mr. Thompson presented changes to the language on Policy (9/A) and (9/R) “Placement of Structures” for Commissioner comment.

For the record, Mr. Allen motioned to continue this item to a future Planning Commission meeting.

TOWN COUNCIL REPORT:

No Town Council representative was in attendance at 10:37 pm to present a report.

OTHER MATTERS:

None.

ADJOURNMENT

The meeting was adjourned at 10:37 p.m.

Rodney Allen, Chair

Memorandum

TO: Town Council
FROM: Tom Daugherty, Town Engineer
DATE: April 9, 2009
RE: Public Projects Update

2009 Asphalt Overlay Project

The contract for the 2009 Asphalt Overlay Project has been awarded to New West Paving, Inc. of Denver. The project came in below the budgeted amount for 2009. The work is scheduled to start and be completed during the month of June.

Recreation Center Roof

A-P Construction has received the final plans and is preparing a GMP proposal. I should have a final number later in April.

Dale will be present if you have any questions.

➤ **MEMO**

TO: Mayor & Town Council

FROM: Tim Gagen

DATE: March 30, 2009

RE: Committee Reports

NWCCOG

Peter Grosshuesch

March 26, 2009

- Discussion of federal stimulus dollars (American Recovery and Reinvestment Act - ARRA) flowing to the NWCCOG weatherization program will increase their budget from \$1.6M to \$2.76M for next fiscal year (beginning in June). This will enable them to double this years effort (from 200 some homes, to over 450). As has been the case over the years with this program, the guidelines limit this to retrofits only, where the household income does not exceed 200 percent of the poverty level.
- Alpine Area Agency on Aging will see its budget restored to full funding with the receipt of ARRA money.
- ARRA money is now available for the WRNF to clear dead trees from road ROWs and power easements.
- There is National Forest Foundation grant money to do forest management work on property adjacent to ski areas. NWCCOG will apply for the grant. They'll ask for \$142K. We submitted three parcels for consideration that were in our consultant's report covering the 39 open space parcels.

Summit Stage

James Phelps

March 25, 2009

March 25th, 2009 Summit Stage Board Meeting

The Summit Stage will discontinue Winter Service on April 18th and begin Summer Service the 19th thru mid Nov. The Stage Summer Service will operate 1 hour service all routes with Peak 30 min. Service during morning and afternoon hours. The Stage ran this service plan last August for the remainder of the 2008 summer season.

At the last several BOD meetings there have been representatives of the Blue River Area that have requested Transit Service. What has been committed is that more research is necessary to the feasibility of pull-out areas, ridership, surveys, etc. Initial cost analysis of this new service ranges from 500k -900K ; this amount may be reduced by 30%-40% if route was to be interlined. In any event the Stage BOD stated this request is not possible for this season and not likely for 2010. The BOD would like to have all preliminary work and final recommendations in place for when the Tax Revenues trend positive.

There was brief discussion as too revisiting Service Criteria for the Summit Stage as there is currently one route that has low performance. Depending on if the route meets criteria, adjustments or possible elimination of route was discussed.

The BOD meeting was additionally attended by representatives of CMC. This was at the request of John Jones. John wanted the BOD to hear/discuss operational issues surrounding the CMC campus coming on-line in mid August. There is consensus BOD commitment to provide the best possible service to the campus however due to roadway infrastructure not being complete at this time a compromise has been decided for the eminent summer service. The Summit Stage will service the CMC via the South-bound Frisco-Breckenridge route only. This will be a demand deviation that will be at the verbal request of the transit rider. If no verbal request is made the route will operate as current. This is a short term plan in hopes that will allow time to design a better winter time service plan. All North bound service/connection to CMC will be via the Breckenridge Free Ride.

Total Ridership for February: decrease of 3.77% under 2008. Para transit Ridership for February: increase of 8.24% over 2008. Late night Ridership for February: increase of 8.19% over 2008.

Transit Tax Collection for January was down 10.6%. Verbal – February Transit Tax numbers were not available but were believed to be negative.

Other Meetings

| | | |
|---------------------------|-------------------|------------|
| Police Advisory Committee | Rick Holman | No Meeting |
| CML | Tim Gagen | No Meeting |
| Summit Leadership Forum | Tim Gagen | No Meeting |
| SCHA | Laurie Best | No Meeting |
| CAST | Tim Gagen | No Meeting |
| I-70 Coalition | Tim Gagen | No Meeting |
| LLA | MJ Loufek | No Meeting |
| Public Art Commission | Jen Cram | No Meeting |
| Wildfire Council | Peter Grosshuesch | No Meeting |

**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

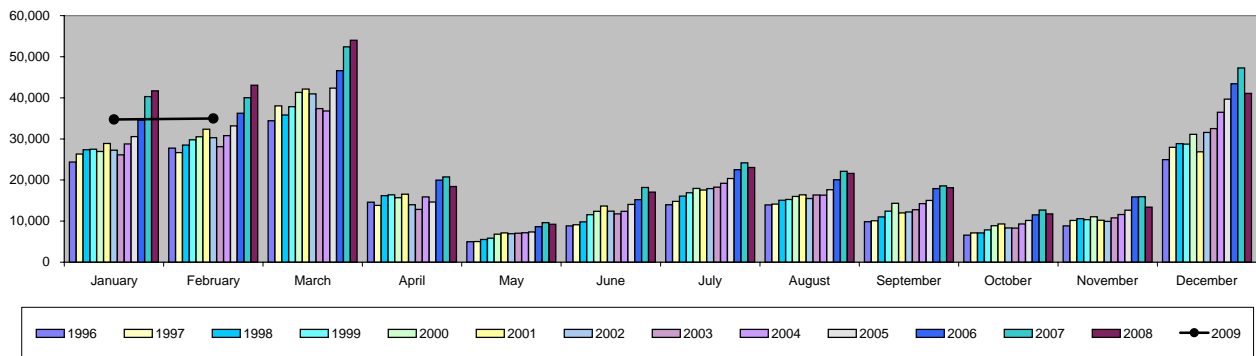
(in Thousands of Dollars)

Total - All Categories*

* excluding Undefined and Utilities categories

| | Actual 1996 | Actual 1997 | Actual 1998 | Actual 1999 | Actual 2000 | Actual 2001 | Actual 2002 | Actual 2003 | Actual 2004 | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | Actual 2009 | Monthly 08-09 | YTD 2008 | YTD 2009 | YTD % Change 08-09 |
|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|-------------|-------------|--------------------------|
| January | 24,356 | 26,315 | 27,355 | 27,490 | 26,938 | 28,887 | 27,264 | 26,117 | 28,764 | 30,549 | 34,589 | 40,283 | 41,708 | 34,749 | -16.7% | 41,708 | 34,749 | -16.7% |
| February | 27,767 | 26,667 | 28,510 | 29,777 | 30,510 | 32,350 | 30,295 | 28,093 | 30,808 | 33,171 | 36,236 | 40,034 | 43,045 | 34,948 | -18.8% | 84,753 | 69,697 | -17.8% |
| March | 34,438 | 38,037 | 35,824 | 37,843 | 41,307 | 42,120 | 40,962 | 37,377 | 36,807 | 42,370 | 46,603 | 52,390 | 53,985 | 0 | n/a | 138,738 | 69,697 | -49.8% |
| April | 14,619 | 13,809 | 16,196 | 16,407 | 15,702 | 16,565 | 13,982 | 12,868 | 15,894 | 14,635 | 19,963 | 20,758 | 18,402 | 0 | n/a | 157,140 | 69,697 | -55.6% |
| May | 4,994 | 5,024 | 5,530 | 5,822 | 6,816 | 7,107 | 6,914 | 7,028 | 7,179 | 7,355 | 8,661 | 9,629 | 9,236 | 0 | n/a | 166,376 | 69,697 | -58.1% |
| June | 8,856 | 9,093 | 9,826 | 11,561 | 12,400 | 13,676 | 12,426 | 11,774 | 12,395 | 14,043 | 15,209 | 18,166 | 17,060 | 0 | n/a | 183,436 | 69,697 | -62.0% |
| July | 13,979 | 14,791 | 16,080 | 16,899 | 17,949 | 17,575 | 17,909 | 18,273 | 19,208 | 20,366 | 22,498 | 24,168 | 23,037 | 0 | n/a | 206,473 | 69,697 | -66.2% |
| August | 13,940 | 14,145 | 15,077 | 15,253 | 15,994 | 16,389 | 15,508 | 16,362 | 16,326 | 17,625 | 20,071 | 22,125 | 21,617 | 0 | n/a | 228,090 | 69,697 | -69.4% |
| September | 9,865 | 10,099 | 11,033 | 12,427 | 14,310 | 12,002 | 12,224 | 12,778 | 14,261 | 15,020 | 17,912 | 18,560 | 18,152 | 0 | n/a | 246,242 | 69,697 | -71.7% |
| October | 6,598 | 7,120 | 7,132 | 7,880 | 8,876 | 9,289 | 8,323 | 8,311 | 9,306 | 10,170 | 11,544 | 12,687 | 11,766 | 0 | n/a | 258,008 | 69,697 | -73.0% |
| November | 8,847 | 10,173 | 10,588 | 10,340 | 11,069 | 10,211 | 9,942 | 10,780 | 11,604 | 12,647 | 15,877 | 15,943 | 13,390 | 0 | n/a | 271,398 | 69,697 | -74.3% |
| December | 24,975 | 27,965 | 28,845 | 28,736 | 31,107 | 26,870 | 31,564 | 32,525 | 36,482 | 39,687 | 43,431 | 47,258 | 41,085 | 0 | n/a | 312,483 | 69,697 | -77.7% |
| Totals | 193,234 | 203,238 | 211,996 | 220,435 | 232,978 | 233,041 | 227,313 | 222,286 | 239,034 | 257,638 | 292,594 | 322,001 | 312,483 | 69,697 | | | | |

2009 Monthly Sales Tax Activity (in thousands of dollars)



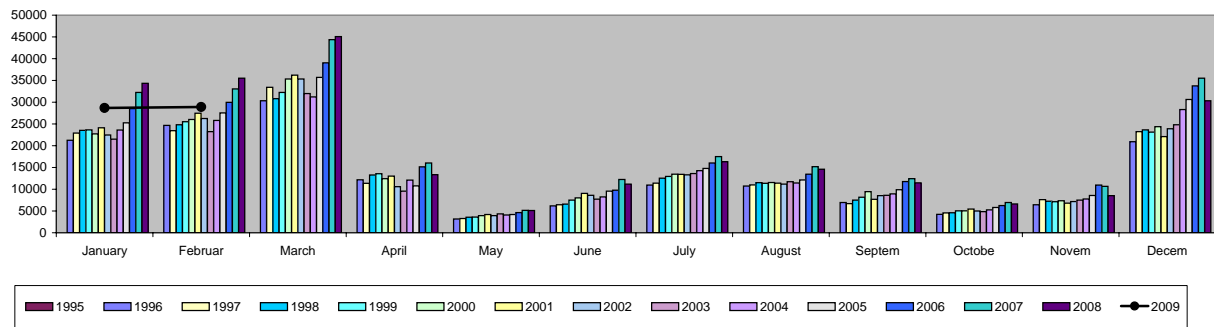
**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail-Restaurant-Lodging Summary

| | Actual 1996 | Actual 1997 | Actual 1998 | Actual 1999 | Actual 2000 | Actual 2001 | Actual 2002 | Actual 2003 | Actual 2004 | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | Actual 2009 | Monthly 08-09 | YTD 2008 | YTD 2009 | YTD % Change 08-09 |
|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|-------------|-------------|--------------------------|
| January | 21,263 | 22,893 | 23,523 | 23,629 | 22,723 | 24,118 | 22,465 | 21,509 | 23,620 | 25,240 | 28,528 | 32,258 | 34,333 | 28,667 | -16.5% | 34,333 | 28,667 | -16.5% |
| February | 24,673 | 23,443 | 24,805 | 25,532 | 26,044 | 27,464 | 26,258 | 23,253 | 25,826 | 27,553 | 29,972 | 33,039 | 35,504 | 28,907 | -18.6% | 69,837 | 57,574 | -17.6% |
| March | 30,343 | 33,414 | 30,809 | 32,254 | 35,348 | 36,196 | 35,344 | 31,988 | 31,209 | 35,705 | 39,051 | 44,390 | 45,086 | 0 | n/a | 114,923 | 57,574 | -49.9% |
| April | 12,182 | 11,347 | 13,256 | 13,579 | 12,426 | 13,029 | 10,587 | 9,562 | 12,102 | 10,773 | 15,134 | 16,025 | 13,329 | 0 | n/a | 128,252 | 57,574 | -55.1% |
| May | 3,167 | 3,264 | 3,565 | 3,610 | 3,949 | 4,203 | 3,950 | 4,331 | 4,095 | 4,179 | 4,647 | 5,146 | 5,096 | 0 | n/a | 133,348 | 57,574 | -56.8% |
| June | 6,174 | 6,451 | 6,588 | 7,513 | 8,001 | 9,058 | 8,619 | 7,724 | 8,217 | 9,568 | 9,789 | 12,225 | 11,184 | 0 | n/a | 144,532 | 57,574 | -60.2% |
| July | 10,950 | 11,405 | 12,527 | 12,944 | 13,464 | 13,406 | 13,292 | 13,590 | 14,248 | 14,766 | 16,038 | 17,499 | 16,323 | 0 | n/a | 160,855 | 57,574 | -64.2% |
| August | 10,738 | 10,981 | 11,517 | 11,352 | 11,542 | 11,407 | 11,174 | 11,717 | 11,429 | 12,122 | 13,446 | 15,167 | 14,587 | 0 | n/a | 175,442 | 57,574 | -67.2% |
| September | 6,966 | 6,687 | 7,492 | 8,160 | 9,443 | 7,666 | 8,513 | 8,599 | 8,940 | 9,897 | 11,761 | 12,418 | 11,465 | 0 | n/a | 186,907 | 57,574 | -69.2% |
| October | 4,232 | 4,560 | 4,578 | 5,049 | 5,054 | 5,425 | 4,991 | 4,855 | 5,257 | 5,824 | 6,248 | 6,934 | 6,623 | 0 | n/a | 193,530 | 57,574 | -70.3% |
| November | 6,426 | 7,617 | 7,255 | 7,122 | 7,352 | 6,816 | 7,174 | 7,511 | 7,771 | 8,557 | 10,963 | 10,650 | 8,544 | 0 | n/a | 202,074 | 57,574 | -71.5% |
| December | 20,928 | 23,219 | 23,650 | 23,124 | 24,361 | 22,090 | 23,901 | 24,818 | 28,314 | 30,619 | 33,736 | 35,517 | 30,337 | 0 | n/a | 232,411 | 57,574 | -75.2% |
| Totals | 158,042 | 165,281 | 169,565 | 173,868 | 179,707 | 180,878 | 176,268 | 169,457 | 181,028 | 194,803 | 219,313 | 241,268 | 232,411 | 57,574 | | | | |

2009 Monthly Sales Tax Activity (in thousands of dollars)



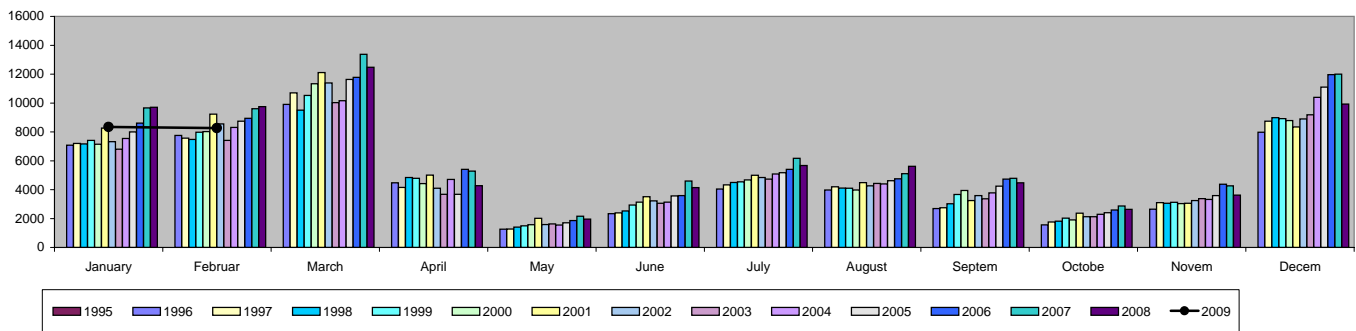
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail Sales

| | Actual 1996 | Actual 1997 | Actual 1998 | Actual 1999 | Actual 2000 | Actual 2001 | Actual 2002 | Actual 2003 | Actual 2004 | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | Actual 2009 | Monthly % CHG | Actual 2008 | Actual 2009 | YTD % CHG |
|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|----------------|----------------|--------------|
| January | 7,079 | 7,205 | 7,173 | 7,411 | 7,149 | 8,271 | 7,320 | 6,807 | 7,545 | 8,001 | 8,607 | 9,665 | 9,707 | 8,340 | -14.1% | 9,707 | 8,340 | -14.1% |
| February | 7,753 | 7,568 | 7,474 | 7,983 | 8,024 | 9,231 | 8,549 | 7,418 | 8,312 | 8,744 | 8,942 | 9,607 | 9,756 | 8,267 | -15.3% | 19,463 | 16,607 | -14.7% |
| March | 9,902 | 10,702 | 9,507 | 10,525 | 11,337 | 12,116 | 11,390 | 10,028 | 10,162 | 11,632 | 11,774 | 13,373 | 12,473 | 0 | n/a | 31,936 | 16,607 | -48.0% |
| April | 4,481 | 4,156 | 4,841 | 4,789 | 4,423 | 5,008 | 4,105 | 3,679 | 4,714 | 3,678 | 5,406 | 5,287 | 4,277 | 0 | n/a | 36,213 | 16,607 | -54.1% |
| May | 1,263 | 1,272 | 1,408 | 1,492 | 1,569 | 2,014 | 1,583 | 1,626 | 1,549 | 1,708 | 1,858 | 2,165 | 1,957 | 0 | n/a | 38,170 | 16,607 | -56.5% |
| June | 2,335 | 2,391 | 2,521 | 2,931 | 3,135 | 3,514 | 3,227 | 3,062 | 3,140 | 3,565 | 3,589 | 4,597 | 4,140 | 0 | n/a | 42,310 | 16,607 | -60.7% |
| July | 4,040 | 4,336 | 4,499 | 4,543 | 4,678 | 4,998 | 4,838 | 4,732 | 5,087 | 5,174 | 5,403 | 6,176 | 5,678 | 0 | n/a | 47,988 | 16,607 | -65.4% |
| August | 3,981 | 4,199 | 4,109 | 4,100 | 3,973 | 4,492 | 4,269 | 4,429 | 4,397 | 4,620 | 4,757 | 5,110 | 5,620 | 0 | n/a | 53,608 | 16,607 | -69.0% |
| September | 2,698 | 2,753 | 3,021 | 3,671 | 3,944 | 3,242 | 3,587 | 3,370 | 3,781 | 4,249 | 4,726 | 4,783 | 4,479 | 0 | n/a | 58,087 | 16,607 | -71.4% |
| October | 1,563 | 1,759 | 1,815 | 2,024 | 1,908 | 2,374 | 2,132 | 2,127 | 2,298 | 2,404 | 2,591 | 2,866 | 2,641 | 0 | n/a | 60,728 | 16,607 | -72.7% |
| November | 2,650 | 3,108 | 3,060 | 3,124 | 3,041 | 3,057 | 3,249 | 3,378 | 3,326 | 3,586 | 4,376 | 4,267 | 3,622 | 0 | n/a | 64,350 | 16,607 | -74.2% |
| December | 7,978 | 8,746 | 8,985 | 8,919 | 8,782 | 8,338 | 8,893 | 9,184 | 10,388 | 11,099 | 11,971 | 12,000 | 9,924 | 0 | n/a | 74,274 | 16,607 | -77.6% |
| Totals | 55,723 | 58,195 | 58,413 | 61,512 | 61,963 | 66,655 | 63,142 | 59,840 | 64,699 | 68,460 | 74,000 | 79,896 | 74,274 | 16,607 | | | | |

2009 Monthly Sales Tax Activity (in thousands of dollars)



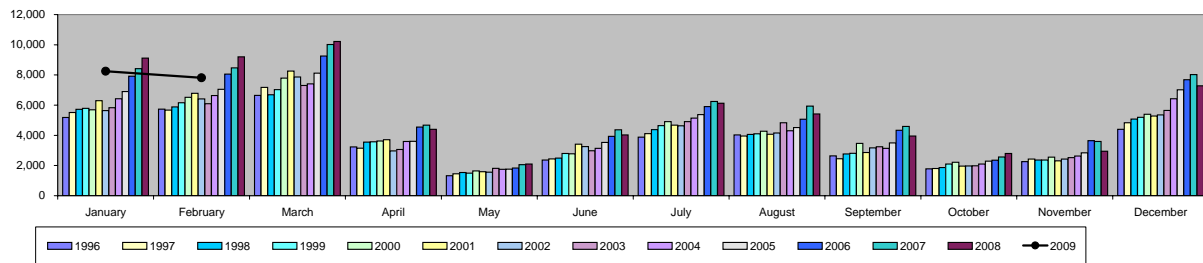
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Restaurants/Bars

| | Actual 1996 | Actual 1997 | Actual 1998 | Actual 1999 | Actual 2000 | Actual 2001 | Actual 2002 | Actual 2003 | Actual 2004 | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | Actual 2009 | Monthly % CHG | Actual 2008 | Actual 2009 | YTD % CHG |
|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|----------------|----------------|--------------|
| January | 5,180 | 5,515 | 5,723 | 5,784 | 5,697 | 6,300 | 5,644 | 5,835 | 6,425 | 6,897 | 7,924 | 8,414 | 9,117 | 8,243 | -9.6% | 9,117 | 8,243 | -9.6% |
| February | 5,735 | 5,667 | 5,880 | 6,162 | 6,519 | 6,783 | 6,412 | 6,092 | 6,637 | 7,047 | 8,058 | 8,467 | 9,206 | 7,817 | -15.1% | 18,323 | 16,060 | -12.4% |
| March | 6,651 | 7,180 | 6,688 | 7,031 | 7,792 | 8,258 | 7,870 | 7,307 | 7,413 | 8,117 | 9,256 | 10,015 | 10,223 | 0 | n/a | 28,546 | 16,060 | -43.7% |
| April | 3,238 | 3,149 | 3,548 | 3,576 | 3,624 | 3,706 | 2,967 | 3,068 | 3,595 | 3,609 | 4,552 | 4,678 | 4,404 | 0 | n/a | 32,950 | 16,060 | -51.3% |
| May | 1,329 | 1,454 | 1,541 | 1,492 | 1,641 | 1,590 | 1,561 | 1,808 | 1,746 | 1,760 | 1,832 | 2,058 | 2,102 | 0 | n/a | 35,052 | 16,060 | -54.2% |
| June | 2,364 | 2,437 | 2,488 | 2,796 | 2,779 | 3,413 | 3,257 | 2,982 | 3,136 | 3,525 | 3,938 | 4,370 | 4,027 | 0 | n/a | 39,079 | 16,060 | -58.9% |
| July | 3,877 | 4,113 | 4,380 | 4,639 | 4,910 | 4,675 | 4,632 | 4,913 | 5,138 | 5,375 | 5,905 | 6,249 | 6,130 | 0 | n/a | 45,209 | 16,060 | -64.5% |
| August | 4,032 | 3,953 | 4,056 | 4,106 | 4,270 | 4,068 | 4,156 | 4,832 | 4,302 | 4,521 | 5,067 | 5,933 | 5,414 | 0 | n/a | 50,623 | 16,060 | -68.3% |
| September | 2,641 | 2,452 | 2,770 | 2,814 | 3,468 | 2,860 | 3,169 | 3,249 | 3,138 | 3,498 | 4,340 | 4,585 | 3,950 | 0 | n/a | 54,573 | 16,060 | -70.6% |
| October | 1,779 | 1,807 | 1,870 | 2,097 | 2,220 | 1,959 | 1,977 | 1,978 | 2,100 | 2,290 | 2,352 | 2,564 | 2,801 | 0 | n/a | 57,374 | 16,060 | -72.0% |
| November | 2,261 | 2,428 | 2,364 | 2,367 | 2,558 | 2,307 | 2,425 | 2,520 | 2,624 | 2,841 | 3,651 | 3,593 | 2,946 | 0 | n/a | 60,320 | 16,060 | -73.4% |
| December | 4,402 | 4,834 | 5,076 | 5,191 | 5,393 | 5,275 | 5,354 | 5,646 | 6,428 | 7,017 | 7,681 | 8,028 | 7,287 | 0 | n/a | 67,607 | 16,060 | -76.2% |
| Totals | 43,489 | 44,989 | 46,384 | 48,055 | 50,871 | 51,194 | 49,424 | 50,230 | 52,682 | 56,497 | 64,556 | 68,954 | 67,607 | 16,060 | | | | |

2009 Monthly Sales Tax Activity (in thousands of dollars)



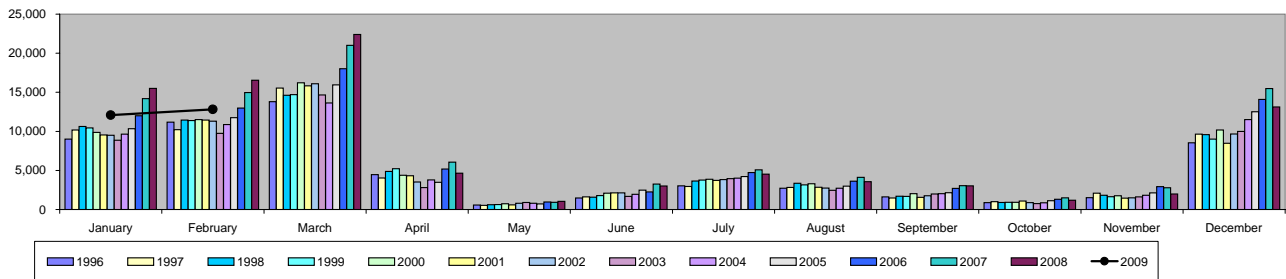
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Short-Term Lodging

| | Actual 1996 | Actual 1997 | Actual 1998 | Actual 1999 | Actual 2000 | Actual 2001 | Actual 2002 | Actual 2003 | Actual 2004 | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | Actual 2009 | Monthly % CHG | Actual 2008 | Actual 2009 | YTD % CHG |
|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|----------------|----------------|--------------|
| January | 9,004 | 10,173 | 10,627 | 10,434 | 9,877 | 9,547 | 9,501 | 8,867 | 9,650 | 10,342 | 11,997 | 14,179 | 15,509 | 12,084 | -22.1% | 15,509 | 12,084 | -22.1% |
| February | 11,185 | 10,208 | 11,451 | 11,387 | 11,501 | 11,450 | 11,297 | 9,743 | 10,877 | 11,762 | 12,972 | 14,965 | 16,542 | 12,823 | -22.5% | 32,051 | 24,907 | -22.3% |
| March | 13,790 | 15,532 | 14,614 | 14,698 | 16,219 | 15,822 | 16,084 | 14,653 | 13,634 | 15,956 | 18,021 | 21,002 | 22,390 | 0 | n/a | 54,441 | 24,907 | -54.2% |
| April | 4,463 | 4,042 | 4,867 | 5,214 | 4,379 | 4,315 | 3,515 | 2,815 | 3,793 | 3,486 | 5,176 | 6,060 | 4,648 | 0 | n/a | 59,089 | 24,907 | -57.8% |
| May | 575 | 538 | 616 | 626 | 739 | 599 | 806 | 897 | 800 | 711 | 957 | 923 | 1,037 | 0 | n/a | 60,126 | 24,907 | -58.6% |
| June | 1,475 | 1,623 | 1,579 | 1,786 | 2,087 | 2,131 | 2,135 | 1,680 | 1,941 | 2,478 | 2,262 | 3,258 | 3,017 | 0 | n/a | 63,143 | 24,907 | -60.6% |
| July | 3,033 | 2,956 | 3,648 | 3,762 | 3,876 | 3,733 | 3,822 | 3,945 | 4,023 | 4,217 | 4,730 | 5,074 | 4,515 | 0 | n/a | 67,658 | 24,907 | -63.2% |
| August | 2,725 | 2,829 | 3,352 | 3,146 | 3,299 | 2,847 | 2,749 | 2,456 | 2,730 | 2,981 | 3,622 | 4,124 | 3,553 | 0 | n/a | 71,211 | 24,907 | -65.0% |
| September | 1,627 | 1,482 | 1,701 | 1,675 | 2,031 | 1,564 | 1,757 | 1,980 | 2,021 | 2,150 | 2,695 | 3,050 | 3,036 | 0 | n/a | 74,247 | 24,907 | -66.5% |
| October | 890 | 994 | 893 | 928 | 926 | 1,092 | 882 | 750 | 859 | 1,130 | 1,305 | 1,504 | 1,181 | 0 | n/a | 75,428 | 24,907 | -67.0% |
| November | 1,515 | 2,081 | 1,831 | 1,631 | 1,753 | 1,452 | 1,500 | 1,613 | 1,821 | 2,130 | 2,936 | 2,790 | 1,976 | 0 | n/a | 77,404 | 24,907 | -67.8% |
| December | 8,548 | 9,639 | 9,589 | 9,014 | 10,186 | 8,477 | 9,654 | 9,988 | 11,498 | 12,503 | 14,084 | 15,489 | 13,126 | 0 | n/a | 90,530 | 24,907 | -72.5% |
| Totals | 58,830 | 62,097 | 64,768 | 64,301 | 66,873 | 63,029 | 63,702 | 59,387 | 63,647 | 69,846 | 80,757 | 92,418 | 90,530 | | | 24,907 | | |

2009 Monthly Sales Tax Activity (in thousands of dollars)



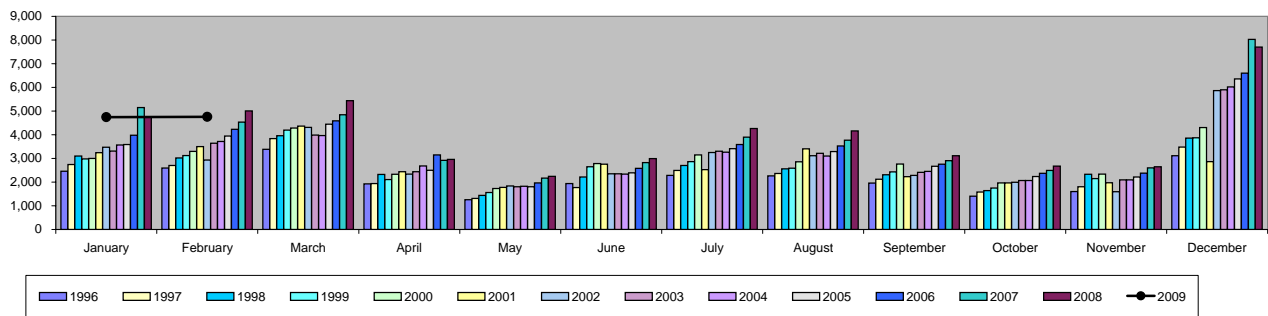
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Grocery/Liquor Stores

| | Actual 1996 | Actual 1997 | Actual 1998 | Actual 1999 | Actual 2000 | Actual 2001 | Actual 2002 | Actual 2003 | Actual 2004 | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | Actual 2009 | Monthly % CHG | Actual 2008 | Actual 2009 | YTD % CHG |
|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|----------------|----------------|--------------|
| January | 2,458 | 2,746 | 3,104 | 2,977 | 2,999 | 3,242 | 3,472 | 3,314 | 3,570 | 3,589 | 3,977 | 5,149 | 4,744 | 4,741 | -0.1% | 4,744 | 4,741 | -0.1% |
| February | 2,595 | 2,702 | 3,020 | 3,119 | 3,296 | 3,501 | 2,931 | 3,643 | 3,714 | 3,949 | 4,233 | 4,536 | 5,009 | 4,755 | -5.1% | 9,753 | 9,496 | -2.6% |
| March | 3,383 | 3,839 | 3,960 | 4,199 | 4,282 | 4,366 | 4,311 | 3,988 | 3,968 | 4,449 | 4,585 | 4,844 | 5,436 | 0 | n/a | 15,189 | 9,496 | -37.5% |
| April | 1,928 | 1,937 | 2,325 | 2,105 | 2,330 | 2,441 | 2,336 | 2,437 | 2,682 | 2,503 | 3,149 | 2,920 | 2,959 | 0 | n/a | 18,148 | 9,496 | -47.7% |
| May | 1,256 | 1,309 | 1,440 | 1,558 | 1,728 | 1,779 | 1,836 | 1,801 | 1,823 | 1,806 | 1,969 | 2,169 | 2,246 | 0 | n/a | 20,394 | 9,496 | -53.4% |
| June | 1,940 | 1,772 | 2,214 | 2,648 | 2,784 | 2,760 | 2,352 | 2,354 | 2,341 | 2,392 | 2,584 | 2,822 | 2,990 | 0 | n/a | 23,384 | 9,496 | -59.4% |
| July | 2,283 | 2,494 | 2,701 | 2,862 | 3,152 | 2,527 | 3,253 | 3,303 | 3,266 | 3,414 | 3,588 | 3,899 | 4,264 | 0 | n/a | 27,648 | 9,496 | -65.7% |
| August | 2,266 | 2,364 | 2,559 | 2,587 | 2,861 | 3,404 | 3,117 | 3,216 | 3,103 | 3,292 | 3,529 | 3,771 | 4,161 | 0 | n/a | 31,809 | 9,496 | -70.1% |
| September | 1,959 | 2,122 | 2,311 | 2,430 | 2,765 | 2,231 | 2,284 | 2,409 | 2,456 | 2,671 | 2,757 | 2,908 | 3,113 | 0 | n/a | 34,922 | 9,496 | -72.8% |
| October | 1,407 | 1,584 | 1,644 | 1,748 | 1,969 | 1,965 | 1,990 | 2,066 | 2,069 | 2,239 | 2,372 | 2,494 | 2,673 | 0 | n/a | 37,595 | 9,496 | -74.7% |
| November | 1,602 | 1,804 | 2,330 | 2,152 | 2,339 | 1,970 | 1,597 | 2,096 | 2,096 | 2,214 | 2,377 | 2,600 | 2,647 | 0 | n/a | 40,242 | 9,496 | -76.4% |
| December | 3,115 | 3,477 | 3,858 | 3,869 | 4,305 | 2,865 | 5,868 | 5,897 | 6,017 | 6,356 | 6,604 | 8,028 | 7,705 | 0 | n/a | 47,947 | 9,496 | -80.2% |
| Totals | 26,192 | 28,150 | 31,466 | 32,254 | 34,810 | 33,051 | 35,347 | 36,524 | 37,105 | 38,874 | 41,724 | 46,140 | 47,947 | 9,496 | | | | |

2009 Monthly Sales Tax Activity (in thousands of dollars)



THE TOWN IS AWARE OF INCONSISTENT FILING PRACTICES THAT HAVE NEGATIVELY IMPACTED COMPARISONS FOR THIS SECTOR.

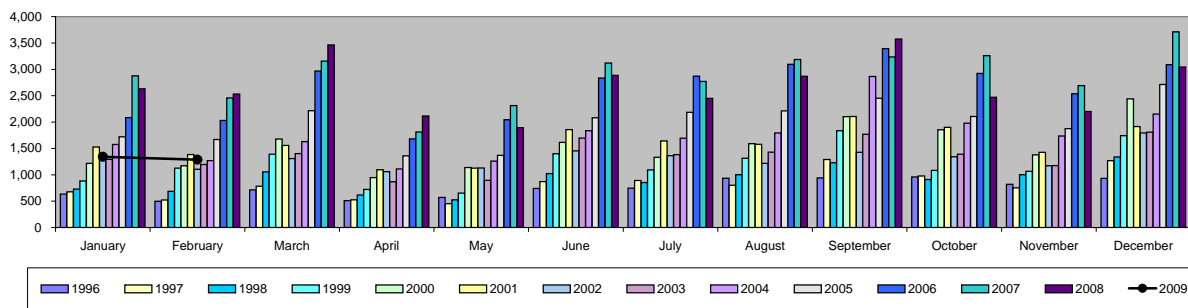
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Supplies

| | Actual 1996 | Actual 1997 | Actual 1998 | Actual 1999 | Actual 2000 | Actual 2001 | Actual 2002 | Actual 2003 | Actual 2004 | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | Actual 2009 | Monthly % CHG | Actual 2008 | Actual 2009 | YTD % CHG |
|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|----------------|----------------|--------------|
| January | 635 | 676 | 728 | 884 | 1,216 | 1,527 | 1,327 | 1,294 | 1,574 | 1,720 | 2,084 | 2,876 | 2,631 | 1,341 | -49.0% | 2,631 | 1,341 | -49.0% |
| February | 499 | 522 | 685 | 1,126 | 1,170 | 1,385 | 1,106 | 1,197 | 1,268 | 1,669 | 2,031 | 2,459 | 2,532 | 1,286 | -49.2% | 5,163 | 2,627 | -49.1% |
| March | 712 | 784 | 1,055 | 1,390 | 1,677 | 1,558 | 1,307 | 1,401 | 1,630 | 2,216 | 2,967 | 3,156 | 3,463 | 0 | n/a | 8,626 | 2,627 | -69.5% |
| April | 509 | 525 | 615 | 723 | 946 | 1,095 | 1,059 | 869 | 1,110 | 1,359 | 1,680 | 1,813 | 2,114 | 0 | n/a | 10,740 | 2,627 | -75.5% |
| May | 571 | 451 | 525 | 654 | 1,139 | 1,125 | 1,128 | 896 | 1,261 | 1,370 | 2,045 | 2,314 | 1,894 | 0 | n/a | 12,634 | 2,627 | -79.2% |
| June | 742 | 870 | 1,024 | 1,400 | 1,615 | 1,858 | 1,455 | 1,696 | 1,837 | 2,083 | 2,836 | 3,119 | 2,886 | 0 | n/a | 15,520 | 2,627 | -83.1% |
| July | 746 | 892 | 852 | 1,093 | 1,333 | 1,642 | 1,364 | 1,380 | 1,694 | 2,186 | 2,872 | 2,770 | 2,450 | 0 | n/a | 17,970 | 2,627 | -85.4% |
| August | 936 | 800 | 1,001 | 1,314 | 1,591 | 1,578 | 1,217 | 1,429 | 1,794 | 2,211 | 3,096 | 3,187 | 2,869 | 0 | n/a | 20,839 | 2,627 | -87.4% |
| September | 940 | 1,290 | 1,230 | 1,837 | 2,102 | 2,105 | 1,427 | 1,770 | 2,865 | 2,452 | 3,394 | 3,234 | 3,574 | 0 | n/a | 24,413 | 2,627 | -89.2% |
| October | 959 | 976 | 910 | 1,083 | 1,853 | 1,899 | 1,342 | 1,390 | 1,980 | 2,107 | 2,924 | 3,259 | 2,470 | 0 | n/a | 26,883 | 2,627 | -90.2% |
| November | 819 | 752 | 1,003 | 1,066 | 1,378 | 1,425 | 1,171 | 1,173 | 1,737 | 1,876 | 2,537 | 2,693 | 2,199 | 0 | n/a | 29,082 | 2,627 | -91.0% |
| December | 932 | 1,269 | 1,337 | 1,743 | 2,441 | 1,915 | 1,795 | 1,810 | 2,151 | 2,712 | 3,091 | 3,713 | 3,043 | 0 | n/a | 32,125 | 2,627 | -91.8% |
| Totals | 9,000 | 9,807 | 10,965 | 14,313 | 18,461 | 19,112 | 15,698 | 16,305 | 20,901 | 23,961 | 31,557 | 34,593 | 32,125 | 2,627 | | | | |

2009 Monthly Sales Tax Activity (in thousands of dollars)



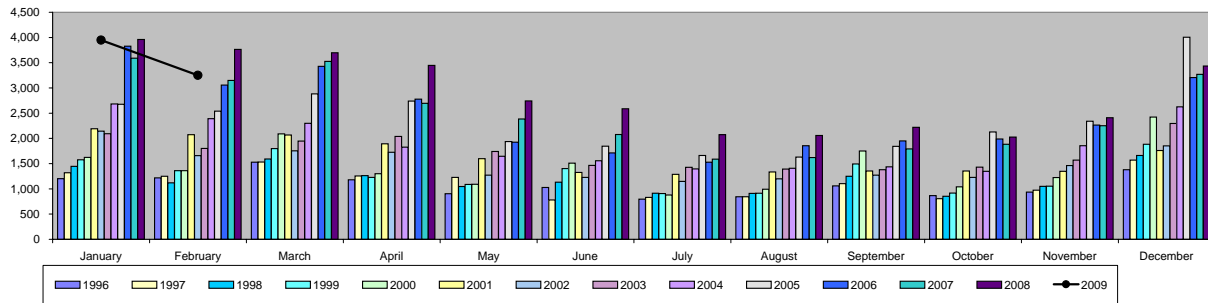
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Utilities

| | Actual 1996 | Actual 1997 | Actual 1998 | Actual 1999 | Actual 2000 | Actual 2001 | Actual 2002 | Actual 2003 | Actual 2004 | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | Actual 2009 | Monthly % CHG | Actual 2008 | Actual 2009 | YTD % CHG |
|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|----------------|----------------|--------------|
| January | 1,201 | 1,320 | 1,446 | 1,575 | 1,625 | 2,191 | 2,144 | 2,093 | 2,684 | 2,675 | 3,829 | 3,591 | 3,961 | 3,949 | -0.3% | 3,961 | 3,949 | -0.3% |
| February | 1,218 | 1,250 | 1,121 | 1,360 | 1,359 | 2,075 | 1,659 | 1,800 | 2,391 | 2,540 | 3,056 | 3,149 | 3,765 | 3,252 | -13.6% | 7,726 | 7,201 | -6.8% |
| March | 1,529 | 1,533 | 1,591 | 1,799 | 2,090 | 2,067 | 1,754 | 1,947 | 2,299 | 2,883 | 3,428 | 3,525 | 3,699 | 0 | n/a | 11,425 | 7,201 | -37.0% |
| April | 1,181 | 1,255 | 1,262 | 1,227 | 1,299 | 1,894 | 1,724 | 2,040 | 1,827 | 2,741 | 2,778 | 2,694 | 3,448 | 0 | n/a | 14,873 | 7,201 | -51.6% |
| May | 904 | 1,226 | 1,047 | 1,089 | 1,091 | 1,599 | 1,272 | 1,740 | 1,647 | 1,939 | 1,926 | 2,386 | 2,742 | 0 | n/a | 17,615 | 7,201 | -59.1% |
| June | 1,027 | 780 | 1,133 | 1,402 | 1,510 | 1,325 | 1,228 | 1,466 | 1,558 | 1,846 | 1,713 | 2,078 | 2,588 | 0 | n/a | 20,203 | 7,201 | -64.4% |
| July | 796 | 830 | 913 | 907 | 880 | 1,289 | 1,147 | 1,427 | 1,394 | 1,663 | 1,529 | 1,588 | 2,075 | 0 | n/a | 22,278 | 7,201 | -67.7% |
| August | 844 | 844 | 910 | 913 | 994 | 1,336 | 1,198 | 1,393 | 1,408 | 1,629 | 1,854 | 1,621 | 2,058 | 0 | n/a | 24,336 | 7,201 | -70.4% |
| September | 1,059 | 1,103 | 1,249 | 1,494 | 1,752 | 1,354 | 1,271 | 1,381 | 1,435 | 1,843 | 1,949 | 1,792 | 2,219 | 0 | n/a | 26,555 | 7,201 | -72.9% |
| October | 866 | 804 | 854 | 917 | 1,039 | 1,353 | 1,227 | 1,429 | 1,348 | 2,127 | 1,987 | 1,883 | 2,026 | 0 | n/a | 28,581 | 7,201 | -74.8% |
| November | 935 | 974 | 1,049 | 1,052 | 1,225 | 1,348 | 1,461 | 1,569 | 1,856 | 2,340 | 2,264 | 2,251 | 2,411 | 0 | n/a | 30,992 | 7,201 | -76.8% |
| December | 1,381 | 1,570 | 1,661 | 1,885 | 2,423 | 1,760 | 1,852 | 2,297 | 2,627 | 4,005 | 3,206 | 3,271 | 3,435 | 0 | n/a | 34,427 | 7,201 | -79.1% |
| Totals | 12,941 | 13,489 | 14,236 | 15,620 | 17,287 | 19,591 | 17,937 | 20,582 | 22,474 | 28,231 | 29,519 | 29,829 | 34,427 | 7,201 | | | | |

2009 Monthly Sales Tax Activity (in thousands of dollars)



TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR
(in Thousands of Dollars)

February figures are as of 4/07/09

| Total - All Categories* <i>*except Utilities & Undefined, as requested by Council</i> | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | 4 year average | Actual 2009 | % Change 08-09 | % Change Average vs. 09 |
|---|------------------------|------------------------|------------------------|------------------------|---------------------------|------------------------|---------------------------|------------------------------------|
| January | 30,549 | 34,586 | 40,275 | 41,714 | 36,781 | 34,748 | -16.70% | -5.53% |
| February | 33,171 | 36,234 | 40,017 | 43,051 | 38,118 | 34,947 | -18.82% | -8.32% |
| March | 42,370 | 46,603 | 52,390 | 53,942 | 48,826 | 0 | n/a | n/a |
| April | 14,635 | 19,963 | 20,750 | 18,397 | 18,436 | 0 | n/a | n/a |
| May | 7,355 | 8,661 | 9,626 | 9,248 | 8,723 | 0 | n/a | n/a |
| June | 14,043 | 15,209 | 18,139 | 17,028 | 16,105 | 0 | n/a | n/a |
| July | 20,366 | 22,498 | 24,155 | 22,930 | 22,487 | 0 | n/a | n/a |
| August | 17,625 | 20,071 | 22,109 | 21,588 | 20,348 | 0 | n/a | n/a |
| September | 15,020 | 17,912 | 18,489 | 18,170 | 17,398 | 0 | n/a | n/a |
| October | 10,170 | 11,544 | 12,663 | 11,465 | 11,461 | 0 | n/a | n/a |
| November | 12,647 | 15,877 | 15,909 | 13,225 | 14,415 | 0 | n/a | n/a |
| December | 39,687 | 43,431 | 46,932 | 40,412 | 42,616 | 0 | n/a | n/a |
| Totals | 257,638 | 292,589 | 321,454 | 311,170 | 295,713 | 69,695 | -77.60% | -76.43% |

| Core Business Retail-Restaurant-Lodging | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | 4 year average | Actual 2009 | % Change 08-09 | % Change Average vs. 09 |
|--|------------------------|------------------------|------------------------|------------------------|---------------------------|------------------------|---------------------------|------------------------------------|
| January | 25,240 | 28,528 | 32,250 | 34,339 | 30,089 | 28,667 | -16.52% | -4.73% |
| February | 27,553 | 29,972 | 33,022 | 35,510 | 31,514 | 28,907 | -18.59% | -8.27% |
| March | 35,705 | 39,051 | 44,390 | 45,043 | 41,047 | 0 | n/a | n/a |
| April | 10,773 | 15,134 | 16,017 | 13,324 | 13,812 | 0 | n/a | n/a |
| May | 4,179 | 4,647 | 5,143 | 5,108 | 4,769 | 0 | n/a | n/a |
| June | 9,568 | 9,789 | 12,198 | 11,152 | 10,677 | 0 | n/a | n/a |
| July | 14,766 | 16,038 | 17,486 | 16,216 | 16,127 | 0 | n/a | n/a |
| August | 12,122 | 13,446 | 15,151 | 14,558 | 13,819 | 0 | n/a | n/a |
| September | 9,897 | 11,761 | 12,347 | 11,486 | 11,373 | 0 | n/a | n/a |
| October | 5,824 | 6,248 | 6,910 | 6,322 | 6,326 | 0 | n/a | n/a |
| November | 8,557 | 10,963 | 10,616 | 8,380 | 9,629 | 0 | n/a | n/a |
| December | 30,619 | 33,736 | 35,207 | 29,695 | 32,314 | 0 | n/a | n/a |
| Totals | 194,803 | 219,313 | 240,737 | 231,133 | 221,497 | 57,574 | -75.09% | -74.01% |

| Retail Sales | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | 4 year average | Actual 2009 | % Change 08-09 | % Change Average vs. 09 |
|---------------------|------------------------|------------------------|------------------------|------------------------|---------------------------|------------------------|---------------------------|------------------------------------|
| January | 8,001 | 8,607 | 9,665 | 9,707 | 8,995 | 8,340 | -14.08% | -7.28% |
| February | 8,744 | 8,942 | 9,607 | 9,757 | 9,263 | 8,267 | -15.27% | -10.75% |
| March | 11,632 | 11,774 | 13,373 | 12,465 | 12,311 | 0 | n/a | n/a |
| April | 3,678 | 5,406 | 5,281 | 4,289 | 4,664 | 0 | n/a | n/a |
| May | 1,708 | 1,858 | 2,163 | 1,982 | 1,928 | 0 | n/a | n/a |
| June | 3,565 | 3,589 | 4,591 | 4,129 | 3,969 | 0 | n/a | n/a |
| July | 5,174 | 5,403 | 6,176 | 5,659 | 5,603 | 0 | n/a | n/a |
| August | 4,620 | 4,757 | 5,110 | 5,620 | 5,027 | 0 | n/a | n/a |
| September | 4,249 | 4,726 | 4,780 | 4,440 | 4,549 | 0 | n/a | n/a |
| October | 2,404 | 2,591 | 2,860 | 2,596 | 2,613 | 0 | n/a | n/a |
| November | 3,586 | 4,376 | 4,263 | 3,499 | 3,931 | 0 | n/a | n/a |
| December | 11,099 | 11,971 | 11,983 | 9,624 | 11,169 | 0 | n/a | n/a |
| Totals | 68,460 | 74,000 | 79,852 | 73,767 | 74,020 | 16,607 | -77.49% | -77.56% |

| Restaurants/Bars | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | 4 year average | Actual 2009 | % Change 08-09 | % Change Average vs. 09 |
|-------------------------|------------------------|------------------------|------------------------|------------------------|---------------------------|------------------------|---------------------------|------------------------------------|
| January | 6,897 | 7,924 | 8,414 | 9,117 | 8,088 | 8,243 | -9.59% | 1.92% |
| February | 7,047 | 8,058 | 8,467 | 9,206 | 8,195 | 7,817 | -15.09% | -4.61% |
| March | 8,117 | 9,256 | 10,015 | 10,180 | 9,392 | 0 | n/a | n/a |
| April | 3,609 | 4,552 | 4,676 | 4,386 | 4,306 | 0 | n/a | n/a |
| May | 1,760 | 1,832 | 2,057 | 2,089 | 1,935 | 0 | n/a | n/a |
| June | 3,525 | 3,938 | 4,368 | 4,006 | 3,959 | 0 | n/a | n/a |
| July | 5,375 | 5,905 | 6,236 | 6,039 | 5,889 | 0 | n/a | n/a |
| August | 4,521 | 5,067 | 5,917 | 5,385 | 5,223 | 0 | n/a | n/a |
| September | 3,498 | 4,340 | 4,570 | 4,016 | 4,106 | 0 | n/a | n/a |
| October | 2,290 | 2,352 | 2,546 | 2,544 | 2,433 | 0 | n/a | n/a |
| November | 2,841 | 3,651 | 3,573 | 2,917 | 3,246 | 0 | n/a | n/a |
| December | 7,017 | 7,681 | 7,997 | 7,010 | 7,426 | 0 | n/a | n/a |
| Totals | 56,497 | 64,556 | 68,836 | 66,895 | 64,196 | 16,060 | -75.99% | -74.98% |

| Accommodations | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | 4 year average | Actual 2009 | % Change 08-09 | % Change Average vs. 09 |
|----------------|----------------|----------------|----------------|----------------|-------------------|----------------|-------------------|----------------------------|
| January | 10,342 | 11,997 | 14,171 | 15,515 | 13,006 | 12,084 | -22.11% | -7.09% |
| February | 11,762 | 12,972 | 14,948 | 16,547 | 14,057 | 12,823 | -22.51% | -8.78% |
| March | 15,956 | 18,021 | 21,002 | 22,398 | 19,344 | | n/a | n/a |
| April | 3,486 | 5,176 | 6,060 | 4,649 | 4,843 | | n/a | n/a |
| May | 711 | 957 | 923 | 1,037 | 907 | | n/a | n/a |
| June | 2,478 | 2,262 | 3,239 | 3,017 | 2,749 | | n/a | n/a |
| July | 4,217 | 4,730 | 5,074 | 4,518 | 4,635 | | n/a | n/a |
| August | 2,981 | 3,622 | 4,124 | 3,553 | 3,570 | | n/a | n/a |
| September | 2,150 | 2,695 | 2,997 | 3,030 | 2,718 | | n/a | n/a |
| October | 1,130 | 1,305 | 1,504 | 1,182 | 1,280 | | n/a | n/a |
| November | 2,130 | 2,936 | 2,780 | 1,964 | 2,453 | | n/a | n/a |
| December | 12,503 | 14,084 | 15,227 | 13,061 | 13,719 | | n/a | n/a |
| Totals | 69,846 | 80,757 | 92,049 | 90,471 | 83,281 | 24,907 | -72.47% | -70.09% |

| Grocery/Liquor Stores | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | 4 year average | Actual 2009 | % Change 08-09 | % Change Average vs. 09 |
|-----------------------|----------------|----------------|----------------|----------------|-------------------|----------------|-------------------|----------------------------|
| January | 3,589 | 3,977 | 5,149 | 4,744 | 4,365 | 4,741 | -0.06% | 8.62% |
| February | 3,949 | 4,233 | 4,536 | 5,009 | 4,432 | 4,755 | -5.07% | 7.29% |
| March | 4,449 | 4,585 | 4,844 | 5,436 | 4,829 | | n/a | n/a |
| April | 2,503 | 3,149 | 2,920 | 2,959 | 2,883 | | n/a | n/a |
| May | 1,806 | 1,969 | 2,169 | 2,246 | 2,048 | | n/a | n/a |
| June | 2,392 | 2,584 | 2,822 | 2,990 | 2,697 | | n/a | n/a |
| July | 3,414 | 3,588 | 3,899 | 4,264 | 3,791 | | n/a | n/a |
| August | 3,292 | 3,529 | 3,771 | 4,161 | 3,688 | | n/a | n/a |
| September | 2,671 | 2,757 | 2,908 | 3,113 | 2,862 | | n/a | n/a |
| October | 2,239 | 2,372 | 2,494 | 2,673 | 2,445 | | n/a | n/a |
| November | 2,214 | 2,377 | 2,600 | 2,647 | 2,460 | | n/a | n/a |
| December | 6,356 | 6,604 | 8,028 | 7,705 | 7,173 | | n/a | n/a |
| Totals | 38,874 | 41,724 | 46,140 | 47,947 | 43,671 | 9,496 | -80.19% | -78.26% |

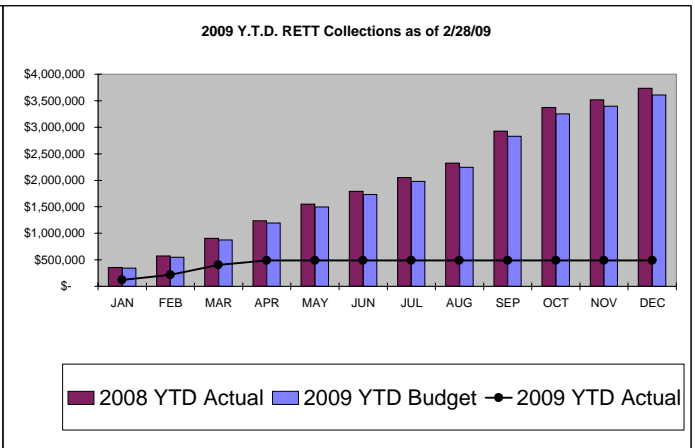
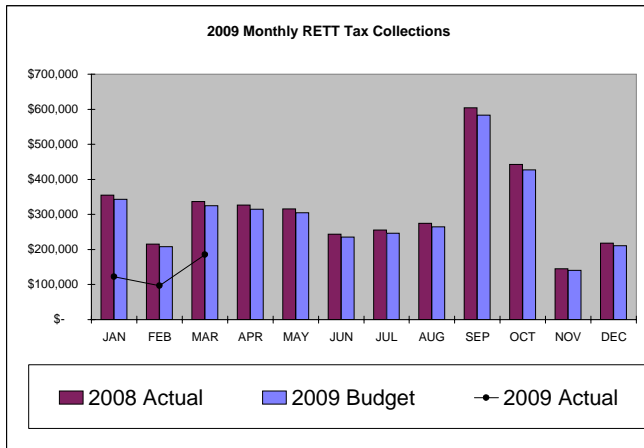
| Supplies | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | 4 year average | Actual 2009 | % Change 08-09 | % Change Average vs. 09 |
|---------------|----------------|----------------|----------------|----------------|-------------------|----------------|-------------------|----------------------------|
| January | 1,720 | 2,081 | 2,876 | 2,631 | 2,327 | 1,340 | -49.07% | -42.42% |
| February | 1,669 | 2,029 | 2,459 | 2,532 | 2,172 | 1,285 | -49.25% | -40.84% |
| March | 2,216 | 2,967 | 3,156 | 3,463 | 2,951 | | n/a | n/a |
| April | 1,359 | 1,680 | 1,813 | 2,114 | 1,742 | | n/a | n/a |
| May | 1,370 | 2,045 | 2,314 | 1,894 | 1,906 | | n/a | n/a |
| June | 2,083 | 2,836 | 3,119 | 2,886 | 2,731 | | n/a | n/a |
| July | 2,186 | 2,872 | 2,770 | 2,450 | 2,570 | | n/a | n/a |
| August | 2,211 | 3,096 | 3,187 | 2,869 | 2,841 | | n/a | n/a |
| September | 2,452 | 3,394 | 3,234 | 3,571 | 3,163 | | n/a | n/a |
| October | 2,107 | 2,924 | 3,259 | 2,470 | 2,690 | | n/a | n/a |
| November | 1,876 | 2,537 | 2,693 | 2,198 | 2,326 | | n/a | n/a |
| December | 2,712 | 3,091 | 3,697 | 3,008 | 3,127 | | n/a | n/a |
| Totals | 23,961 | 31,552 | 34,577 | 32,086 | 30,544 | 2,625 | -91.82% | -91.41% |

| Utilities | Actual 2005 | Actual 2006 | Actual 2007 | Actual 2008 | 4 year average | Actual 2009 | % Change 08-09 | % Change Average vs. 09 |
|---------------|----------------|----------------|----------------|----------------|-------------------|----------------|-------------------|----------------------------|
| January | 2,675 | 3,829 | 3,591 | 3,961 | 3,514 | 3,949 | -0.30% | 12.38% |
| February | 2,540 | 3,056 | 3,149 | 3,765 | 3,128 | 3,252 | -13.63% | 3.98% |
| March | 2,883 | 3,428 | 3,525 | 3,699 | 3,384 | | n/a | n/a |
| April | 2,741 | 2,778 | 2,694 | 3,448 | 2,915 | | n/a | n/a |
| May | 1,939 | 1,926 | 2,386 | 2,742 | 2,248 | | n/a | n/a |
| June | 1,846 | 1,713 | 2,078 | 2,588 | 2,056 | | n/a | n/a |
| July | 1,663 | 1,529 | 1,588 | 2,075 | 1,714 | | n/a | n/a |
| August | 1,629 | 1,854 | 1,621 | 2,058 | 1,791 | | n/a | n/a |
| September | 1,843 | 1,949 | 1,792 | 2,219 | 1,951 | | n/a | n/a |
| October | 2,127 | 1,987 | 1,883 | 2,026 | 2,006 | | n/a | n/a |
| November | 2,340 | 2,264 | 2,251 | 2,411 | 2,317 | | n/a | n/a |
| December | 4,005 | 3,206 | 3,271 | 3,106 | 3,397 | | n/a | n/a |
| Totals | 28,231 | 29,519 | 29,829 | 34,098 | 30,419 | 7,201 | -78.88% | -76.33% |

**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

| Sales Period | 2008 Collections | | | 2009 Budget | | | 2009 Monthly | | | 2009 Year to Date | | |
|--------------|------------------|--------------|------------------|--------------|--------------|------------------|--------------|--------------------|-------------|-------------------|--------------------|-------------|
| | Tax Collected | Year To Date | Percent of Total | Tax Budgeted | Year To Date | Percent of Total | Actual | % Change from 2008 | % of Budget | Actual | % Change from 2008 | % of Budget |
| JAN | \$ 355,179 | \$ 355,179 | 9.5% | \$ 342,940 | \$ 342,940 | 9.51% | \$ 122,245 | -65.6% | 35.6% | \$ 122,245 | -65.6% | 3.4% |
| FEB | 215,566 | 570,745 | 15.3% | 208,138 | 551,078 | 15.29% | 96,379 | -55.3% | 46.3% | 218,623 | -61.7% | 6.1% |
| MAR | 336,956 | 907,701 | 24.3% | 325,345 | 876,423 | 24.31% | 185,714 | -44.9% | 57.1% | 404,337 | -55.5% | 11.2% |
| APR | 326,521 | 1,234,222 | 33.1% | 315,270 | 1,191,693 | 33.06% | 82,997 | -74.6% | 26.3% | 487,334 | -60.5% | 13.5% |
| MAY | 315,494 | 1,549,716 | 41.5% | 304,623 | 1,496,317 | 41.51% | - | n/a | 0.0% | 487,334 | -68.6% | 13.5% |
| JUN | 243,969 | 1,793,685 | 48.0% | 235,562 | 1,731,879 | 48.04% | - | n/a | 0.0% | 487,334 | -72.8% | 13.5% |
| JUL | 255,305 | 2,048,990 | 54.9% | 246,508 | 1,978,387 | 54.88% | - | n/a | 0.0% | 487,334 | -76.2% | 13.5% |
| AUG | 274,442 | 2,323,432 | 62.2% | 264,985 | 2,243,372 | 62.23% | - | n/a | 0.0% | 487,334 | -79.0% | 13.5% |
| SEP | 604,037 | 2,927,469 | 78.4% | 583,223 | 2,826,596 | 78.40% | - | n/a | 0.0% | 487,334 | -83.4% | 13.5% |
| OCT | 442,830 | 3,370,299 | 90.3% | 427,571 | 3,254,167 | 90.26% | - | n/a | 0.0% | 487,334 | -85.5% | 13.5% |
| NOV | 145,549 | 3,515,848 | 94.2% | 140,534 | 3,394,701 | 94.16% | - | n/a | 0.0% | 487,334 | -86.1% | 13.5% |
| DEC | \$ 217,937 | \$ 3,733,785 | 100.0% | \$ 210,427 | \$ 3,605,128 | 100.00% | \$ - | n/a | 0.0% | \$ 487,334 | -86.9% | 13.5% |

March #s are as of the end of day 4/3/09



TO: Mayor and Town Council Members
FROM: Tim Gagen
DATE: April 9, 2009
RE: Proposed Draft IGA

Background: The Upper Blue Sanitation District (the District) has plans to expand the Farmers Korner Treatment Plant and as part of the expansion, would like the option to connect to the Town's water system. They also would like to use the Town's reuse water to irrigate the disturbed construction area. In exchange for the normal cost to connect to the Town's water system and to use the reuse water, the District is offering to provide the Town with sewer SFE's which it can use at its discretion. A draft IGA is attached that articulates the exchange. The calculation for the water connection results is 31.5 sewer SFE's. We are still working on a formula for the reuse water for irrigation. If the Council finds the draft acceptable in form, Staff and Town Attorney will work with the District to put in final form for approval by the Council and District.

**INTERGOVERNMENTAL AGREEMENT
(Upper Blue Sanitation District/Town of Breckenridge)**

This Intergovernmental Agreement ("Agreement") is made and entered into this ____ day of _____, 2009 by and between the UPPER BLUE SANITATION DISTRICT, a Colorado quasi-municipal corporation whose address is 1605 Airport Road, P.O. Box 1216, Breckenridge, Colorado 80424 ("District") and the TOWN OF BRECKENRIDGE, a Colorado home rule municipal corporation whose address is P.O. Box 168, Breckenridge, Colorado 80424 ("Town") (collectively the "Parties").

WHEREAS, C.R.S. §§ 29-1-201, *et seq.*, as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties, and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Article XIV, § 18(2) of the Colorado Constitution; and

WHEREAS, the Town desires to acquire from the District certain sewer Single Family Equivalents, which sewer Single Family Equivalents may either be used by the Town for its own projects or transferred by the Town to one or more third parties in the Town's sole and absolute discretion; and

WHEREAS, the District desires to acquire certain water services from the Town for the District's Farmer's Korner Facility as part of the District's plans to expand that Facility; and

WHEREAS, the Parties believe that the exchange provided for in this Agreement is fair; that each of the Parties has conducted its own independent review of the exchange provided for in this Agreement and has determined for itself that the value received by such Party hereunder adequately approximates the value given by such Party; and that it would be in the public interest for the Parties to enter into this Agreement; and

WHEREAS, the Parties have satisfied all applicable notice requirements prior to entering into this Agreement.

NOW, THEREFORE, in consideration of the above-recited premises and the mutual covenants and commitments made herein, the Parties agree as follows:

1. The District hereby transfers and conveys to the Town a total of **31.5** sewer Single Family Equivalents ("Sewer SFEs"). The District expressly acknowledges and agrees that the Sewer SFEs may either be used by the Town for its own public projects within the limits of the District, or some or all of the Sewer SFEs may be assigned by the Town, in its sole and absolute discretion, to one or more third parties, including, but not limited to, the Summit County Housing Authority, for use in connection with such third parties' projects within the limits of the District and regardless of what the value of a sewer PIF is at the time of used..

2. In consideration of the transfer of the Sewer SFEs to the Town as provided in Paragraph 1, the District shall receive the following from Town:

a. 31.5 Water SFEs which the District may use, in whole or in part, at any time in the future at the District's Farmer's Korner Facility for any purposes authorized by such Water SFEs and in accordance with the rules governing the Town water system, so long as the District: (a) makes the necessary connection from the Town's water facilities to the District's Farmer's Korner Facility at the District's sole cost; and (b) makes the applicable Line Extension payments to the School District, if any. Once the District's Farmer's Korner Facility is connected to the Town's water facilities, the District will be charged, and will pay, monthly service fees for the Water SFEs actually being used based on the rates the Town charges its customers within the corporate limits of the Town.

b. Temporary outdoor irrigation water service using the Town's reuse water that is now treated at the District's Farmer's Korner Facility ("Treated Reuse Water") in the amount of _____ acre feet per year for five (5) years beginning: at the time the District completes the landscaping for its plant expansion at Farmer's Korner or May 1, 2015, whichever occurs first. The District will be responsible at its sole cost for installing the necessary plumbing to enable the District to use the Treated Reuse Water for outdoor irrigation and that water will only be used to irrigate up to 1.5 acres of landscaping on the property more particularly described in Exhibit A attached hereto. To the extent that any water quality authorization(s) are required for the District to use the Treated Reuse Water for outdoor irrigation, the District will be responsible at its sole cost to obtain such authorizations. To the extent that any water rights authorization(s) are required for the District to use the Treated Reuse Water for outdoor irrigation at the District's Farmer's Korner Facility, the Town will be responsible to obtain such authorizations and the District will reimburse the Town for costs and fees incurred for obtaining such authorization(s) up to a maximum reimbursement of \$9300; said reimbursement to be in cash or additional Sewer SFEs in an amount of equal value.. In the event such authorization(s) cannot be obtained or the parties determine that the cost to obtain such authorization(s) is excessive, this agreement can be terminated by either party; and any consideration given shall be returned in full without penalty or interest.

3. This Agreement contains the entire understanding between the Parties and supersedes any prior agreements, negotiations, or understandings relating to the subject matter of this Agreement; provided, however, that this Agreement shall not be deemed to supersede or to affect in any manner that certain Intergovernmental Agreement between the Parties dated _____?????. Any proposed amendment of this Agreement affecting the rights, powers, or obligations of the Parties shall be made in writing only, and only upon the approval of both Parties as indicated by the signature of an official authorized to make such approval for the Town and the District.

4. Any Party may enforce this Agreement by any legal or equitable means including specific performance and declaratory and injunctive relief. No other person or entity shall have any right to enforce the provisions of this Agreement.

5. This Agreement shall be governed by the State of Colorado and venue shall lie in the County of Summit.

6. This Agreement may be executed in counterparts, each of which shall be considered an original for all purposes and all of which together shall constitute but one and the same instrument.

IN WITNESS THEREOF, the Parties have executed this Intergovernmental Agreement as of the date first written above.

UPPER BLUE SANITATION DISTRICT

By: _____
_____, President

Date: _____

ATTEST

_____, Secretary

TOWN OF BRECKENRIDGE

By: _____
Timothy J. Gagen, Town Manager

Date: _____

ATTEST

Mary Jean Loufek, Town Clerk



MEMORANDUM

To: Town Council
From: Jennifer Cram, Planner III
Subject: Updates to the Mountain Pine Beetle and Defensible Space Ordinances
Date: April 9, 2009 (For the meeting on April 14, 2009)

How to treat the forests in and around Breckenridge to begin forest regeneration and minimize the impacts of a wildfire are pressing issues for our community. We are trying to balance the importance of our mountain character with health and safety issues, as well as consider the economic impacts of proposed actions to the Town and private property owners. Staff has been working with several organizations including the US Forest Service, State Forest Service, County and Red White and Blue Fire Protection District to look at the big picture of what is happening in the Upper Blue Valley. Staff has also worked with consultants to develop a Forest Management Plan for Town Open Space and a Fuel Break Plan for areas around Town. On April 14th staff will walk the Council through proposed changes to the Mountain Pine Beetle and Defensible Space Ordinances.

Mountain Pine Beetle Ordinance

With the reality of 95% of our lodge pole forests dying due to the current Mountain Pine Beetle Epidemic, it is clear that just looking at cutting infested trees and spraying select healthy trees will not address the problem alone. However, keeping the Mountain Pine Beetle Ordinance on the books with thoughtful updates is productive. The Mountain Pine Beetle Ordinance addresses vacant lots, by continuing to require property owners to take responsibility for their property and remove dead and infested trees. The ordinance also addresses continued maintenance of properties, by requiring continued removal of dead and infested trees on an annual basis.

The proposed Mountain Pine Beetle Ordinance and proposed Defensible Space Ordinance compliment one another by requiring that property owners, including the Town, look at their properties holistically.

Proposed changes to the Mountain Pine Beetle Ordinance since the last Town Council worksession on March 24th are summarized below. All changes within the ordinance are highlighted with a double underline.

Section 5-11-2 – Definitions were added for Good Cause and a Town – approved Tree Removal Contractor.

Section 5-11-3 – The three year time frame to remove dead and infested trees has been clearly noted as June 1, 2012 with the ability to extend this date by two years with good cause.

Pros of Three Year Removal Plan

We are also recommending three years for the creation of Defensible Space. Having the two ordinances coincide with one another encourages property owners to treat their properties once and receive the best economy of scale. If property owners are proactive and have the Red, White and Blue Fire Protection District come out and mark trees for Defensible Space, the dead and infested trees will be marked for removal first, poorly formed trees will also be marked, leaving the most vigorous trees remaining. These are the trees that property owners should spray, if they so desire. Trees marked for removal can then be removed all at once, or for property owners with economic hardships, they can remove them over three years.

The three year time frame is also the most manageable with limited staff resources.

The Red, White and Blue Fire protection district is comfortable with this time frame. Serious wild fire threat comes when all of the dead lodge pole pine trees fall to the ground. This is estimated to occur in 5-10 years.

Cons of Three Year Removal Plan

The downside to this proposal is that some property owners may do nothing until the third year, thus having several dead trees on their property for up to three years.

Section 5-11-7 – The Notice of Violations has been updated with regard to the three year time frame to remove dead and infested trees.

Section 5-11-8 – Clarifications to the Abatement Order Process has been made.

Section 5-11-9 – Clarifications to the Development Permit process has been made. No Development Permit will be required to remove dead and infested trees provided that property owners work with an approved contractor. A Class D Permit is required to remove dead and infested trees, if the property owner chooses to work with a contractor that is not on the approved list.

Section 5-11-12 – This section clearly states how Town owned property and Open Space will be treated within the next 3 to 5 years. Town owned property includes those parcels that have already been treated annually such as Public Works, the Golf Course, the BOEC, Carter Park, Valley Brook Cemetery, Stillson, etc. Town Open Space includes all Town owned parcels that have been identified in the Mountain Pine Beetle Hazard

Analysis for Town of Breckenridge Open Space Parcels. We believe that the proposed changes are equitable with what private property owners are being asked to do on their properties.

It should be noted that the treatments for Open Space Parcels varies from surgical removals to sterilization. Staff will have copies of the Open Space maps for the meeting. Copies of these maps and the plans for treatment are on file in the Community Development Department for public review. They are also posted on the website. We have included the memo prepared by Scott Reid for the march 24th meeting that summarizes the treatment for the Open Space parcels prioritized for 2009.

Section 5-11-14 – This section was added to clarify the intent of the approved tree removal contractor list.

Section 5-11-15 – This section was added to note that all staff members involved in the Mountain Pine Beetle program have adequate training to inspect and identify beetle infested trees and understand the goals of the ordinance.

Mountain Pine Beetle Program

We are currently proposing to bring back two interns to assist with administration of the Mountain Pine Beetle Program. We also plan to utilize two staff members from Community Development as needed to guide the interns, handle overflow and continue to work on long range forest management projects, such as researching grants, etc.

With the proposed three years for compliance, staff will initially be assisting property owners with second opinions on contractor markings. Enforcement of the ordinance will be addressed based on complaints and obvious negligence from public rights of way in year three. Year three will be a critical year for additional staff resources.

- With Council's blessing, we would like to proceed with the recruitment of one intern to begin training and assisting property owners. A second intern will be brought on board if the demand is present and as budgets allow.

Defensible Space Ordinance

Since the last discussion with the Council on Defensible Space on March 24th Staff has made changes based on feedback from letters and one-on-one discussions with the Council. Staff and the Red, White and Blue Fire Protection District have also continued to conduct several courtesy site visits for private property owners to discuss what Defensible Space might look like on individual properties. It should be noted that several property owners have voluntarily had trees marked for Defensible Space by RWB and have processed Class D Permits for removal.

Proposed changes to the Defensible Space Ordinance since the March 24th worksession are outlined below. All changes within the ordinance are highlighted with a double underline.

Section 5-12-3 – An Intent Section was added to clarify the intent of the Ordinance.

- A. To preserve healthy trees and approved landscaping within the Town, while at the same time reducing fuels that can feed a fire. This will reduce the chance of a structure fire spreading to the surrounding forest.
- B. To provide areas within the Town where fire suppression personnel and equipment can more effectively fight fires.
- C. To protect life and property.
- D. To encourage the development of new diverse forests.
- E. To protect the Town’s scenic backdrop which is vital to the economic well being of the Town and its citizens.

Section 5-12-5 – A definition of Fire-wise landscaping was added. A definition of Good Cause was also added.

Section 5-12-6 – Verbiage was added to note that all staff involved in the enforcement of Defensible Space shall be trained to understand the goals of preserving buffers and approved landscaping.

Section 5-12-10 – The Standards for Defensible Space has been clarified. We removed any ambiguous language to clearly note what is expected to be preserved and what is required to be removed within Zones One, Two and Three.

- A. The property shall be divided into three zones. Zone One shall be measured 30 feet from the eave of building or structure including attached structures or protrusions, such as a deck on the property. Zone Two shall be measured 75 feet or greater from the eave of building or structure including attached structures or protrusions, such as a deck on the property. depending on slope from the eave of ~~any~~the building or structure on the property, and shall exclude the portion of the property located within Zone One. Zone Three shall extend beyond Zone Two to the property boundary.
- B. It is not the intent of this chapter that any portion of a property be “clear cut” in order to achieve the required Defensible Space. No Defensible Space Plan prepared by the Director shall require the “clear cutting” of any property.
- C. In formulating a Defensible Space Plan ~~T~~the Director shall consider both the horizontal clearance between aerial fuels, such as the outside edge of the tree crowns or high brush, as well as the vertical clearance between lower limbs of aerial fuels and the nearest surface fuels and grass/weeds.

D. The following specific standards apply to the creation of defensible space within Zone One:

1. All healthy trees shrubs, bushes and other landscaping material that provide visual buffers shall be preserved.
2. All healthy trees, trees shrubs, bushes and other landscaping material required by a Town-approved landscape plan shall be preserved.
3. All healthy fire-wise trees, shrubs, bushes and other landscaping material shall be preserved if they are well spaced, well pruned, and create a condition that avoids spread of fire to other vegetation or to a building or structure.
4. All irrigated trees, shrubs, bushes and other landscaping material shall be preserved.
5. All dead and diseased trees, shrubs, bushes and other landscaping material shall be removed.
6. All vegetation and combustible material shall be removed from under all eaves and decks.
7. All grasses and ground cover shall be kept under 6 inches in height.
8. All firewood shall be removed.
9. Fire-wise landscaping material may be planted at the landowner's discretion with Town approval.

E. The following specific standards apply to the creation of defensible space within Zone Two:

1. All healthy trees , shrubs, bushes and other landscaping material that provides visual buffers shall be preserved.
2. All healthy trees, shrubs, bushes and other landscaping material required by a Town-approved landscape plan shall be preserved.
3. All healthy fire-wise trees, shrubs, bushes and other landscaping material shall be preserved if they are well spaced, well pruned, and create a condition that avoids spread of fire to other vegetation or to a building or structure.
4. All irrigated trees, shrubs, bushes and other landscaping material shall be preserved.
5. All dead and diseased trees, shrubs, bushes and other landscaping material shall be removed.
6. Trees shall be thinned to open up crown spacing to a minimum of ten feet between individual crowns of the trees.
7. Groups of trees with the required spacing between clumps shall be preserved.
8. Firewood may be maintained if an adequate buffer around the firewood is determined to exist by the Director.
9. Fire-wise landscaping material may be planted at the landowner's discretion with Town approval.

F. **The following specific standards apply to the creation of defensible space within Zone Three:**

1. **All dead and diseased trees, shrubs, bushes and other landscaping material shall be removed.**
2. **Firewise landscaping material may be planted at the landowner's discretion with Town approval.**

Section 5-12 -11 – The appeal process has been clarified. A property owner may appeal a Defensible Space Plan within 30 days of receipt of the plan. Appeals will be reviewed by one representative from Town, one from RWB and one tree expert.

Section 5-12 -12 - Minor updates to the requirements for establishment and maintenance of a Defensible Space plan were made for consistency.

Section 5-12-13 – The fee for a Defensible Space Permit has been waived for the first year to encourage property owners to create Defensible Space sooner than later (This also encourages the treatment for MPB infested trees.). We also clarified the process for determining that required work has been completed.

Section 5-12-18 – We have clarified how Town owned property will be treated. We also noted that the Town will continue to work with other agencies to look at long range planning goals to establish fuel breaks, etc.

Summary

Staff will be present during the worksession to walk the Council through the proposed changes to both the Mountain Pine Beetle and Defensible Space Ordinances and address the concerns raised by these ordinances. Copies of additional comments from the public have also been included in your packets.

Because time is of the essence and we are receiving multiple phone calls and inquiries from contractors and homeowners wishing to get started on the removal of dead and infested trees as well as the creation of Defensible Space it is critical that staff receive clear direction from the Council on how to precede with the two ordinances.

1 **FOR WORKSESSION – APRIL 14**

2
3 Additions To The Ordinance As Reviewed At Worksession on March 24, 2009 Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. ____

7
8 Series 2009

9
10 AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 11 OF
11 TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING MOUNTAIN PINE
12 BEETLES AND BEETLE INFESTED TREES

13
14 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
15 COLORADO:

16
17 Section 1. Chapter 11 of Title 5 of the Breckenridge Town Code, entitled “Mountain Pine
18 Beetles and Beetle Infested Trees”, is repealed and readopted with changes so as to read in its
19 entirety as follows:

20
21 CHAPTER 11

22
23 MOUNTAIN PINE BEETLES AND BEETLE INFESTED TREES

24
25 Section:

- 26 5-11-1: Legislative Findings
- 27 5-11-2: Definitions
- 28 5-11-3: Landowner to Remove Beetle Infested Trees; Initial Deadline; Annual Inspection
- 29 and Removal
- 30 5-11-4: Duty of Landowner and Occupant to Permit Inspection
- 31 5-11-5: Inspection For Mountain Pine Beetle
- 32 5-11-6 Inspection Warrant
- 33 5-11-7: Notice of Violation
- 34 5-11-8: Abatement Order
- 35 5-11-9: No Development Permit **Required** For Removal of Beetle Infested Tree
- 36 5-11-10: Unlawful Acts
- 37 5-11-11: Applicability
- 38 5-11-12: Town Property
- 39 5-11-13: Exception
- 40 **5-11-14: Town-Approved Tree Removal Contractors**
- 41 ~~5-11-14~~**15**: Director To Enforce
- 42 ~~5-11-15~~**16**: Rules and Regulations
- 43
- 44

1 5-11-1: LEGISLATIVE FINDINGS: The Town Council hereby finds, determines and declares
2 as follows:

- 3
- 4 A. The presence of the mountain pine beetle and beetle infested trees presents a real and
5 substantial risk to the health of the lodgepole forests located in and around the Town.
 - 6 B. The presence of the mountain pine beetle and beetle infested trees within the Town also
7 presents a real and substantial risk to the public health, safety and welfare in the form of
8 an increased risk of a rapidly spreading fire, and a significant threat to the aesthetic
9 values which are of great importance to the social and economic vitality of the Town.
 - 10 C. The presence of the mountain pine beetle and beetle infested trees within the Town is
11 predicted to result in lodgepole pine mortality rates of up to 95% within the foreseeable
12 future.
 - 13 D. There exists a growing mountain pine beetle epidemic within the Town which threatens
14 our community and its valuable natural and scenic resources.
 - 15 E. There exists an urgent need for a Town-wide policy to effectively manage the existing
16 and future threats to public and private property caused by the mountain pine beetle and
17 beetle infested trees. The provisions of this chapter reflect such a policy.
 - 18 F. The provisions of this chapter are necessary in order to protect the public health, safety
19 and welfare.
 - 20 G. The inspection provisions contained in this chapter are necessary in the interest of public
21 safety within the meaning of Rule 241(b)(2)(II) of the Colorado Municipal Court Rules
22 of Procedure.
- 23

24 5-11-2: DEFINITIONS: In this chapter, the following words shall have the following meanings,
25 unless the context clearly requires otherwise:
26

“Beetle Infested Tree” or “tree
infested with mountain pine
beetle”

(i) A tree, alive or dead, which is, or has been,
infested with the mountain pine beetle; and (ii) any
Lodgepole Pine tree (species *Pinus contorta*
Latifolia) that is dead or substantially dead, and all
deadwood to which the bark is still attached which,
because of its condition, may serve as a breeding
place for the mountain pine beetle.

“Destruction”

Cutting and chipping a tree which is infested with
mountain pine beetle; or other method of disposing
of a beetle infested tree approved by the Director.

“Good Cause”

**A showing by a landowner that compliance with
the requirements of section 5-11-3(B) of this
chapter will result in a substantial hardship to
the landowner.**

“Director”

Has the meaning provided in section 9-1-5 of this
code.

| | |
|------------------------|---|
| “Mountain Pine Beetle” | The species <i>Dendroctonus ponderosae</i> . |
| “Occupant” | Any person in physical possession of any lot, tract or parcel of real property located within the corporate limits of the Town who is not the owner of such property. For the purposes of this chapter, “occupant” does not include the owner of an easement or right-of-way across property. |
| “Owner” or “landowner” | Any person who owns any lot, tract or parcel of real property located within the corporate limits of the Town. |
| “Person” | Has the meaning provided in section 1-3-2 of this code. |
| “Property” | Any lot, tract or parcel of real property located within the corporate limits of the Town. |

“Town-approved Tree Removal Contractor” **A contractor who: (i) has a Town Business and Occupational License; (ii) has attended a seminar sponsored by the Town concerning the goals, objectives and requirements of this chapter; and (iii) has taken and passed a test administered by the Director concerning the goals, objectives and requirements of this chapter.**

1
2 5-11-3: LANDOWNER TO REMOVE BEETLE INFESTED TREES; INITIAL DEADLINE;
3 ANNUAL INSPECTION AND REMOVAL
4

- 5 A. Each landowner has a duty to cut down and remove all beetle infested trees from
6 the landowner’s property, and ~~for assuring~~ **to assure** that any trees on the
7 landowner’s property that subsequently become infested with the mountain pine
8 beetle are cut down and removed on an annual basis, all in accordance with the
9 time limitations and requirements of this section.
- 10
- 11 B. Not later than **June 1**, 2012, each landowner shall cut down and remove all beetle
12 infested trees from the landowner’s property. **Upon request made prior to June**
13 **1, 2012, and for good cause shown, the Director may extend the June 1, 2012**
14 **deadline for a specific parcel of real property by a maximum of two years.**
- 15
- 16 C. Commencing **June 1**, 2012, **or the date to which compliance with subsection B**
17 **of this section has been extended by the Director, whichever occurs first,**

1 each landowner shall annually inspect the landowner's property to determine if
2 additional trees have become infested with mountain pine beetle. If additional
3 trees are found to be infested with mountain pine beetle, the landowner shall cut
4 down and remove such newly infested trees by September 1st of such year.
5

6 5-11-4: DUTY OF LANDOWNER AND OCCUPANT TO PERMIT INSPECTION:
7

8 An owner or occupant whose property may have located on it one or more beetle infested tree
9 shall allow the Director to enter such property for the purpose of immediate inspection of the
10 trees located upon such property when at least one of the following events has occurred:
11

- 12 A. The owner or occupant has requested the inspection;
- 13
- 14 B. A neighboring landowner or occupant has reported a suspected beetle infested
15 tree and requested an inspection; or
- 16
- 17 C. The Director has made a visual observation from a public right-of-way or area
18 and has reason to believe that a beetle infested tree exists on the property of the
19 owner or occupant.
20

21 5-11-5: INSPECTION FOR MOUNTAIN PINE BEETLE:
22

- 23 A. Subject to the requirements and limitations of this section, the Director shall have
24 the right to enter upon any property, whether public or private, during reasonable
25 hours for the purpose of inspecting for the existence of a beetle infested tree when
26 at least one of the three events described in section 5-11-4 has occurred. However,
27 no agent or employee of the Town shall enter upon any property to inspect for a
28 beetle infested tree without the permission of the owner or occupant, or without
29 an inspection warrant issued pursuant to this section.
30
- 31 B. If verbal permission to inspect the property from the affected owner or occupant
32 is not obtained the Director may request that an inspection warrant be issued by
33 the municipal court. Where possible, inspections shall be scheduled and
34 conducted with the concurrence of the owner or occupant.
35
- 36 C. In case of an emergency involving imminent danger to public health, safety or
37 welfare, the Director may enter the property to conduct an emergency inspection
38 without a warrant and without complying with the requirements of this section.
39

40 5-11-6: INSPECTION WARRANT:
41

- 42 A. The municipal court judge shall issue an inspection warrant authorizing the inspection of
43 property located within the Town pursuant to this chapter upon presentation by the
44 Director of an affidavit satisfying the requirements of Rule 241(b)(2) of the Colorado
45 Municipal Court Rules of Procedure; provided, however, that when issuing an area-wide

1 inspection warrant pursuant to subsection B of this section the Municipal Judge shall not
2 require a showing that the owner or occupant of the property to be inspected has refused
3 entry to the Town inspector or that the premises are locked and the Town inspector has
4 been unable to obtain permission of the owner or occupant to enter.
5

6 B. The municipal court judge shall issue an area-wide inspection warrant for two or more
7 properties upon a finding that:
8

- 9 1. The Town has established and currently maintains a program to inspect properties
10 throughout the Town for beetle infested trees.
11
- 12 2. There are a significant number of publicly and privately owned lands within the
13 Town that need to be inspected for beetle infested trees, and an urgent public need
14 to implement the provisions of this chapter.
15
- 16 3. Because of the significant number of properties that need to be inspected it is not
17 practical for the Town to attempt to obtain the individualized permission from
18 each affected landowner before going onto the property to inspect for beetle
19 infested trees.
20
- 21 4. Requiring the Town to first attempt to obtain permission from the numerous
22 landowners within the area to be inspected would frustrate the purpose of an area-
23 wide inspection warrant; would create an undue delay in the performance of the
24 necessary inspections for beetle infested trees; would be an unreasonable burden
25 and precondition to the issuance of an area-wide inspection warrant; and, as a
26 result, would jeopardize the public health, safety and welfare.
27
- 28 5. No good reason exists to require the Town to first seek the permission of the
29 landowners of lands to be included in an area-wide inspection warrant, and there
30 is no need to impose such a requirement on the Town as a precondition to the
31 issuance of the requested inspection warrant.
32

33 C. An inspection warrant issued pursuant to this chapter shall contain the following
34 conditions:
35

- 36 1. The inspector shall attempt to verbally notify the affected landowner or occupants
37 prior to beginning the inspection. This shall be done by knocking on the front
38 door of any building located on the property and, if the landowner or an occupant
39 is present, the inspector shall present his or her credentials identifying the
40 inspector as an employee or agent of the Town. The inspector shall also explain to
41 the property landowner or occupant the purpose of the inspection. If: (a) neither
42 the landowner nor an occupant is home when the inspector goes to inspect the
43 property; (b) the building is locked; or (c) the property consists of unimproved
44 property, no notice shall be required prior to the inspector entering the property to
45 inspect for beetle infested trees.

- 1
2 2. No Town inspector acting pursuant to an inspection warrant shall enter any
3 residence, building, or structure located upon any property without the permission
4 of the landowner or occupant.
5

- 6 D. The municipal judge may impose such other conditions on an inspection warrant as may
7 be necessary in the judge's opinion to protect the private property rights of the
8 landowner of the property to be inspected, or to otherwise make the warrant comply with
9 applicable law.
10

11 5-11-7: NOTICE OF VIOLATION:
12

- 13 A. On and after June 1, 2012, or the date to which compliance with subsection B
14 of this section has been extended by the Director pursuant to section 5-11-
15 3(B), whichever first occurs, if the Director determines that a property contains
16 ~~one or more tree infested with the mountain pine beetle~~ a landowner has not
17 complied with the requirements of section 5-11-3, the Director shall notify the
18 landowner and any occupant of the property. Such notice shall be given either by
19 certified mail or personal delivery.
20

- 21 B. The notice shall:
22

- 23 1. advise the landowner or occupant that the property contains one or more trees
24 ~~infested with mountain pine beetle~~ the Director believes that the landowner
25 has not complied with the requirements of section 5-11-3;
26 2. advise the landowner or occupant of Town-approved methods for the removal
27 and destruction of beetle infested trees, and the list of Town-approved tree-
28 removal contractors described in section 5-11-14; and
29 3. advise the landowner or occupant that all trees infested with mountain pine
30 beetle must be removed from the property within 10 days following receipt of
31 the notice, or that an acceptable plan and schedule for removal of the beetle
32 infested trees must be submitted to the Director within such 10 day period.
33

- 34 C. If the landowner or occupant disputes that the property contains one or more trees
35 infested with mountain pine beetle, the landowner or occupant shall notify the
36 Director of such dispute within 10 days of receipt of the Director's notice. If a timely
37 notice of dispute is given, the Town shall not file an application for an abatement
38 order until the Director has met with the disputing party in an effort to resolve the
39 dispute. If the Director meets with the disputing party and is unable to resolve the
40 dispute, the Town may file an application for an abatement order pursuant to section
41 5-11-8.
42

43 5-11-8: ABATEMENT ORDER:
44

- 45 A. In the event the landowner or occupant fails to comply with the Director's notice as

1 described in Section 5-11-7 by removing the beetle infested trees or submitting an
2 acceptable schedule for such removal within the applicable 10 day period, the Town
3 has the authority to provide for and complete the removal by obtaining and acting on
4 an abatement order.

5
6 B. Upon the expiration of the period of notice, or at any time thereafter if the required
7 action has not taken place, the Town may apply to the municipal court for an
8 abatement order.

9
10 C. An application for an abatement order shall be accompanied by an affidavit
11 affirming that:

- 12
13 1. the Director has determined that the subject property has one or more trees
14 infested with mountain pine beetle;
15 2. the Director has complied with the notice requirements of Section 5-11-7;
16 3. the landowner or ~~occupant~~ has not disputed the Director's determination
17 that the subject property has one or more trees infested with mountain
18 pine beetle; or that the owner has disputed the Director's determination
19 and that the parties have met without being able to resolve the dispute;
20 and
21 4. the landowner or ~~occupant~~ has failed to either remove the beetle infested
22 trees or to submit an acceptable plan and schedule for removal of the beetle
23 infested trees within the required time.

24
25 D. The Town shall give notice to the landowner and ~~any occupant~~ of the property of its
26 application for an abatement order either by certified mail or by personal service of
27 the notice.

28
29 E. The notice of application for an abatement order shall include a copy of the Town's
30 application and its affidavit in support thereof, as well as the date, time, and place at
31 which the Town will appear before the Municipal Court to request entry of the
32 abatement order.

33
34 F. At the stated time, date, and place, the municipal court judge shall review the
35 Town's application for an abatement order, the affidavit, any statement of the Town
36 offered in support thereof, as well as any statement and evidence presented by the
37 owner or occupant, if present.

38
39 G. If the municipal judge determines that:

- 40
41 1. the subject property has one or more trees infested with mountain pine
42 beetle;
43 2. the Director has complied with the notice requirements of Section 5-11-7;
44 and
45 3. the landowner or ~~occupant~~ has failed to either remove the beetle infested

1 trees or to submit an acceptable plan and schedule for removal of the beetle
2 infested trees within the required time,

3
4 the municipal court judge is authorized to enter an order permitting the Town to
5 enter upon the property, remove the beetle infested trees, and recover its costs as
6 provided in subsection K of this section.
7

- 8 H. ~~An owner is responsible under this chapter for any beetle infested tree permitted to~~
9 ~~remain on the owner's property by an occupant after the Director has given notice of~~
10 ~~a violation pursuant to section 5-11-7.~~ In case of an emergency involving imminent
11 danger to public health, safety or welfare, the Town may authorize immediate
12 removal of any beetle infested tree without notice or abatement order.
13
- 14 I. The Town may pursue the remedies set forth in this section with or without filing a
15 complaint in the municipal court, at the Town's sole discretion.
16
- 17 J. The ~~landowner or occupant~~ shall be assessed twice the whole cost of removal of the
18 beetle infested trees from the property, including administrative fees. If all of the
19 costs and charges incurred by the Town are not paid within 30 days of the date of the
20 assessment, the unpaid costs shall be certified to the Summit Treasurer for collection
21 in the same manner as real property taxes.
22

23 5-11-9: NO DEVELOPMENT PERMIT **REQUIRED** FOR REMOVAL OF BEETLE
24 INFESTED TREE: No Development Permit shall be required to remove any beetle infested tree
25 provided that **if** the property owner **landowner** either: **(i)** contacts Town Staff **the Department**
26 **of Community Development** prior to removing said trees themselves **the landowner beginning**
27 **removal of a beetle infested tree**, or works **(ii)** **contracts for the removal of the beetle**
28 **infested tree** with a Town-approved **tree removal** contractor. **A Class D development permit**
29 **is required if the landowner does not contact the Department of Community Development**
30 **prior to beginning removal of the beetle infested trees or if the landowner contracts for the**
31 **removal the beetle infested trees with a contractor who is not a Town-approved tree-**
32 **removal contractor. If a Class D development permit is required, the Director must mark**
33 **all beetle infested trees prior to their removal.**
34

35 5-11-10: UNLAWFUL ACTS:
36

- 37 A. It shall be unlawful and a misdemeanor offense for a owner or occupant to deny
38 the Director access to the property owned or occupied by the owner or occupant if
39 the Director presents an inspection warrant issued pursuant to this section.
40
- 41 B. It shall be unlawful and a misdemeanor offense for any person to sell, expose for
42 sale, offer for sale, transfer, give away or offer to give away any beetle infested tree
43 anywhere within the Town.
44

1 5-11-11APPLICABILITY: Except as provided in section 5-11-11 and 5-11-12, the provisions of
2 this chapter shall apply to all public and private lands within the corporate limits of the Town.
3

4 5-11-12: TOWN PROPERTY: ~~The inspection of Town-owned property, and the removal of~~
5 ~~beetle infested trees from such lands, shall be determined by the Town Council in its considered~~
6 ~~judgment. The Town Council shall consult with the Town of Breckenridge Open Space Advisory~~
7 ~~Commission with respect to the inspection of and removal of beetle infested trees from Town-~~
8 ~~owned open space parcels. In determining how to proceed with respect to the inspection and~~
9 ~~removal of beetle infested trees from Town-owned real property the Town Council shall~~
10 ~~consider, access, steep slopes, and ecological sensitivity along with established budgetary~~
11 ~~priorities; the availability of public funds to conduct such inspections and removal actions; as~~
12 ~~well as any other applicable budgetary constraints or limitations. The Town shall remove all~~
13 ~~beetle infested trees from Town-owned real property by June 1, 2012. This deadline may be~~
14 ~~extended by not more than two years if budgetary constraints or site-specific constraints~~
15 ~~preclude compliance with the June 1, 2012 deadline. Any extension of the June 1, 2012~~
16 ~~deadline shall be made by a nonemergency ordinance duly adopted by the Town Council.~~
17 ~~Town-owned open space parcels will be treated for mountain pine beetle based upon the~~
18 ~~recommendations of the “Mountain Pine Beetle Hazard Analysis for Town of Breckenridge~~
19 ~~Open Space Parcels” as amended from time to time, on file with the Department of~~
20 ~~Community Development.~~
21

22 5-11-13: EXCEPTION: The provisions of this chapter shall not apply to property that has steep
23 slopes or poor access making it unreasonable for the landowner to be required to inspect and
24 remove beetle infested trees. The Director’s regulations shall more specifically identify the
25 property to which the exception in this section applies.
26

27 **5-11-14: TOWN-APPROVED TREE REMOVAL CONTRACTORS: For the purpose of**
28 **attempting to make certain that tree removal contractors working within the Town are**
29 **familiar with the goals of this chapter, but not to regulate the means, methods, training,**
30 **equipment, or business practices of tree removal contractors, the Director shall maintain a**
31 **list of Town-approved tree removal contractors. The Town makes no guarantees or**
32 **representations whatsoever concerning the qualifications, experience, ability, competence,**
33 **or business practices of any Town-approved tree removal contractor. The Town has no**
34 **liability to any person with respect to the work or business practices of a Town-approved**
35 **tree removal contractor, and no action at law or in equity shall lie against the Town as a**
36 **result of a person being placed on or removed from the Director’s list of Town-approved**
37 **tree removal contractors. The Director may provide in his rules and regulations for the**
38 **removal of a contractor from the list of Town-approved contractors.**
39

40 5-11-~~14~~**15**: DIRECTOR TO ENFORCE: The Director shall administer and enforce the
41 provisions of this chapter. **The Director shall assure that all staff members involved in the**
42 **administration of this chapter are adequately trained with respect to the identification of**
43 **beetle infested trees, and the goals and objectives of this chapter.**
44

1 5-11-~~15~~**16**: RULES AND REGULATIONS: The Director has the authority from time to time to
2 adopt, amend, alter and repeal administrative rules and regulations as necessary for the proper
3 administration of this chapter. Such regulations shall be adopted in accordance with the
4 procedures established by Title 1, Chapter 18 of this Code.

5
6 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
7 various secondary codes adopted by reference therein, shall continue in full force and effect.

8
9 Section 3. The Town Council hereby finds, determines and declares that this ordinance is
10 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
11 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
12 thereof.

13
14 Section 4. The Town Council hereby finds, determines and declares that it has the power
15 to adopt this ordinance pursuant to the provisions of: (i) Section 31-15-103, C.R.S., (concerning
16 municipal police power); (ii) Section 31-15-401, C.R.S. (concerning municipal police power);
17 (iii) the powers contained in the Breckenridge Town Charter; and (iv) other powers possessed by
18 home rule municipalities in Colorado.

19
20 Section 5. This ordinance shall be published and become effective as provided by
21 Section 5.9 of the Breckenridge Town Charter.

22
23 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
24 PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be held at the
25 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
26 _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
27 Town.

28
29 TOWN OF BRECKENRIDGE, a Colorado
30 municipal corporation

31
32
33
34 By _____
35 John G. Warner, Mayor

36
37 ATTEST:

38
39
40
41 _____
42 Mary Jean Loufek, CMC,
43 Town Clerk

44
45
46 500-222\2009 Amendments _7 (04-07-09)

1 **FOR WORKSESSION – APRIL 14**

2
3 Additions To The Ordinance As Reviewed At Worksession on March 24, 2009 Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. ____

7
8 Series 2009

9
10 AN ORDINANCE ADOPTING CHAPTER 12 OF TITLE 5 OF THE BRECKENRIDGE
11 TOWN CODE; ADOPTING MANDATORY REQUIREMENTS FOR THE CREATION OF
12 DEFENSIBLE SPACE AROUND BUILDINGS AND STRUCTURES WITHIN THE TOWN
13 OF BRECKENRIDGE; PROVIDING PROCEDURES AND GUIDELINES FOR CREATING
14 THE REQUIRED DEFENSIBLE SPACE; AND PROVIDING PENALTIES AND OTHER
15 ENFORCEMENT MECHANISMS FOR VIOLATIONS OF THE ORDINANCE

16
17 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
18 COLORADO:

19
20 Section 1. The Breckenridge Town Code is hereby amended by the addition of a new
21 Chapter 12 of Title 5, to be entitled “Defensible Space”, which shall read in its entirety as
22 follows:

23
24 CHAPTER 12

25
26 DEFENSIBLE SPACE

27
28 Section:

29
30 5-12-1: Title

31 5-12-2: Authority

32 **5-12-3: Intent**

33 ~~5-12-34:~~ Legislative Findings

34 ~~5-12-45:~~ Definitions

35 5-12-~~56:~~ Director to Enforce; **Training**; Intergovernmental Agreement

36 ~~5-12-6:~~ Director to Identify High Risk Areas

37 5-12-7: Inspection For Defensible Space

38 5-12-8: Inspection Warrant

39 ~~5-12-9:~~ Fee

40 ~~5-12-109:~~ Director To Develop Defensible Space Plan

41 **5-12-10: Standards For Defensible Space**

42 **5-12-11: Landowner’s Appeal of Defensible Space Plan**

43 ~~5-12-112:~~ Duty Of Landowner To Establish And Maintain Defensible Space

44 ~~5-12-12:~~ Director To Determine Compliance With Plan

45 5-12-13: Permit For Establishment Of Defensible Space

- 1 5-12-14: Notice of Violation
- 2 5-12-15 Court Order
- 3 5-12-16 Responsibility For Costs of Compliance; Collection; Failure To Pay
- 4 5-12-17 Unlawful Acts
- 5 **5-12-18: Town Property**
- 6 ~~5-12-18~~**19** Applicability
- 7 ~~5-12-19~~**20** Rules and Regulations

8
9 5-12-1: TITLE: This chapter shall be known and may be cited as the “Town of Breckenridge
10 Defensible Space Ordinance.”

11
12 5-12-2: AUTHORITY: The Town Council hereby finds, determines, and declares that it has
13 the power to adopt this chapter pursuant to the provisions of: (i) section 31-15-103, C.R.S.,
14 (concerning municipal police power); (ii) section 31-15-401, C.R.S. (concerning general
15 municipal police power) and, in particular, sections 31-15-401(1)(a), (1)(b), (1)(d) and (1)(q)(I);
16 (iii) section 31-15-601, C.R.S. (concerning municipal building and fire regulations) and, in
17 particular, sections 31-15-601(1)(j.5) and (1)(k); (iv) the powers contained in the Breckenridge
18 Town Charter; and (v) other powers possessed by home rule municipalities in Colorado.

19
20 **5-12-3: INTENT: The intent of this chapter is as follows:**

- 21
- 22 **A. To preserve healthy trees and approved landscaping within the Town, while at the**
23 **same time reducing fuels that can feed a fire. This will reduce the chance of a**
24 **structure fire spreading to the surrounding forest.**
- 25 **B. To provide areas within the Town where fire suppression personnel and equipment**
26 **can more effectively fight fires.**
- 27 **C. To protect life and property.**
- 28 **D. To encourage the development of new diverse forests.**
- 29 **E. To protect the Town’s scenic backdrop which is vital to the economic well being of**
30 **the Town and its citizens.**

31
32 **This chapter shall be interpreted and applied consistently with this intent.**

33
34 ~~5-12-34~~: LEGISLATIVE FINDINGS: The Town Council hereby finds, determines, and declares
35 as follows:

- 36
- 37 A. Substantial portions of the Town include heavily forested private lands that are
38 susceptible to wildfire.
- 39 B. The Town is bounded by areas that include national forest lands that are also susceptible
40 to wildfire.
- 41 C. A wildfire affecting all or a substantial portion of the Town would seriously threaten
42 both the aesthetic values which are of great importance to the social and economic
43 vitality of the Town, as well as the overall socio-economic future of the Town.

- 1 D. The threat to the Town from a wildfire comes in substantial part from the exposure of
- 2 buildings or structures to flames and firebrands (burning airborne materials) resulting in
- 3 ignitions that could produce widespread extreme losses.
- 4 E. A wildfire in or near the Town could result in rapid fire spread within residential areas; a
- 5 large number of simultaneously exposed structures; overwhelmed fire-protection and
- 6 firefighting capabilities; and the total loss of a substantial number of buildings and
- 7 structures, as well as the potential for a significant loss of life.
- 8 F. A wildland fire does not spread to a building or structure unless it meets the fuel and
- 9 heat requirements sufficient for ignition and continued combustion.
- 10 G. The vegetation surrounding a building or structure is fuel for a fire.
- 11 H. The reduction or elimination of certain types of vegetation in the area surrounding a
- 12 building or structure results in an area of defensible space around that building or
- 13 structure.
- 14 I. A defensible space perimeter around a building or structure provides firefighters with a
- 15 safer working environment that allows them to protect the building or structure from
- 16 encroaching wildfires and minimizes the chance that a structure fire will escape into the
- 17 surrounding areas.
- 18 J. Under the legal authority described in section 5-12-2 of this chapter, the Town has the
- 19 authority to require that each building or structure located within the Town have a
- 20 defensible space around it.
- 21 K. The provisions of this chapter are necessary in order to protect the public health, safety
- 22 and welfare.
- 23 L. The inspection provisions contained in this chapter are necessary in the interest of public
- 24 safety within the meaning of Rule 241(b)(2) of the Colorado Municipal Court Rules of
- 25 Procedure.

26
 27 5-12-4~~5~~: DEFINITIONS: In this chapter, the following words shall have the following
 28 meanings, unless the context clearly requires otherwise:
 29

- “Defensible Space” means the area where the basic wildfire protection practices described in this chapter are implemented, and which provides the key point of defense from an approaching wildfire or fire escaping a structure fire. The area is characterized by the establishment and maintenance of a firebreak within 30 feet around a building or structure and a reduced fuel zone extending up to 75 feet or greater, depending on slope away from the building or structure.
- “Defensible Space Plan” or “ Plan” means a site specific defensible space plan for a specific property established by the Director pursuant to section 5-12-10 of this chapter.
- “Defensible Space Permit” means a permit issued by the Red, White and Blue

Fire Protection District authorizing the implementation of a Defensible Space Plan.

“Director” has the meaning provided in section 9-1-5 of this code.

“Fire District” means the Red, White and Blue Fire Protection District, a Colorado special district organized pursuant to Title 32, C.R.S.

“Fire-wise Landscaping” **means trees, shrubs, bushes and other landscaping which: (i) meet the criteria for fire-resistant landscaping as established from time to time by the Colorado State University Cooperative Extension Service, (ii) are suited to the Town’s sub-alpine environment in accordance with the Development Code, and (iii) are located in conformance with requirements of this chapter, and all other applicable Town codes and ordinances.**

“Financial Services Manager” means the Financial Services Manager of the Town.

“Good Cause” **Means a showing by a landowner that compliance with the requirements of section 5-12-13 of this chapter will result in a substantial hardship to the landowner.**

“Landowner” means any person who owns any lot, tract, or parcel of property located within the corporate limits of the Town.

“Property” means any lot, tract, or parcel of property located within the corporate limits of the Town.

“Person” has the meaning provided in section 1-3-2 of this code.

1
2 5-12-~~56~~: DIRECTOR TO ENFORCE; **TRAINING**; INTERGOVERNMENTAL
3 AGREEMENT:

4
5 A. The Director shall enforce the provisions of this chapter.
6

1 B. The ~~Red, White and Blue Fire Protection~~ District shall administer the Defensible Space
2 Program pursuant to an intergovernmental agreement with the Town. The
3 intergovernmental agreement shall be consistent with the provisions of this chapter. The
4 ~~Red, White and Blue Fire Protection~~ District shall have all power and authority required
5 to administer the Defensible Space Program and this chapter.
6

7 C. All personnel involved in the enforcement of this chapter, including both Town
8 staff and employees of the Fire District, shall be trained by the Director to make
9 sure that they are aware of the Town's goals of preserving buffers and required
10 landscape materials while creating defensible space.
11

12 ~~5-12-6: DIRECTOR TO INSPECT ALL TOWN PROPERTIES: The Director shall evaluate all~~
13 ~~developed property within the Town to determine its susceptibility to damage caused by wildfire~~
14

15 5-12-7: INSPECTION FOR DEFENSIBLE SPACE:
16

17 A. ~~Within those areas identified by the Director pursuant to section 5-12-6, t~~The Director
18 and/or the ~~Red, White and Blue Fire Protection~~ District shall conduct a physical
19 inspection of each building, structure, or property to determine how best to achieve a
20 defensible space around such building or structure. Any area within Town that already
21 meet the intent of this chapter shall not be required to create defensible space.
22

23 B. Subject to the requirements and limitations of this section, the Director and the ~~Red,~~
24 ~~White and Blue Fire Protection~~ District shall have the right to enter upon any property,
25 whether public or private, during reasonable hours for the purpose of conducting the
26 physical inspection described in subsection A of this section. However, no agent or
27 employee of the Town shall enter upon any property to conduct a physical inspection
28 described in subsection A of this section without the permission of the landowner or
29 occupant, or without an inspection warrant issued pursuant to ~~this~~ section 5-12-8.
30

31 C. If verbal permission to inspect the property from the affected landowner or occupant is
32 not obtained, or in lieu of attempting to obtain such verbal permission, the Director may
33 request that an inspection warrant be issued by the municipal court.
34

35 D. In case of an emergency involving imminent danger to public health, safety, or welfare,
36 the Director may enter any property within the Town to conduct an emergency
37 inspection for defensible space without a warrant and without complying with the
38 requirements of ~~this~~ section 5-12-8.
39

40 5-12-8: INSPECTION WARRANT:
41

42 A. The municipal court judge shall issue an inspection warrant authorizing the inspection of
43 property located within the Town pursuant to this chapter upon presentation by the
44 Director of an affidavit satisfying the requirements of Rule 241(b)(2) of the Colorado
45 Municipal Court Rules of Procedure; provided, however, that when issuing an area-wide

1 inspection warrant pursuant to subsection B of this section the Municipal Judge shall not
2 require a showing that the owner or occupant of the property to be inspected has refused
3 entry to the Town inspector or that the premises are locked and the Town inspector has
4 been unable to obtain permission of the owner or occupant to enter.
5

6 B. The municipal court judge shall issue an area-wide inspection warrant for two or more
7 properties upon a finding that:
8

- 9 1. The Town has established and currently maintains a program to inspect properties
10 throughout the Town for defensible space.
11
- 12 2. There are a significant number of publicly and privately owned lands within the
13 Town that need to be inspected for defensible space, and an urgent public need to
14 implement this chapter. The extremely high number of properties that need to be
15 inspected in such a short time period, combined with the limited Town **and Fire**
16 **District** staff who are available to conduct the necessary inspections, makes it
17 impracticable for the Town to attempt to obtain the individualized permission
18 from each affected landowner before going onto the property to inspect for
19 defensible space.
20
- 21 3. Requiring the Town to first attempt to obtain permission from the numerous
22 landowners within the area to be inspected would frustrate the purpose of an area-
23 wide inspection warrant; would create an undue delay in the performance of the
24 necessary defensible space inspections; would be an unreasonable burden and
25 precondition to the issuance of an area-wide inspection warrant; and, as a result,
26 would jeopardize the public health, safety and welfare.
27
- 28 4. No good reason exists to require the Town to first seek the permission of the
29 landowners of lands to be included in an area-wide inspection warrant, and there
30 is no need to impose such a requirement on the Town as a precondition to the
31 issuance of the requested inspection warrant.
32

33 C. An inspection warrant issued pursuant to this chapter shall contain the following
34 conditions:
35

- 36 1. The inspector shall attempt to verbally notify the affected landowner or occupants
37 prior to beginning the inspection. This shall be done by knocking on the front
38 door of any building located on the property and, if the landowner or an occupant
39 is present, the inspector shall present his or her credentials identifying the
40 inspector as an employee or agent of the Town **or the Fire District**. The inspector
41 shall also explain to the property landowner or occupant the purpose of the
42 inspection. If: (a) neither the landowner nor an occupant is home when the
43 inspector goes to inspect the property; (b) the building is locked; or (c) the
44 property consists of unimproved property, no notice shall be required prior to the
45 inspector entering the property to inspect for defensible space.

1
2 2. No Town inspector acting pursuant to an inspection warrant shall enter any
3 residence, building, or structure located upon any property without the permission
4 of the landowner or occupant.
5

6 D. The municipal judge may impose such other conditions on an inspection warrant as may
7 be necessary in the judge's opinion to protect the private property rights of the
8 landowner of the property to be inspected, or to otherwise make the warrant comply with
9 applicable law.
10

11 ~~5-12-10~~: DIRECTOR TO DEVELOP DEFENSIBLE SPACE PLAN:
12

13 A. Based upon his inspection and other relevant information and data, the Director,
14 with the assistance of the Fire District, shall develop an individualized plan for
15 defensible space for the inspected property. In developing such plan, the Director
16 shall follow the following guidelines standards set forth in Section 5-12-11 of this
17 chapter.
18

19 B. Trees, shrubs, bushes and other landscaping vegetation that need to be removed
20 ~~within Zone One and Zone Two~~ required by the Director to be removed in order
21 to achieve the required defensible space shall be clearly identified in the field and
22 photographed or located by global positioning satellite software by the Director.
23

24 5-12-10: STANDARDS FOR DEFENSIBLE SPACE: The following standards shall govern
25 the creation of a defensible space plan:
26

27 A. The property shall be divided into three zones. Zone One shall be measured 30 feet
28 from the eave of building or structure including attached structures or protrusions,
29 such as a deck on the property. Zone Two shall be measured 75 feet or greater from
30 the eave of building or structure including attached structures or protrusions,
31 such as a deck on the property, depending on slope from the eave of ~~any~~the
32 building or structure on the property, and shall exclude the portion of the property
33 located within Zone One. Zone Three shall extend beyond Zone Two to the property
34 boundary.
35

36 B. It is not the intent of this chapter that any portion of a property be "clear cut" in order
37 to achieve the required Defensible Space. No Defensible Space Plan prepared by
38 the Director shall require the "clear cutting" of any property.
39

40 C. In formulating a Defensible Space Plan ~~The~~ Director shall consider both the
41 horizontal clearance between aerial fuels, such as the outside edge of the tree crowns
42 or high brush, as well as the vertical clearance between lower limbs of aerial fuels
43 and the nearest surface fuels and grass/weeds.
44

45 D. The following specific standards apply to the creation of defensible space within

1 **Zone One:**
2

- 3 1. **All healthy trees shrubs, bushes and other landscaping material that provide**
4 **visual buffers shall be preserved.**
- 5 2. **All healthy trees, trees shrubs, bushes and other landscaping material**
6 **required by a Town-approved landscape plan shall be preserved.**
- 7 3. **All healthy fire-wise trees, shrubs, bushes and other landscaping material**
8 **shall be preserved if they are well spaced, well pruned, and create a condition**
9 **that avoids spread of fire to other vegetation or to a building or structure.**
- 10 4. **All irrigated trees, shrubs, bushes and other landscaping material shall be**
11 **preserved.**
- 12 5. **All dead and diseased trees, shrubs, bushes and other landscaping material**
13 **shall be removed.**
- 14 6. **All vegetation and combustible material shall be removed from under all**
15 **eaves and decks.**
- 16 7. **All grasses and ground cover shall be kept under 6 inches in height.**
- 17 8. **All firewood shall be removed.**
- 18 9. **Fire-wise landscaping material may be planted in the landowner's discretion.**

19
20 E. **The following specific standards apply to the creation of defensible space within**
21 **Zone Two:**
22

- 23 1. **All healthy trees , shrubs, bushes and other landscaping material that**
24 **provides visual buffers shall be preserved.**
- 25 2. **All healthy trees, shrubs, bushes and other landscaping material required by**
26 **a Town-approved landscape plan shall be preserved.**
- 27 3. **All healthy fire-wise trees, shrubs, bushes and other landscaping material**
28 **shall be preserved if they are well spaced, well pruned, and create a condition**
29 **that avoids spread of fire to other vegetation or to a building or structure.**
- 30 4. **All irrigated trees, shrubs, bushes and other landscaping material shall be**
31 **preserved.**
- 32 5. **All dead and diseased trees, shrubs, bushes and other landscaping material**
33 **shall be removed.**
- 34 6. **Trees shall be thinned to open up crown spacing to a minimum of ten feet**
35 **between individual crowns of the trees.**
- 36 7. **Groups of trees with the required spacing between clumps shall be**
37 **preserved.**
- 38 8. **Firewood may be maintained if an adequate buffer around the firewood is**
39 **determined to exist by the Director.**
- 40 9. **Fire-wise landscaping material may be planted in the landowner's discretion**
41

42 F. **The following specific standards apply to the creation of defensible space within**
43 **Zone Three:**
44

- 45 1. **All dead and diseased trees, shrubs, bushes and other landscaping material**

1 shall be removed.

2 **2. Firewise landscaping material may be planted in the landowner's discretion**

- 3
- 4 G. The Director's administrative rules adopted pursuant to section 12-5-1921 may
5 include minimum spacing guidelines for trees, shrubs, and other vegetation.
6 Distances between vegetation will depend on slopes, vegetation size, vegetation type
7 (brush, grass, trees), and other fuel characteristics (including, but not limited to, fuel
8 compaction and chemical content). Properties with greater fire hazards will require
9 greater buffers between fuels.
- 10
- 11 H. A copy of the Defensible Space Plan shall be given to the property owner by
12 personal service or by mail. A copy of the Defensible Space Plan shall be kept on file
13 with the Red, White and Blue Fire Protection District and at the Town in the
14 Community Development Department.
- 15
- 16 I. The Director may amend the Defensible Space Plan with property owner consent
17 based on scientific data from the Colorado State Forest Service or other agencies. A
18 copy of any amended Defensible Space Plan shall be provided to the landowner in
19 the same manner as the original Plan was provided.

Deleted: as he deems appropriate in order to achieve the purpose of this chapter.

20

21 **5-12-11: LANDOWNER'S APPEAL OF DEFENSIBLE SPACE PLAN: If a landowner**
22 **disputes the Director's determination that any tree, bush, shrub or other landscaping material**
23 **must be removed in order to create the required defensible space, or any other provision of a**
24 **Defensible Space Plan, the landowner shall notify the Director of such dispute within thirty**
25 **days after the landowner's receipt of the Director's Defensible Space Plan for the property. If**
26 **a timely notice of dispute is not given by the landowner, the Director's Defensible Space Plan**
27 **becomes final. If a timely notice of dispute is given by the landowner, the matter shall be**
28 **reviewed by a three-member panel consisting of one member of the Department of**
29 **Community Development possessing training or experience in landscape architecture; one**
30 **member of Fire District; and a qualified independent tree expert or arborist selected by the**
31 **Director who is familiar with the creation of defensible space. The panel shall make a final**
32 **determination with respect to the landowner's appeal. Prior to making its decision the panel**
33 **shall consult with the landowner.**

34

35 **5-12-1112: DUTY OF LANDOWNER TO ESTABLISH AND MAINTAIN DEFENSIBLE**
36 **SPACE:**

- 37
- 38 A. In order to maintain an acceptable level of community fire prevention/protection,
39 achieve life safety, and otherwise achieve the goals of this chapter the owner of any
40 property for which a Defensible Space Plan has been prepared shall take such action as
41 is necessary to fully implement the Plan within three years of the ~~inspection and~~
42 ~~preparation~~ **landowner's receipt** of the Defensible Space Plan by the Red, White and
43 ~~Blue Fire Protection District (Date on Defensible Space Permit),~~ **or three years after**
44 **the date of the decision by the appeal board in the event of the landowner's appeal**
45 **of the Director's issuance of a Defensible Space Plan, whichever is longer.** For good

1 cause shown, the Director may extend such deadline for a maximum of two additional
2 years.

3
4 B. Once a Defensible Space Plan has been implemented, the landowner of the property that
5 is the subject of such Plan shall take ~~such~~ **the following** action ~~from time to time as shall~~
6 ~~be necessary~~ to maintain and keep the property in compliance with the Plan.:

7
8 1. Tall grasses, leaf clutter and dead branches on living trees shall also be removed
9 within Zones One and **Zone** Two on an annual basis. Dead branches on living
10 trees shall be removed a minimum of 6 feet above grade and a maximum of 10
11 feet above grade. Loose surface fuels shall be permitted to a maximum depth of
12 three inches. This **guideline requirement** is primarily intended to eliminate trees,
13 brushes, shrubs and surface debris that are completely dead or with substantial
14 amounts of dead branches or leaves/needles that may readily burn.

15
16 2. All dead, dying, and beetle-infested trees (as defined in ~~Section 5-11-2~~ **Chapter**
17 **11 of Title 5** of this code) located within Zone One, Zone Two and Zone three
18 shall be removed on an annual basis.

19
20 C. If ownership of property that is subject to a Defensible Space Plan is transferred prior to
21 the deadline for the creation of the defensible space as described in the Plan, the selling
22 landowner shall notify the purchaser of the deadline for the creation of the defensible
23 space as described in the Plan. The purchaser shall then be required to create the
24 defensible space required by the Plan within the prescribed time period.

25
26 ~~5-12-12: DIRECTOR TO DETERMINE COMPLIANCE WITH PLAN:~~

27
28 ~~A. When defensible space has been created on a property, the property owner shall request~~
29 ~~that the Director inspect the property to determine if the defensible space complies with~~
30 ~~the Defensible Space Plan for the property, and the Defensible Space Permit that was~~
31 ~~issued for such work.~~

32
33 ~~B. If the Director determines that defensible space has been created in accordance with the~~
34 ~~Defensible Space Plan, he shall issue a certificate of compliance or other appropriate~~
35 ~~written evidence acceptable to the Director evidencing the creation of the required~~
36 ~~defensible space in compliance with the Plan. (Need to discuss related to Insurance~~
37 ~~Issues.)~~

38
39 ~~C. If ownership of property that is subject to a Defensible Space Plan is transferred after~~
40 ~~initial compliance with the Plan has been achieved and a certificate of compliance or~~
41 ~~other appropriate written evidence has been issued by the Director, the selling landowner~~
42 ~~shall notify the purchaser of the existence of the Plan and of the purchaser's duty to~~
43 ~~maintain the property in continuance compliance with the Plan before or at the time title~~
44 ~~is transferred. However, it shall not be a defense to an action to enforce the Plan that the~~
45 ~~selling landowner failed to disclose to the purchaser the existence of the Plan and the~~

1 ~~duty of maintaining the property in continuance compliance with the Plan.~~

2
3 ~~5-12-12: FEE: A fee shall be required in connection with the issuance of a Defensible Space~~
4 ~~Permit by the Red, White and Blue Fire Protection District as required by Section 5-12-13.~~
5 ~~(Move this to in front of 5-12-13)~~

6
7 5-12-13: PERMIT FOR ESTABLISHMENT OF DEFENSIBLE SPACE:

- 8
9 A. No work shall be done to implement a Defensible Space Plan until the owner has
10 obtained a Defensible Space Permit from the ~~Red, White and Blue Fire Protection~~
11 ~~District.~~ **There shall be no fee for a permit issued prior to June 1, 2010. Thereafter,**
12 ~~The~~ fee for such permit shall be \$45.00, unless a different fee is provided for in an
13 intergovernmental agreement between the Town and the Red, White and Blue Fire
14 Protection District.
- 15
16 **B. When defensible space has been created on a property, the property shall be**
17 **inspected by the Fire District to determine if the defensible space complies with the**
18 **Defensible Space Plan for the property and the Defensible Space Permit that was**
19 **issued for such work. If so, an appropriation notation shall be included in the**
20 **permit file.**
- 21
22 C. If the Director determines that a landowner had previously created adequate defensible
23 space on the landowner's property before the inspection by the Town, the permit fee to
24 be paid by the landowner to the ~~Red, White and Blue Fire Protection~~ District shall be
25 waived.

26
27 5-12-14 NOTICE OF VIOLATION:

- 28
29 A. If the Director determines that a violation of section 5-12-~~4718~~ exists the Director shall
30 notify the landowner of the property. Such notice shall be given either by certified mail
31 or personal delivery.
- 32
33 B. The notice shall:
- 34 1. advise the landowner that a violation of section 5-12-~~4718~~ exists on the
 - 35 property;
 - 36 2. describe the nature of the violation; and
 - 37 3. advise the landowner that the violation of section 5-12-~~4718~~ must be corrected
 - 38 within 30 days following receipt of the notice, or that an acceptable plan and
 - 39 schedule for the correction of the violation must be submitted to the Director
 - 40 within such 30 day period.
- 41
42
43
44
45 C. If the landowner disputes that a violation of section 5-12-~~4718~~ exists on the property, the

1 landowner shall notify the Director of such dispute within 10 days of receipt of the
2 Director's notice. If a timely notice of dispute is given, the Town shall not file a
3 complaint seeking a court order pursuant to section 5-12-~~15~~18 until the Director has met
4 with the landowner in an effort to resolve the dispute. If the Director meets with the
5 disputing landowner and is unable to resolve the dispute, or if the landowner fails or
6 refuses to meet with the Director. the Town may file a complaint for a court order
7 pursuant to section 5-12-~~15~~16.

8
9 5-12-15: COURT ORDER:

- 10
11 A. If the landowner fails to comply with the Director's notice as described in section
12 5-12-~~13~~15 within the applicable time period, the Town may apply to the
13 municipal court for a court order pursuant to Section 1-8-10 of this code.
14
15 B. The procedure to be followed in connection with a complaint filed by the Town
16 pursuant to this section shall be as provided in Section 1-8-10 of this code.
17 However, if the address to which the landowner's tax bills ~~for the landowner~~ is
18 located outside of Summit County, Colorado according to the records of the
19 Summit County Treasurer, service of process by mail shall be allowed in
20 accordance with Rule 4(g) of the Colorado Rules of Civil Procedure.
21
22 C. No person acting pursuant to a court order issued pursuant to this section shall
23 have any personal liability except for acts intentionally taken in violation of the
24 court order.
25
26 D. In case of an emergency involving imminent danger to public health, safety, or
27 welfare, the Director may authorize immediate correction of any violation of
28 ~~section 5-12-17~~this chapter without notice or court order.
29
30 E. Nothing in this section shall preclude the Town from seeking enforcement of this
31 chapter in a court of competent jurisdiction other than the municipal court. Such
32 action shall be subject to the applicable rules governing such action.
33

34 5-12-16 RESPONSIBILITY FOR COSTS OF COMPLIANCE; COLLECTION; FAILURE TO
35 PAY:

- 36
37 A. A landowner who fails to comply with a court order entered pursuant to this
38 chapter shall be liable to the Town for and shall pay and bear all actual costs and
39 expenses incurred by the Town to enforce the order and bring the landowner's
40 property into compliance with the Defensible Space Plan for the landowner's
41 property, together with an additional fifteen-percent (15%) assessment for
42 administrative costs and the reasonable attorney's fees incurred by the Town in
43 enforcing the court order. Such costs and expenses are due and payable in full
44 thirty days after an itemized statement describing such costs and expenses is
45 mailed to the landowner at the address to which tax notices are sent according to

1 the records of the Summit County Treasurer, or within thirty days after such
2 itemized statement is served upon the owner by personal service.
3

- 4 B. All costs and expenses owed by the landowner to the Town pursuant to this
5 chapter may be collected by the Town in any action at law; and, at the option of
6 the Town, assessed against the property as hereinafter provided. If the Town is the
7 prevailing party in any action brought to collect the costs and expenses described
8 in subsection A of this section, it shall also be entitled to recover its attorneys'
9 fees incurred in such action.
10
- 11 C. All costs and expenses owed by the landowner to the Town pursuant to this
12 chapter shall be a lien on the landowner's property, which lien shall be prior to all
13 existing liens or encumbrances on the property, except for the lien of the general
14 property taxes and the lien of any prior special assessment. The Financial Services
15 Manager may file with the Summit County Clerk and Recorder a verified lien
16 statement describing the property that is subject to the lien and the amount due to
17 the Town. The Town's lien may be foreclosed in the manner provided by law for
18 the foreclosure of a mortgage.
19
- 20 D. In addition to the other methods of collection described above, if all costs and
21 expenses owed by an landowner to the Town pursuant to this chapter are not paid
22 when due, the Financial Services Manager may certify such unpaid fees and costs
23 to the Summit County Treasurer pursuant to section 31-20-105, C.R.S., to be
24 collected and paid over by the Summit County Treasurer in the same manner as
25 taxes are authorized to be collected by Title 31, C.R.S.
26

27 5-12-17: UNLAWFUL ACTS:
28

- 29 A. It shall be unlawful and a misdemeanor offense for any landowner to fail or refuse
30 to fully implement a Defensible Space Plan issued by the Director pursuant to this
31 chapter within ~~one year~~ **three years** of ~~service~~ **receipt** of the Plan ~~upon~~ **by** the
32 landowner, or such additional time as may have been approved by the Director
33 pursuant to Section 5-12-~~11~~ **13**(A).
34
- 35 B. It shall be unlawful and a misdemeanor offense for any landowner to fail or refuse
36 to ~~maintain the landowner's property in continuous compliance with a Defensible~~
37 ~~Space Plan issued by the~~ **Director comply with the requirements of section 5-**
38 **12-12(B) of this chapter.**
39
- 40 C. It shall be unlawful and a misdemeanor offense for any person to violate any other
41 provision of this chapter.
42
- 43 D. It shall be unlawful and a misdemeanor offense for any landowner or occupant to
44 deny the Director access to the property owned or occupied by the landowner or
45 occupant if the Director presents an inspection warrant issued pursuant to this

chapter.

5-12-18: TOWN PROPERTY: The Town shall establish defensible space around all Town-owned buildings and structures by June 1, 2012. Such defensible space shall be created in accordance with the standards established by this chapter. The deadline may be extended by not more than two years if budgetary constraints or site-specific constraints preclude compliance with the June 1, 2012 deadline. Any extension of the June 1, 2012 deadline shall be made by a nonemergency ordinance duly adopted by the Town Council. In connection with the establishment of defensible space on Town property the Town shall work with state and federal agencies, Summit County, and neighboring municipalities to continue coordinated long range planning efforts designed to reduce the risks of fire by creating defensible space and fuel breaks on government-owned properties.

~~5-12-18~~¹⁹ APPLICABILITY: The provisions of this chapter shall apply to all public and private lands within the corporate limits of the Town.

~~5-12-19~~²⁰: RULES AND REGULATIONS: The Director has the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as necessary for the proper administration of this chapter. Such regulations shall be adopted in accordance with the procedures established by Title 1, Chapter 18 of this Code.

Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 3. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 4. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

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ATTEST:

Mary Jean Loufek, CMC,
Town Clerk



MEMORANDUM

TO: Town Council

FROM: Scott Reid, Open Space and Trails Planner

DATE: March 17, 2009

SUBJECT: Open Space Defensible Space/ Forest Health Projects for 2009

Open Space and Trails Division staff has been working with James Phelps of Public Works, Paul Cada of the Colorado State Forest Service, and Matt Benedict and Kim Scott of the Red White and Blue Fire Protection District to identify defensible space/ forest health projects on Town open space parcels for 2009. Of particular interest are the parcels that could be eligible for wildfire protection grant funding through the Summit County Wildfire Council. This memo outlines the progress on these efforts to date.

In 2008, the Town commissioned Eric Petterson of Rocky Mountain Ecological Services to evaluate all of the Town open space parcels and prioritize parcels for forest health actions, particularly as they relate to the current mountain pine beetle infestation. The priorities outlined in that report are the basis upon which the 2009 forest health projects have been proposed. (The full report is available on the Town website.) Town staff is continuing to coordinate forest management projects associated with other programs, including efforts on non-open space Town properties, projects proposed by the USFS, and those being funded by the Community Wildfire Council

On March 9th, Town staff organized in a site visit with RWB and the Colorado State Forest Service representatives to evaluate various proposed 2009 actions on Town owned open space parcels. The group visited potential project sites and identified those potentially eligible for grant funding. Some of the original twelve open space parcels discussed have been merged into the following list of ten, to increase the overall number of acres to be treated and reduce the per-acre treatment costs.

The following is a summary of the potentially grant-eligible forest health project sites:

Potential Grant-Eligible Sites:

Total 59.7 acres

These projects are considered grant eligible because fuels mitigation actions would help protect important infrastructure (e.g. homes, water facilities, etc.). These parcels also tend to be on steeper slopes, requiring specialized logging equipment. Town staff plans to group these projects together for contract bidding to reduce the per-acre treatment costs.

Highlands 1. 4.4 acres on steep, north-facing slope at junction of Tiger Road and Revette Drive. Prescription: Remove all mature lodgepole pines, retaining spruce/fir understory whenever possible. Protect pump house from potential wildfire.

Discovery 2. 5.3 acres on moderately graded, western facing slope along Gold Run Road.
Prescription: Remove mature lodgepole pines with 200 feet of road right-of-way to prevent wind throw on road and create defensible space for area homes. Avoid damages to Discovery Hill Trail. May be good project to partner with Highlands HOAs.

Gold 1. 19.5 acres on moderately graded, northwestern-facing slope along Golden Age Drive.
Prescription: Remove all mature lodgepole pines, retaining spruce/fir understory whenever possible. Protect water tank infrastructure and area homes with fuel break. Avoid damages to Upper Flume Trail.

Gold 2. 28.2 acres on moderately graded, east and northeastern-facing slope at the end of Golden Age Drive and Byron Court.
Prescription: Remove all mature lodgepole pines, retaining spruce/fir understory where possible. Create fuel break for homes and water tank. Avoid impacts to wetland area and Upper Flume Trail. May be good project for accessing upper portions of Peabody Placer in cooperation with Summit County Open Space. May also be good project for Highlands HOA partnership.

Lift Line. 2.3 acres on steep, north-facing slope at the base of the Snowflake Lift.
Prescription: Remove all mature lodgepole pines. Establish wider fuel break for area residences and ski lift. Avoid impacts to wetlands, ski lift and summer and winter trails.

Other Potential Open Space Projects (not considered grant eligible):

Total 7.22 acres

Highlands 7. .4 acres of moderately graded, eastern-facing slope between Silver Circle and Glenwood Circle.
Prescription: Sanitation cut.

Highlands 9. 1.04 acres of moderately steep, northwestern-facing slope north of the intersection of Silver Circle and Shekel Lane.
Prescription: Sanitation cut.

Highlands 11&12. 3.86 acres of flat terrain between Highway 9 and Marksberry Way, just south of Tiger Road intersection.
Prescription: Sanitation cut. Strive to preserve visual buffer along Highway 9.

Discovery 5. .7 acres of moderately steep terrain at the junction of Discovery Hill Drive and Gold Run Road.
Prescription: Sanitation cut.

Unknown 7. 1.22 acres of relatively steep, eastern-facing land adjacent to the Skyway-Skiway.
Prescription: Remove all mature lodgepole pines, retaining spruce/fir understory whenever possible. Avoid impacts to area trails (summer and winter).

The projects listed above represent the priority 2009 forest health projects on Town open space. Staff intends to pursue Summit County Wildfire Council grant funding for the eligible projects when the grant application is available (approximately April 1, 2009).

I look forward to discussing these projects with you at the March 24 Council meeting.

Public Comments Round 5

JOHN E.EBRIGHT
871 GOLD RUN ROAD
BRECKENRIDGE, CO 80424

March 31, 2009

Re: Proposed ordinances for Mountain Pine Beetle (MPB) and Defensible Space (DS)
dated March 23, 2009

Dear Mayor Warner and Town Council

The following comments below are a follow-up to my letters dated March 2 and March 12, 2009. I am John Ebright and I am president of Highlands Park HOA.

I have the following issues with the two proposed ordinances:

1. DS ordinance requires the "Director to inspect all Town properties"(5-2-16) and "shall develop an individualized plan ... for the inspected properties"(5-12-9) which will use twelve described guidelines. (My understanding is that the Town has over 1700 single family lots, of which approximately half are in the Highlands and Shock Hill.)

As suggested before, as this ordinance is mandatory rather than voluntary, I estimate the inspection process will cost the Town in excess of \$50,000 per year for several years. This money would be much better spent on removing dead and infected trees.

The benefits of a voluntary vs mandatory ordinance are :

- a) Avoid administrative costs of approximately \$50,000
 - b) A well publicized no cost defensive space plan by RWB would be well received by the community.
 - c) The main focus of fire mitigation would be concentrated on dead and infected trees.
2. DS ordinance requires a lot owner " to fully implement the Plan within three years from the date of adoption of this ordinance... the Director may extend such deadline for a maximum of two additional years."

The ordinance, thus, allows five years "in order to maintain an acceptable level of community fire prevention/protection, achieve life safety..."

If the Town is allowing five years to achieve these goals, it appears that the Town does not believe that fire mitigation, life safety and aesthetic look of our forests is a serious issue. That is contrary to all the discussion that, among others, the RWB has been recommending over the past few months. I strongly recommend that a maximum of two years be the time frame for compliance.

3. DS ordinance requires "the Director shall notify the landowner of the property that a violation of the ordinance has occurred." In order to comply with this procedure, the Director will need to track all properties for three to five years, after the

completion of a DS Plan. The administrative time to track this information will be substantial and costly as noted above.

4. MPB ordinance Notice of Violation requires that "on or after _____, 2012, if the Director determines the property contains... trees infested...the Director shall notify the owner"(5-11-7). The ordinance, however, does not describe how the Director will determine if a property has infected trees. The ordinance implies that the Director will use the DS Plan as described in the DS ordinance. In addition, the MPB ordinance requires a three year time plan, but does not allow for a two year extension. It appears that a landowner will be able to use a two year extension for infected trees under the DS ordinance.
5. Several HOAs provide to the Town a listing by lot of dead and infested trees. It would be HP HOA's intent to deliver the August 2008 listing to the Director as soon as the ordinance is passed in order to start the time clock on the enforcement process. We would expect the Director to send a letter to each lot owner to put them on notice that they have three years to remove dead and infected trees.

John E. Ebright
President, Highlands Park HOA

Mayor and Town Council Members

My wife and I attended your meeting yesterday, and while we were disappointed that there was insufficient time for public commentary, we were encouraged that you seem to be taking a sincere interest in the comments received in letters from Breckenridge homeowners. You asked for more letters, so I am writing.

My wife and I have been full-time residents of The Highlands since 2005 having "semi-retired" here from 30 years in Denver. For several years I was a Board member of the Highlands Golf Course Property Owners Association. I am very proud of the work done by our Board and the spirit of cooperation and participation by most of our homeowners in trying to defeat the mountain pine beetle (MPB) epidemic. Unlike many of those associated with Town of Breckenridge government I do not think "the war is lost", and I am encouraged by the results we have experienced here in The Highlands from mandatory spraying and timely removal of infested trees. As you may know, in our association alone (one of 4 in The Highlands) for several years we have required our 260 lot owners to spray 50-60 trees and to remove infested trees by July 1, before the next beetle "flight". In addition, many, if not most, of our homeowners (including my wife and I) have voluntarily sprayed more trees than the required minimum number. The cost to our 260 lot/home owners for this compliance has been ~\$130,000-\$150,000 per year for spraying, and easily another \$100,000/year for tree removal. We believe, and our results show, that we are making progress. I am further encouraged on what we are doing by information I have recently learned from a friend who owns a 2nd home in Pole Creek, a golf-course residential community in Grand County, probably the most MPB devastated county in Colorado. Pole Creek has been spraying and cutting infested trees for 8-10 years, and last fall their inspectors told them that they believe they have "won the war", that they had little or no new "hits", and that the beetles appear to have moved on. Hopefully, they didn't move on to Summit County, but even if they did we believe we can "win the war" here as well.

We in The Highlands were very disappointed several years ago when the Town "surrendered" to the beetles and concluded that the epidemic was unstoppable and that they couldn't enforce their own MPB ordinance, but we have continued to enforce our own rules, and I think we will continue indefinitely. Now you are coming forward with the proposed Defensible Space Ordinance.

While I think our Boards and our homeowners are not opposed to an ordinance to help protect our forests and our properties, I do believe that most of us would prefer voluntary compliance as opposed to a law to "cram it down our throats". WE are the ones responsible for protecting our own properties and lives, and as we have done with the MPB epidemic, we would do it voluntarily. However, if we can't have voluntary compliance, at least we hope we can have an ordinance that is adequately drafted so that we know how it will be enforced. I know that several of my neighbors and good friends (including two of the current Highlands Board members) have had their properties surveyed by the Red, White and Blue (RWB) representatives, and were pleasantly surprised that their tree removal will be far less than they expected and far less than your draft ordinance would require. While that is a relief, we all share the concern that the present ordinance wording is far too broad and contains far too many uncertainties. The current RWB Defensible Space representatives appear to very very well-trained and very reasonable in their application, but both people and times can change. An overly-broad ordinance could lead to very different results in future years. At yesterday's meeting I was encouraged that Councilmen Mamula and Rossi and Mayor Warner specifically shared their concerns with some of the wording of the ordinance, and I encourage you as a group to closely scrutinize the wording to eliminate the vaguery and tighten up the ordinance consistent with current RW&B thinking. I am not going to go thru it section-by-section suggesting places where it needs to be tightened up. You and the Town staff seem to be aware of the appropriate places for improvement.

On the issue of the \$45 R,W & B survey fee, I thought that Councilman Mamula's idea of waiving that for the first year was a good one. While \$45 is not a lot of money, we should encourage homeowners to have the survey, not add an additional cost to something that could arguably be done voluntarily.

One other issue I ask you to consider is the appropriateness of allowing homeowners to take 3 years to remove MPB infested trees. I agree with the logic of trying to make the ordinances for MPB and Defensible Space consistent, and I appreciate your concern for the costs of compliance. However, allowing infested trees to stand beyond the date of the next beetle "flight" only allows more beetles to mature and therefore to infest more trees. I hope and suspect that we in The Highlands HOAs will continue to enforce our annual removal requirement, but I encourage you to continue to require that of other Breckenridge homeowners as well. Despite the beliefs of some, there are others of us who believe that "the war is not lost", and prompt (annual) removal of infested trees can only help us continue to defeat or mitigate the MPB epidemic. Thank you for consideration of my comments and for your thorough consideration of these ordinances.

Tom Briggs

289 Preston Way

P.O. Box 9754

Breckenridge, CO 80424

H(970) 453-6404 C(303) 905-0113

Larry R. Niedergerke

29 White Cloud Dr.
P O Box 1274
Breckenridge, CO 80424
970 547 2170

Telecopier Number
Call 970 547 2170

March 31, 2009

Honorable Mayor & Members
of the Town Council
Town of Breckenridge
Breckenridge, CO 80424

Ladies and Gentlemen:

I was unable to attend your earlier meeting regarding the proposed tree ordinance so I am writing you this letter to express my views.

I believe the proposed ordinance as I understand it, while maybe well intended, is ill advised. When I build my house in Warriors Mark West my property was not inside the town limits of Breckenridge. Before I could get my occupancy permit one of the things I had to do was to get an inspection by the "fire mitigation lady." She made her inspection and I had to remove 22 trees to receive approval. Now it appears that I will have to remove a large number of additional trees to meet new requirements that somebody dreamed up.

The fact that the rules are changing tells me that no one really knows what needs or should be done. I assume the "fire mitigation lady" who did my inspection knows as much about what is needed as whoever came up with your idea. What I have already done may be as good as what the new idea would require.

Your policies about trees are very confusing. Several years ago you pass an ordinance that prohibits the removal of trees, even though the trees are part of our privately owned property, i.e. our trees. When one person cut some a big deal was made of it with threats of fines and criminal punishment (if I understand what happened correctly). Now you are saying "Stop! Now you have to remove your privately owned trees because we have changed our mind." Plus, even though we are requiring you to do so, we would have to pay a \$45 fee for a permit. How can you say we have to get a permit to do something you propose to require? This just doesn't make any sense to me.

Hon. Mayor & Members of the Town Council.
March 31, 2009
P. 2

On my lot which measures less than ½ acre I have some 100 trees, about 35 Aspen that I planted, 10 Colorado Blue and Engelmann Spruce I planted, and the remainder Lodge Pole Pines. In keeping with your idea of protecting trees I have faithfully sprayed each year in an attempt to keep my trees from dying. Now you say I will have to cut many of them down. It appears that much of the \$10,000 I have spent on new trees plus about \$1,500 on spraying has been wasted. My spraying company has already contacted me about spraying this year. I don't know what to tell them. I don't want to waste another \$500. Now if I have to remove a large number of trees I will be looking at another large expense. This really hacks me off.

No where in the news articles I have read on the firebreak proposal question does it say anything about the types of trees affected, so I am only to guess that the type doesn't matter. Am I mistaken or isn't it true that Aspen trees give you some protection against fires rather than contribute to them?

I hope you will rethink this idea. I am very willing to remove dead trees as they occur, but denuding the town (or should I say parts of the town since I understand some areas are exempt) I can't help but think is the wrong idea. Working with the Forest Service to create a buffer around the town would appear to give protection without destroying our mountain atmosphere.

If what I have read is correct and the historic part of town is exempt I have to ask why? They will burn at least as easy as mine and they are mostly close together. Thus I would have to think that they are even more likely to burn and spread to adjacent properties than mine, along with the trees around them. If that should happen we could easily see an entire block be affected.

Question, why should parts of the town be exempt? If denuding is necessary for some of us, why shouldn't it be for 100% of the Town? That's pure discrimination. Why should my property be treated differently? I don't like that idea either.

You are our elected officials to represent us and to do things for us. I would think with all of the negative publicity this proposal has received that you would get the message that the proposal is not what the citizens want to see happen. Are you listening?

I don't want to cut down all my trees. That would be destroying the atmosphere that I paid dearly to enjoy. If you want to cut down all of yours, I say go ahead (assuming you can get a Town permit). Please do not try to force everyone to do something that they don't want to just because you may think it is a good idea. I know you are intelligent people but that doesn't mean that you are the only intelligent people around, and maybe the ideas and opinions of others are better than yours.

Hon. Mayor & Members of the Town Council.
March 31, 2009
P. 3

I respectfully submit that the proposal is wrong and that different solutions, if in fact any are needed, should be considered.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Nigb". The signature is fluid and cursive, with a large initial "M" and a distinct "Nigb" following.

Larry R. Niedgerke

29 White Cloud Dr.
P O Box 1274
Breckenridge, CO 80424
970 547 2170

Telecopier Number
Call 970 547 2170

April 1, 2009

Addendum to my letter of March 31, 2009 to

Honorable Mayor & Members
of the Town Council
Town of Breckenridge
Breckenridge, CO 80424

Ladies and Gentlemen:

After writing my letter of March 31, 2009 to you I purely by accident tuned in the Weather Channel @ noon on Wednesday, April 1, 2009 looking for local snow news. They were having a program on forest fires, which maybe some of you may have seen it. Having just written my letter to you I watched to entire program. The one thing that I got out of it that I think is pertinent to the local tree removal question was an interview with a man from the Texas Forest Service regarding what people could do to protect themselves and their property. He suggested that people remove trees and brush 15' from their homes. To me that was interesting, that is the same number the "fire mitigation lady" who did my inspection when I got my occupancy permit talked about. If the U. S. Forest Service or whomever employees the "fire mitigation lady" and the Texas Forest Service think 15' gives adequate protection, maybe that should be the number you should be looking at. I think it is a much more palatable number. I sure wouldn't be writing to you if that was the number you were seeking to impose.

Very truly yours,



March 28, 2009

Town of Breckenridge Town Council
P.O. Box 168
Breckenridge, CO 80424

Thank you for working so diligently and carefully when considering a potential additional ordinance named "Defensive Space Ordinance" for fire mitigation. Please vote "No" or table this ordinance. Making it voluntary would be OK too.

Our present Pine Beetle Ordinance is very successful and has satisfied all the stated Legislative Findings for its existence. These are the same Legislative Findings you are now using to justify the Defensive Space Ordinance. If the first ordinance is removing the dead and diseased trees in Town thereby removing the "fuel loads", alleged possible canopy fires and working well to satisfy the fire dangers, why add another? It brings more expense of administration and bureaucracy along with loss of power to the Town and loss of property rights to the citizens.

After listening to Red White Blue Fire Depart and the Forest Service presentation, I am all the more convinced that the potential problem is over stated and is for the most part, outside the jurisdiction of the Town. I do not know of any significant fires in Lake County that they mentioned. And the areas they mentioned, Indiana Creek and Peak 7 are out of the Town's boundary and jurisdiction. Matt of the RWB said it takes 3 to 5 yrs., maybe 8 years, for the telephone pole trees to fall. Geoff Butler said 10 to 12 years for these trees to fall. At that time these trees add to the ground fuel and forest fires become dangerous again because there is supposedly lots of brush being built up in those years. You can look at the clear cuts on Peak 4/5 that were done about 15 years ago and see what the brush build up there has been. Very little, because not much grows at this elevation and what does grow does so slowly...too high, too cold, and poor soil. There are reasons why in Summit County forests we see very few fires from lightening and/or campers and certainly nothing major the last 100 years-- even with the huge population growth over the past 30 years.

Geoff Butler mentioned that Ponderosa Pines are now also being attacked by the pine beetle and add to potential dangers but Ponderosa Pines do not exist in Summit County. They do not grow over 8,000 feet. Slow oxidation, like rotting, is also slow...too dry & cold. Mother Nature will take care of our county wide problem. Beetle trees die, fall down, provide fertilizer and mulch for the next generation of trees. I personally think a Fuel Break Program does more harm than good by cutting roads though our forests which encourages more human access for potential human originated fires. Instead, I wish saplings would be planted everywhere, starting this spring.

The 700 ft. fire break around the national forest perimeter will be shocking to see if it ever happens. (Gene Gregory will be asking for reimbursement for all his fines and costs when he did exactly that in Warrior's Mark West for his view corridor). This ordinance does not address this issue.

Overall, this suggested new ordinance is:

1. not needed (present ordinance working well addressing fire issues in Town)
2. too complicated
3. too arbitrary
4. too expensive....present ordinance is expensive enough
5. gives 100% authority of power and administration to Red, White & Blue. (Town should never give up their authority and control to another entity....like they did in the Breckenridge Metropolitan District.)
6. gives "Director" too many powers to:
 - a) trespass
 - b) issue warrants
 - c) decide compliance
 - d) get court orders
 - e) have fines, attorney fees and court costs attached to property taxes
 - f) define defensible space itself and compliance

All of this is too arbitrary, too complicated, too expensive, too intrusive on property rights and is an overkill proposition for a questionable, exaggerated, border line scientific danger within the Town boundaries.

A last question. I did not read in this proposed ordinance anything that would prevent a landowner who wanted to clear cut 30 to 35 ft. from his building to perhaps get a better rate on his insurance even if the "Director" said he wasn't required to cut all of them down. Couldn't he argue, his insurance company and all of its fire experts defines "defensible space" as a 30ft. or 35 ft. clear cut plus what ever it defines from that point out to 75 feet?

Thank you for reading and considering these points.
I hope you, as a Board, extinguish this fire ordinance.

Sincerely,



Carol Rockne

Box 263
Breckenridge, CO 80424

Memo

To: Town Council
From: Julia Puester, AICP
Date: April 7, 2009 for meeting of April 14, 2009
Re: Valleybrook Subdivision Plat

The Town had identified a portion of its remaining Block 11 land as a site for affordable housing. The Town then entered into a *Development and Charitable Contribution Agreement* with Mercy Housing Colorado to design, construct, and sell approximately 40 to 60 units on the site.

While Mercy Housing is working on their submittal for a site plan application, the Town needs to subdivide the Valleybrook housing parcel from the childcare center parcel. This will allow Mercy to then proceed with funding for the project when ready.

Staff wanted to take the proposed subdivision plat to the Town Council as a worksession item as the Council is the “property owner” and applicant for subdivision of the parcel into 2 lots (Tract 1 for housing and Tract 2 for the childcare center). The subdivision plat would not be recorded and the land would not be conveyed to Mercy Housing until final site plan and agreement approvals of the Valleybrook housing project was given by Council.

Staff will be available at the meeting to answer any questions that the Council may have. Staff would like to get Council approval to move forward with the subdivision of the Valleybrook parcels.

VALLEY BROOK SUBDIVISION

A RESUBDIVISION OF A PORTION OF TRACT A-1 BLOCK 11, ACCORDING TO THE FINAL PLAT A REPLAT OF BLOCK 11, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION, REC. NO. 797050, OF THE SUMMIT COUNTY OFFICE OF THE CLERK AND RECORDER, SAID TRACT LOCATED IN THE WEST ONE-HALF OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, RECEIPTION NO. 797050 LOCATED IN THE WEST ONE-HALF OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO
SHEET 1 OF 2

OWNER'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS THAT:

THE TOWN OF BRECKENRIDGE, A COLORADO MUNICIPAL CORPORATION BEING THE OWNER OF TRACT A-1, BLOCK 11, FINAL PLAT, A REPLAT OF BLOCK 11, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION, REC. NO. 797050, OF THE SUMMIT COUNTY OFFICE OF THE CLERK AND RECORDER, SAID TRACT LOCATED IN THE WEST ONE-HALF OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE SIXTH P.M., TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO
HAS Laid Out, Subdivided and Platted the Same into Lots and Easements as Shown Hereon Under the Name and State of Valley Brook Subdivision, a Resubdivision of a Portion of Tract A-1, Block 11, Final Plat, a Replat of Block 11, an Amended Replat of Breckenridge Airport Subdivision, Rec. No. 797050, of the Summit County Office of the Clerk and Recorder, said Streets, Alleys and Other Public Ways and Places as Shown Hereon and Hereby Denotes Those Portions of Land Labeled as Easements for the Installation and Maintenance of Public Utilities or Such Other Purposes as Shown Hereon Subject to the Plan Notes Hereon.

IN WITNESS WHEREOF, TOWN OF BRECKENRIDGE, HAS CAUSED ITS NAME TO BE HERETO SUBSCRIBED THIS _____ DAY OF _____, 2009.

TOWN OF BRECKENRIDGE
A COLORADO MUNICIPAL CORPORATION

MAYOR, TOWN OF BRECKENRIDGE, CO
JOHN G. WARNER

TOWN ACKNOWLEDGEMENT

STATE OF COLORADO
COUNTY OF SUMMIT }
} SS

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2009, BY JOHN G. WARNER AS MAYOR, AND MARY EAM LOUPEX, TOWN CLERK OF TOWN OF BRECKENRIDGE.
WITNESS MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

BRECKENRIDGE PLANNING COMMISSION CERTIFICATE

APPROVED THIS _____ DAY OF _____, 2009, TOWN PLANNING COMMISSION, BRECKENRIDGE, COLORADO

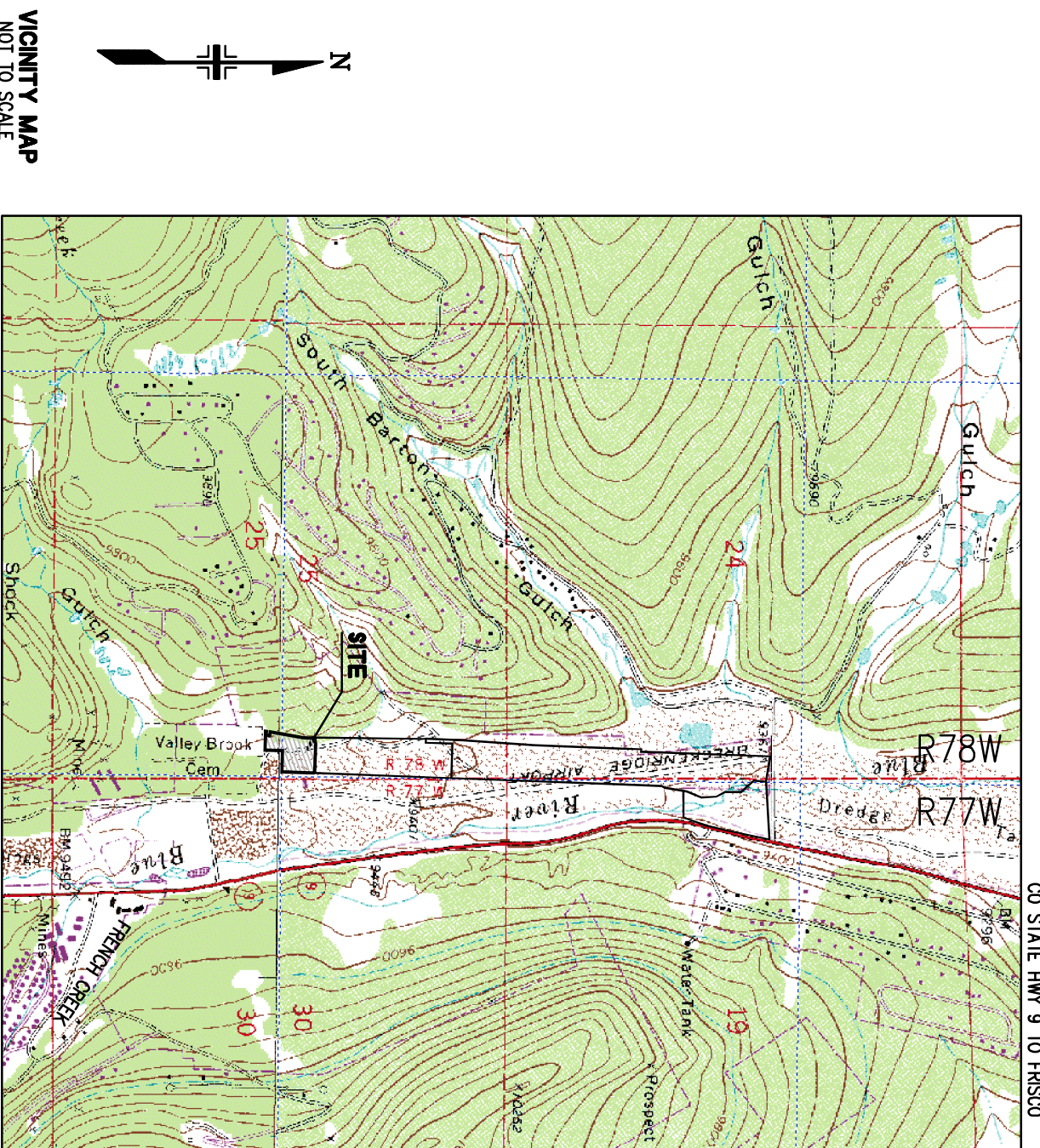
JANE KALKMAYR

BRECKENRIDGE TOWN COUNCIL CERTIFICATE

APPROVED THIS _____ DAY OF _____, 2009, TOWN COUNCIL, BRECKENRIDGE, COLORADO, THIS APPROVAL DOES NOT GUARANTEE THAT THE SOIL OR FLOODING CONDITIONS OF ANY LOT SHOWN HEREON ARE SUCH THAT A BUILDING PERMIT MAY BE ISSUED. THIS APPROVAL IS WITH THE UNDERSTANDING THAT ALL EXPENSES INVOLVING NECESSARY IMPROVEMENTS FOR ALL UTILITIES, SERVICES, PARKING, GRADING, LANDSCAPING, CURBS, GUTTERS, STREET LIGHTS, STREET SIGNS AND SIGNAGE SHALL BE FINANCED BY OTHERS AND NOT THE TOWN OF BRECKENRIDGE.

MAYOR JOHN G. WARNER
TOWN CLERK MARY EAM LOUPEX, CMC

PUBLIC NOTICE IS HEREBY GIVEN THAT ACCEPTANCE OF THIS PLATTED SUBDIVISION BY THE TOWN OF BRECKENRIDGE DOES NOT CONSTITUTE AN ACCEPTANCE OF THE ROADS AND RIGHTS OF WAY RELATED HEREON FOR MAINTENANCE BY SAID TOWN, BUT THE TOWN OF BRECKENRIDGE DOES HEREBY ACCEPT THE DEFERRED RESPONSIBILITIES DESCRIBED HEREON FOR THE MAINTENANCE OF THE ROADS AND RIGHTS OF WAY RELATED HEREON AND HEREBY DENOTES THOSE PORTIONS OF LAND LABELED AS OTHER MATTERS PERTAINING TO OR AFFECTING SAID ROADS AND RIGHTS OF WAY ARE THE SOLE RESPONSIBILITY OF THE OWNERS OF THE LAND EMPHATICALLY WITHIN THIS SUBDIVISION.



VICINITY MAP
NOT TO SCALE

NOTES:

- OWNER HEREBY RESERVES TO INSTALL A PERPETUAL, NON-EXCLUSIVE EASEMENT OVER, UNDER, IN, THROUGH, AND ACROSS THAT PORTION OF THE PROPERTY DESIGNATED ON THIS PLAT AS AN UTILITY, PARKING AND LANDSCAPE EASEMENT IN ITS DESCRIPTIVE NAME. SUCH EASEMENT MAY BE USED BY OWNER FOR THE FOLLOWING PURPOSES: (1) USE OF SUCH PARKING AREA, INCLUDING PROVIDING ALL REQUIRED MAINTENANCE AND SNOW REMOVAL OF SUCH PARKING AREA; AND (2) THE CONSTRUCTION, MAINTENANCE, REPAIR AND REPLACEMENT OF LANDSCAPING AND STRUCTURES.
- OWNER HEREBY RESERVES TO INSTALL A PERPETUAL, NON-EXCLUSIVE EASEMENT OVER, UNDER, IN, THROUGH, AND ACROSS THAT PORTION OF THE PROPERTY DESIGNATED ON THIS PLAT AS AN EASEMENT CONTAINING THE WORDS "25' WATER LINE EASEMENT" IN ITS DESCRIPTIVE NAME. SUCH EASEMENT MAY BE USED BY OWNER FOR THE FOLLOWING PURPOSES: MAINTENANCE AND REPAIRS INCLUDING, WITHOUT LIMITATION, THE CONSTRUCTION, MAINTENANCE, REPAIR AND REPLACEMENT OF SAID WATER LINE.
- NOTICE: ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACTS ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY, COMITS A CLASS 2 MISDEMEANOR PUNISHABLE TO STATE STATUTE 18-6-508 C.A.S.

TITLE COMPANY CERTIFICATE

LAND TITLE GUARANTEE COMPANY DOES HEREBY CERTIFY THAT IT HAS EXAMINED THE TITLE TO ALL LOTS SHOWN HEREON AND ALL LOTS HEREBY RECORDED BY WRITING OF THE PLAT AND TITLE TO ALL SUCH LOTS IS IN THE RECORDS HERE AND CLERK OF ALL FEES, TAXES AND ENCUMBRANCES, EXCEPT AS FOLLOWS:

TITLE COMMITMENT ORDER NO. 20070463 EFFECTIVE DATE OF COMMITMENT: DECEMBER 17, 2008 AT 5PM

DATED THIS _____ DAY OF _____, A.D., 2009.

AGENT _____

TOWN CLERK'S CERTIFICATE

STATE OF COLORADO
COUNTY OF SUMMIT }
} SS

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED IN MY OFFICE AT _____ O'CLOCK, _____ M. THIS _____ DAY OF _____, A.D., 2009.

TOWN CLERK

CLERK AND RECORDER'S CERTIFICATE

STATE OF COLORADO
COUNTY OF SUMMIT }
} SS

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED IN MY OFFICE AT _____ O'CLOCK, _____ M. THIS _____ DAY OF _____, A.D., 2009.

AND FILED UNDER RECEIPTION NUMBER _____

SUMMIT COUNTY, COLORADO CLERK AND RECORDER

BY: _____

SURVEYOR'S CERTIFICATE

I, DAVID W. GARNFELD, A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF COLORADO HEREBY CERTIFY THAT A LAND SURVEY OF THE ABOVEDESCRIBED PROPERTY WAS MADE UNDER MY DIRECT SUPERVISION. I FURTHER CERTIFY THAT THE LAND SURVEY INFORMATION SHOWN HEREON IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

THIS _____ DAY OF _____, 2009.

DAVID W. GARNFELD, COLORADO PLS 29412
FOR AND ON THE BEHALF OF TETRA TECH

| MARK | DATE | DESCRIPTION | BY |
|------|---------|-------------|----|
| 1 | 3/17/09 | DRAFT | |
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www.tetrattech.com
410 French Street
Breckenridge, CO 80424
Phone: 970-453-6394 Fax: 970-453-4579

Client: Town of Breckenridge, CO
Proj. Loc.: BRECKENRIDGE, CO

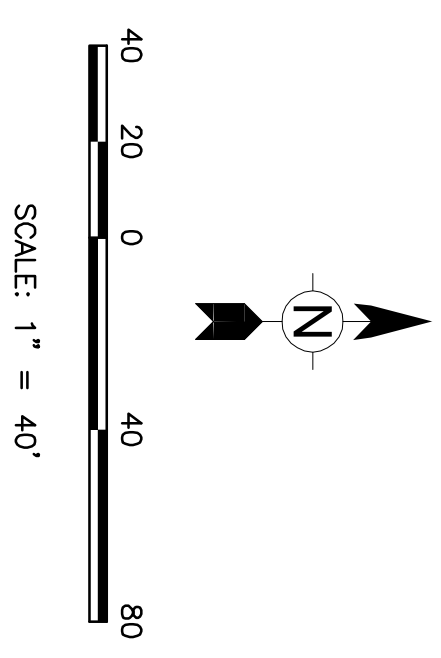
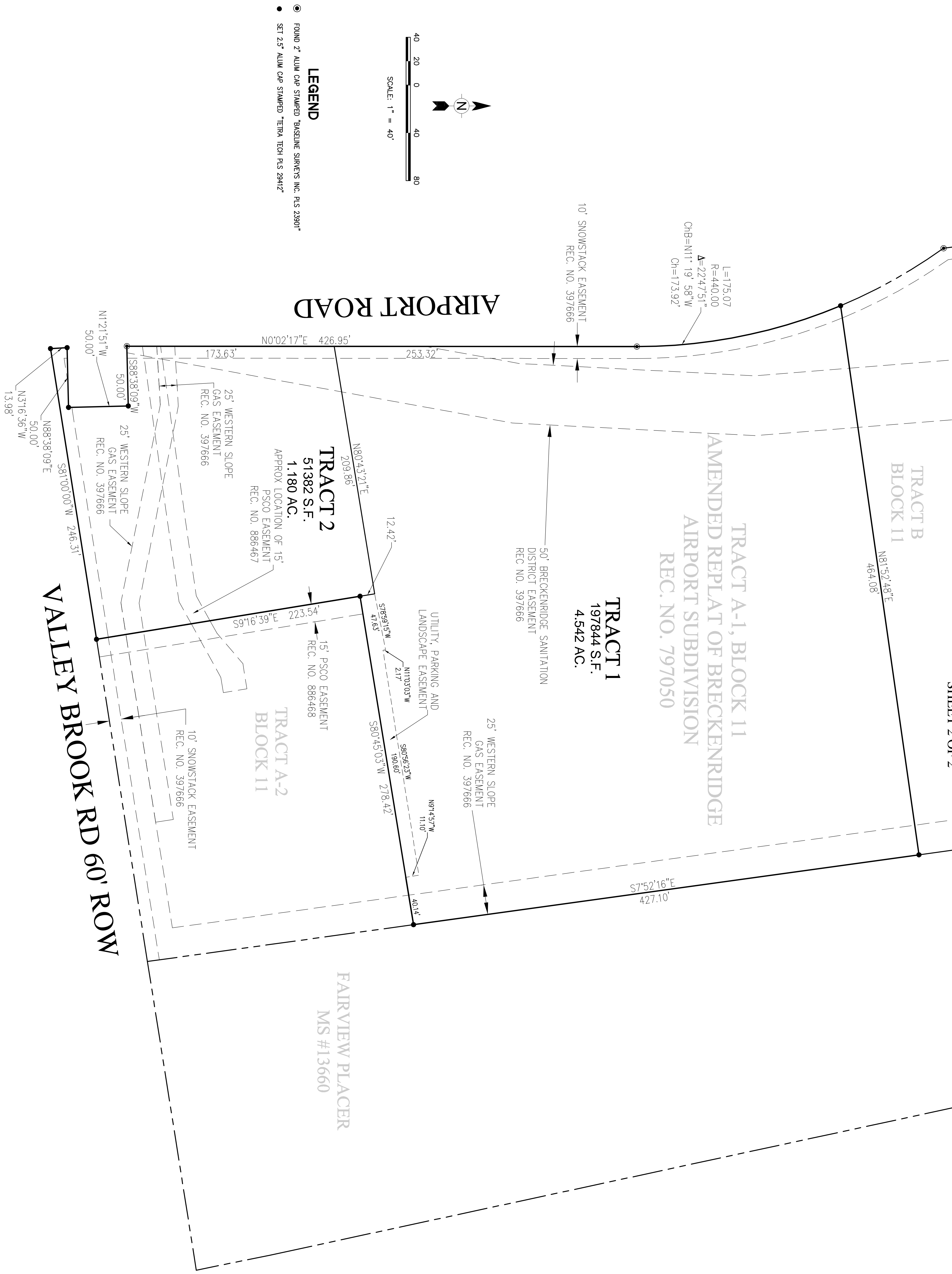
A REPLAT OF TRACT A-1, BLOCK 11
AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION

VALLEY BROOK SUBDIVISION
PRELIMINARY PLAT

Project No.: 133-30027-08001
Designed By: DD
Drawn By: LAW
Checked By: DMC

VALLEY BROOK SUBDIVISION

A RESUBDIVISION OF A PORTION OF TRACT A-1 BLOCK 11, ACCORDING TO THE FINAL PLAT A REPLAT OF BLOCK 11, AN AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION RECEPTION NO. 797050 LOCATED IN THE WEST ONE-HALF OF SECTION 30, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO
SHEET 2 OF 2



- LEGEND**
- FOUND 2" ALUM CAP STAMPED "BASELINE SURVEYS INC. PLS 23901"
 - SET 2.5" ALUM CAP STAMPED "TETRA TECH PLS 29412"

| <p>Project No.: 133-30027-08001 Designed By: DD Drawn By: LAW Checked By: DMC</p> | <p>Client: Town of Breckenridge, CO Proj. Loc.: BRECKENRIDGE, CO</p> <p>A REPLAT OF TRACT A-1, BLOCK 11 AMENDED REPLAT OF BRECKENRIDGE AIRPORT SUBDIVISION</p> <p style="text-align: center;">VALLEY BROOK SUBDIVISION PRELIMINARY PLAT</p> | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>MARK</th> <th>DATE</th> <th>DESCRIPTION</th> <th>BY</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">3/17/09</td> <td style="text-align: center;">DRAFT</td> <td></td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> | MARK | DATE | DESCRIPTION | BY | 1 | 3/17/09 | DRAFT | | | | | | | | | | | | | | <p>TETRA TECH</p> <p style="font-size: small;">www.tetratech.com 410 French Street Breckenridge, CO 80424 Phone: 970-453-6394 Fax: 970-453-4579</p> |
|---|--|--|------|------|-------------|----|---|---------|-------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| MARK | DATE | DESCRIPTION | BY | | | | | | | | | | | | | | | | | | | | |
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MEMORANDUM

TO: Town Council
FROM: Michael Mosher
DATE: March 18, 2009
SUBJECT: Sunsetting Density Policy Review

On the February 3, 2009 Planning Commission meeting, Staff presented a worksession regarding modifying Policy 3 (Density/Intensity) to the Development Code to address sunsetting density for positive points.

Per the Joint Upper Blue Master Plan:

BASIN GROWTH STRATEGY - "At the same time, property owners need to recognize the legitimate community values as expressed in this plan. Assuring fairness in achieving the goal of reducing approved density in accordance with community values is paramount." (Highlight added.)

It has been suggested in the context of various application reviews following the adoption of the Joint Upper Blue Master Pan that a voluntary reduction of available density might be rewarded with the assignment of positive points.


Staff presented ideas on how the policy could be implemented, and how positive points might be assigned, as an incentive to extinguish density during the development review process.

After discussion with Staff, the Commission did not support any proposed changes to Policy 3. They showed no desire to reward applicants that may develop properties at lower densities from the criteria outlined in the Land Use Guidelines or any adopted master plan. The Commission also felt that this was a low priority policy change which would rarely be used and would be difficult for Staff to track over time. All the Commissioners supported abandoning this possible change to Policy 3/A and 3/R and advised Staff not to take any further action with this item.

Reduced density offers benefits of reduced infrastructure loads. However, Staff realizes that a reduction of density doesn't necessarily mean reduced site impacts. For instance, if a proposal was to reduce the density (SFEs) and then change the use from multifamily to duplex, the site impacts could be far greater as a result.


- We ask the Council if you would like to have staff further explore the details of this possible change.

Discussions with other
Resort Areas
on Ski Lift Ticket Taxes




Vail

- 4% reimbursement by number of skiers through the gate. (\$3,086,716)
- Funds go primarily to transportation and parking.
- Town report positive impact. Chamber and Vail Valley Partnership saw no change to report.



Mt. Crested Butte

- 4% Local "Admissions" Tax Applies
- For Transportation and Marketing
- Town reports positive impact for the Town



Snowmass

- 1% local tax on ticket and pass sales.
- @ \$1,000,000 collected in the 2006-2007 season.
- Funds apply to transportation.
- No negative impacts felt by Town.



Park City

- 7.4% tax on lift ticket sales.
- Breakdown
 - 1.4% Local
 - 4.65% State
 - 0.35% County
- Utah Tax Law Differences



No Ticket Tax

- Eagle County
- Durango
- Steamboat Springs
- Telluride
- Mountain Village
- Winter Park
- Aspen
- Jackson, WY



States

- No tax on lift ticket sales in the entirety of California (Tahoe, Kirkwood, Mammoth, Squaw Valley, etc.)
- Vermont has a State Sales Tax (as well as additional local tax rates in some cases)



Admission Taxes

- Numerous Colorado municipalities have an admissions tax in place (for tickets to concerts, movies, museums, etc.)



Next Steps

- Reactions?
- What would the impacts (positive and negative) be to the local economy?
 - To Businesses (retail, restaurant, real estate, construction)
 - To Visitors
 - To Breckenridge Ski Resort (results from Lucy Kay to follow at December meeting).



MEMO

TO: Breckenridge Town Council
FROM: Laurie Best-Community Development Department
DATE: April 7, 2009 (for April 14, 2009 work session)
RE: Restrictive Covenant Interpretation—Real Estate Commission

At your last meeting an issue was raised regarding deed restricted units and whether owners (who are also brokers) could increase the maximum sale price of a unit to pay themselves a real estate commission. Staff had advised several owners that this would not be allowed as the intent of the covenant was to enable sellers to recoup expenses that they incurred but not to increase their proceeds. Council asked that the issue be scheduled for further discussion so we have included this item on your April 14th agenda.

I reviewed previous Council agendas and found that the Council had discussed this item back in February of 2007. At that time the Council agreed with staff's interpretation and since then it has been our policy to deny the add-on for owner/ brokers. But, it has come to our attention that even after this discussion with Council some owner/brokers were able to collect a 6 or 7% commission because it was paid to the owner's employer who then paid the commission to the owner/broker. Staff feels that this was inconsistent with the intent of the real estate commission (to cover costs incurred), that it significantly impacts the long term affordability of deed restricted units, and that it is a loophole that can and should be addressed administratively. To facilitate the discussion I have attached Tim Berry's interpretation of the covenant and a chart illustrating the impact of real estate commission on affordability. We look forward to your feedback on this issue.

Covenant Language:the resale price of a Deed restricted lot may be increased by an actual real estate commission paid by the selling owner.

Tim Berry (February 21, 2007) “I always understood that the purpose of this section was to avoid the situation where a selling unit owner’s allowed proceeds are reduced by the real estate commission. In other words, a selling unit owner should be allowed to receive the maximum resale price without having to dig into their pocket to pay the commission. However, if the selling unit owner is a broker and is allowed to receive not only the maximum sale price allowed by the covenant, but a commission on top of that, it seems to me that the purpose of the commission allowance provision has been wrongly exploited by the selling owner. More simply, a selling owner who is a broker would get more money out of the sale of the house that would his or her neighbor who is not a broker. I don’t think that is fair or was the intent of this section, and I think that the precise language of the Covenant limiting the commission to that “paid by the selling owner” is a sufficient legal basis for us to refuse to allow the commission here. A selling unit owner shouldn’t be allowed to pay themselves the commission in order to get more money out of the sale. I agree with what has been said about the selling owner/broker being allowed to recover his/her expenses of the sale (i.e., advertising costs, etc.).If a commission is actually paid to a third party, I have no problem allowing it. However, if the commission is paid to the selling owner’s brokerage company, and any portion of it is kicked back to the selling owner, I think that too is a violation of the covenant.”

Example of Real Estate Commission Add On:

| Original Purchase | Original Price | AMI | Rate | Resale Date | Price | AMI | Rate | Proceeds |
|-------------------|----------------|--------|-------|-------------|--------------|------|-------|---|
| 02/03/2006 | \$287,900.00 | 98.60% | 6.25% | 11/08/2006 | \$312,500.00 | 106% | 6.24% | \$18,750 commission \$5,850 seller equity |
| 08/23/2005 | \$365,000.00 | 117% | 5.82% | 11/29/2006 | \$399,000.00 | 131% | 6.24% | \$22,557 commission \$11,443 seller equity |
| 04/26/2002 | \$242,403.00 | 98% | 6.99% | 05/21/2007 | \$310,000.00 | 104% | 6.21% | \$21,700 commission \$45,897 seller equity |



TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA
Tuesday, April 14, 2009 (Regular Meeting); 7:30 p.m.

| | | |
|-------------|---|-----------------|
| I | CALL TO ORDER and ROLL CALL | |
| II | APPROVAL OF MINUTES – March 24, 2009 | Page 82 |
| III | APPROVAL OF AGENDA | |
| IV | COMMUNICATIONS TO COUNCIL | |
| | A. Citizen’s Comment - (Non-Agenda Items ONLY; 3 minute limit please) | |
| | B. Police Department Grant Review | Page 86 |
| | C. BRC Report | |
| V | CONTINUED BUSINESS | |
| | A. SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS** | |
| 1. | Council Bill No. 11, Series 2009- AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE <u>BRECKENRIDGE TOWN CODE</u> , KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, CONCERNING SOLAR PANELS, SOLAR DEVICES, AND SOLAR ARRAYS | Page 87 |
| VI | NEW BUSINESS | |
| | A. FIRST READING OF COUNCIL BILL, SERIES 2009 – | |
| 1. | Council Bill No. 12, Series 2009 - AN ORDINANCE AMENDING ARTICLE F OF CHAPTER 3 OF TITLE 6 OF THE <u>BRECKENRIDGE TOWN CODE</u> CONCERNING MUNICIPAL OFFENSES RELATED TO ALCOHOL, CIGARETTES AND AMUSEMENT ESTABLISHMENTS | Page 94 |
| 2. | Council Bill No. 13, Series 2009 - AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 11 OF TITLE 5 OF THE <u>BRECKENRIDGE TOWN CODE</u> CONCERNING MOUNTAIN PINE BEETLES AND BEETLE INFESTED TREES | Page 30 |
| 3. | Council Bill No. 14, Series 2009 - AN ORDINANCE ADOPTING CHAPTER 12 OF TITLE 5 OF THE <u>BRECKENRIDGE TOWN CODE</u> ; ADOPTING MANDATORY REQUIREMENTS FOR THE CREATION OF DEFENSIBLE SPACE AROUND BUILDINGS AND STRUCTURES WITHIN THE TOWN OF BRECKENRIDGE; PROVIDING PROCEDURES AND GUIDELINES FOR CREATING THE REQUIRED DEFENSIBLE SPACE; AND PROVIDING PENALTIES AND OTHER ENFORCEMENT MECHANISMS FOR VIOLATIONS OF THE ORDINANCE | Page 46 |
| | B. RESOLUTIONS, SERIES 2009- | |
| 1. | “A RESOLUTION MAKING A SUPPLEMENTAL APPROPRIATION TO THE 2008 TOWN BUDGET” | Page 99 |
| 2. | “A RESOLUTION MAKING A SUPPLEMENTAL APPROPRIATION TO THE 2009 TOWN BUDGET FOR PROJECTS NOT COMPLETED IN BUDGET YEAR 2008” | |
| | C. OTHER- | |
| VII | PLANNING MATTERS | |
| | A. Planning Commission Decisions of April 7, 2009 | Page 2 |
| | B. Town Council Representative Report (Mr. Rossi) | |
| VIII | REPORT OF TOWN MANAGER AND STAFF* | |
| IX | REPORT OF MAYOR AND COUNCILMEMBERS* | |
| | A. CAST/MMC (Mayor Warner) | |
| | B. Breckenridge Open Space Advisory Commission (Mr. Joyce) | |
| | C. BRC (Mr. McAtamney) | |
| | D. Summit Combined Housing Authority (Ms. Millisor) | |
| | E. Breckenridge Heritage Alliance (Mr. Bergeron) | |
| | F. Peak 6 Task Force (Mr. Bergeron) | |
| X | OTHER MATTERS | |
| XI | SCHEDULED MEETINGS | Page 103 |
| XII | ADJOURNMENT | |

*Report of Town Manager; Report of Mayor and Council Members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item

CALL TO ORDER and ROLL CALL

Mayor Warner called the March 24, 2009 Town Council Meeting to order at 7:33 p.m. The following members answered roll call: Mr. Joyce, Ms. McAtamney, Mr. Millisor, Mr. Bergeron, Mr. Rossi, Mr. Mamula and Mayor Warner.

APPROVAL OF MINUTES – March 10, 2009 Regular Meeting

The Mayor noted some minor corrections. With those changes, Mayor Warner declared the minutes were approved.

APPROVAL OF AGENDA

Town Manager Tim Gagen requested that Item No. 2 under “New Business - Council Bill No. 10, Series 2009- An Ordinance Authorizing the Conveyance of Certain Town-Owned Real Property to Mercy Housing Colorado, a Colorado Non-Profit Corporation (Tract 1 Valley Brook Subdivision)” be removed from the agenda. With that change, the agenda was approved.

COMMUNICATIONS TO COUNCIL

- A. Citizen’s Comments - (Non-Agenda Items ONLY; 3 minute limit please) – None.

CONTINUED BUSINESS

- A. ***SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS*****

1. Council Bill No. 7, Series 2009- AN ORDINANCE AMENDING THE MODEL TRAFFIC CODE FOR COLORADO, 2003 EDITION, ADOPTED BY REFERENCE IN CHAPTER 1 OF TITLE 7 OF THE BRECKENRIDGE TOWN CODE, BY ADOPTING PROVISIONS CONCERNING THE PARKING OF MOTOR VEHICLES ON A SHARED PRIVATE DRIVEWAY

Town Attorney Tim Berry summarized this ordinance to amend the Model Traffic Code by establishing a new regulation with respect to shared driveways, and requiring that a person cannot block or impede the lawful use of the driveway. There were no changes from first reading.

Mr. Bergeron moved to approve Council Bill No. 7, Series 2009 on second reading. Mr. Mamula seconded the motion. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed. The motion passed 7-0.

2. Council Bill No. 8, Series 2009- AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE SIGN ORDINANCE”, BY ADOPTING PROVISIONS CONCERNING OPEN HOUSE SIGNS

Mr. Berry summarized this ordinance to amend the Sign Code by establishing a comprehensive set of rules and regulations governing open house signs in the Town of Breckenridge. There were no changes from first reading.

Mr. Millisor moved to approve Council Bill No. 8, Series 2009 on second reading. Mr. Rossi seconded the motion. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed. The motion passed 7-0.

NEW BUSINESS

- A. ***FIRST READING OF COUNCIL BILL, SERIES 2009***

1. Council Bill No. 9, Series 2009- AN ORDINANCE AMENDING THE TOWN OF BRECKENRIDGE LAND USE GUIDELINES CONCERNING ACCEPTABLE LAND USE TYPES AND INTENSITIES IN LAND USE DISTRICT 31 (Block 11—Employee Housing)

Mr. Berry explained that this ordinance proposes to amend the land use guidelines for District 31, which is essentially the Breckenridge Airport Subdivision, to authorize the construction of an employee

housing project on Town-owned property on Block 11. Mr. Berry requested that any motion to approve the council bill indicate a second reading/public hearing date of April 28 to accommodate special notice requirements.

Mr. Bergeron moved to approve Council Bill No. 9, Series 2009, noting that the second reading and public hearing will be held on April 28, 2009. Ms. McAtamney seconded the motion. The motion passed 7-0.

2. Council Bill No. 11, Series 2009- AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, CONCERNING SOLAR PANELS, SOLAR DEVICES, AND SOLAR ARRAYS

Mr. Berry handed out amendments to the ordinance after discussion at the work session. The amendments modify placement of solar devices outside of the conservation district. Mr. Berry summarized the ordinance and reviewed the hierarchy of placement of solar devices.

Mr. Mamula moved to approve Council Bill No. 11, Series 2009, with the amendments handed out this evening. Ms. McAtamney seconded the motion. The motion passed 7-0.

RESOLUTIONS, SERIES 2009

1. A RESOLUTION CONCERNING THE “BLOCK 11 VISION PLAN”

Mr. Berry explained that the Town Council previously endorsed the concept of the Block 11 Vision Plan and the land use guideline amendment for District 31 refers to the Plan. Therefore, Mr. Berry believes it would be appropriate to memorialize this document through passage of a resolution.

Mr. Bergeron moved to approve a Resolution Concerning the “Block 11 Vision Plan.” Mr. Joyce seconded the motion. The motion passed 7-0.

2. A RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY (Twenty Two Quandary Village Lots)

Mr. Berry informed that last year the County and Town agreed in concept to purchase the Quandary Village Lots, and the County acquired fee title to the lots. This resolution approves the Town’s purchase of a 50 percent interest in the lots for one-half of what the county paid or \$240,270.

Mr. Millisor moved to approve a Resolution Approving a Purchase and Sale Agreement with the Board of County Commissioners of Summit County (Twenty Two Quandary Village Lots). Mr. Mamula seconded the motion. The motion passed 7-0.

OTHER

1. BOSAC Appointments

Mr. Gagen noted inclusion of a ballot in the packet and asked the Council members to select three names. Four votes are required for appointment. Council discussed the merits of the candidates and noted some potential conflicts of interest. Mr. Berry clarified that town employees were not eligible to serve on BOSAC. After balloting, Mr. Gagen announced that the successful candidates were: Erin Hunter, Jeff Cospolich and Monique Merrill.

PLANNING MATTERS

A. Planning Commission Decisions of March 17, 2009

With no requests for call up, Mayor Warner stated the Planning Commission decisions of the March 17, 2009 meeting would stand as presented.

B. Report of Planning Commission Liaison

**TOWN OF BRECKERIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, MARCH 24, 2009
PAGE 3**

Mr. Mamula reported on the discussion of footprint lots. Mr. Mamula felt the issue of residential footprint lots was pretty clear and that they should not be allowed. However, he noted that the issue is a little more unclear with commercial footprint lots. Some issues identified include ground floor residential and interior building setbacks. He asked Council to consider whether they would prefer a big building, or smaller buildings that seem more historic in context and follow the historic settlement pattern, for developments in the commercial core.

REPORT OF TOWN MANAGER AND STAFF

Mr. Gagen asked if the Town Council would like a follow up on the fire break presentation. Discussion then occurred about certain town-owned open space parcels. The general feeling was that if the town is mandating that people take care of their own property, the town needs to take care of its property. Suggestions were made to look more closely at open space dedications, make them private open space, or perhaps dedicate the property back to adjacent property owners. Mr. Gagen will have staff make copies of the fire break report available in hard copy and on the website.

REPORT OF MAYOR AND COUNCILMEMBERS

- A. **CAST/MMC** (Mayor Warner) – No report. Next meeting is on Thursday.
- B. **Breckenridge Open Space Advisory Commission** (Mr. Rossi) – No report.
- C. **BRC** (Mr. Bergeron) – No meeting.
- D. **Summit Combined Housing Authority** (Ms. McAtamney) – Meeting is tomorrow.
- E. **Breckenridge Heritage Alliance** (Mr. Joyce) – Mr. Joyce updated that Executive Director Linda Kay Peterson has turned in her resignation. The Heritage Alliance board would like to meet with Council to discuss budget, funding and responsibilities prior to hiring a new director. He suggested it could be a topic at the upcoming retreat.

There was then discussion about potential retreat meeting dates. The date was tentatively set on May 26 in the afternoon.

- F. **Peak 6 Task Force** (Mr. Rossi) – Mr. Rossi had no report. The next meeting date is being set and the Council should be receiving information about the comments turned in at the task force meeting.

OTHER MATTERS

Mr. Mamula would like to discuss the parking district again, now that the improvement district has expired. On another matter, he was approached about the possibility of putting up a memorial on the retaining wall in the dog park.

Mr. Rossi would like to see utility boxes cleaned up.

Mr. Bergeron suggested closer scrutiny of board and commission applicants to ensure they live in town and that there are no potential conflicts prior to scheduling interviews.

Mr. Joyce asked about the Town's evacuation plans in the event of a catastrophic fire. Police Chief Rick Holman explained that the town is divided into zones and evacuation routes are determined by zone and where the threat is coming from. The response is incident driven. The biggest concern is a threat that occurs when the county is full of people. The plan is currently being finalized and will be made public soon.

Mayor Warner reported that a representative from the Silverthorne library had contacted him and was wondering if there were plans for an addition to the Breckenridge library or if there were other Town facilities that may be suitable to accommodate children's story time and other activities.

EXECUTIVE SESSION

**TOWN OF BRECKERIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, MARCH 24, 2009
PAGE 4**

At 8:43 p.m. Ms. McAtamney moved to convene in Executive Session pursuant to Paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for the purposes of receiving legal advice on specific legal questions; and Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations; and instructing negotiators. Mr. Mamula seconded the motion.

The Mayor then restated the motion and a roll call vote was taken. The motion passed 7-0.

Ms. McAtamney moved to adjourn the Executive Session at 9:29 p.m. Mr. Mamula made the second. All were in favor of the motion.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 9:29 p.m.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

MEMO

TO: Town Council
FROM: Rick Holman, Chief of Police
DATE: April 1, 2009
SUBJECT: Grant Application – Police Department

The Police Department is applying for a federal grant, to support local law enforcement efforts.

A Council review and the opportunity for public comment are requirements of this grant application. Information regarding the grant is outlined below.

Grant: Recovery Act Edward Byrne Memorial Justice Assistance Grant (JAG) Program

Deadline: Applications must be submitted by May 18, 2009. Public notice must be made by April 18, 2009.

Description: On February 17, 2009, President Obama signed into law the landmark American Recovery and Reinvestment Act of 2009 (the “Recovery Act”). As one of its many elements, the Recovery Act provides the U.S. Department of Justice (DOJ) with funding for grants to assist state, local, and tribal law enforcement (including support for hiring), to combat violence against women, to fight internet crimes against children, to improve the functioning of the criminal justice system, to assist victims of crime, and to support youth mentoring. DOJ is committed to working with national, state, local and tribal partners to ensure this funding invests in the American workforce.

Specifically, under this solicitation, the Bureau of Justice Assistance (BJA) will be making awards to assist local and tribal efforts to prevent or reduce crime and violence. The grant funds being made available to the Town of Breckenridge total \$12,412.

Town Application:

The Town of Breckenridge Police Department is submitting an application for grant funds totaling \$12,412. The Town will use these funds to purchase equipment that will be used in a Traffic Safety and Speed Reduction Program.

- **Solar Powered LED Speed Devices:** The department will purchase two solar powered 12” LED speed display devices that are semi-portable and can be installed in various residential neighborhoods to assist with speed reduction.
- **School Zone Indicator Lights:** The department will purchase four 8” yellow LED school zone indicator flashing lights that are programmed to alert motorists of approaching school zones.

Please let me know if you have any questions or comments regarding our grant application.

Memo

To: Town Council
From: Julia Puester, AICP
Date: April 7, 2009 for meeting of April 14, 2009
Re: Policy 5(*Absolute*) *Architectural Compatibility* modification regarding solar devices-1st reading

The Town Council directed Staff to rewrite Policy 5 regarding solar devices to allow for the modification to the existing solar panel policy outside of the Conservation District as well as any other modification necessary to allow for additional flexibility and conformance with the Governor's Energy Office Solar Hot Water Rebate Program. Staff has proposed changes to Policy 5(*Absolute*) *Architectural Compatibility* regarding solar devices inside and outside of the Conservation District to allow for more flexibility, codify system location preferences, and enforcement.

The Town Council approved the first reading of the ordinance amendment on March 17th with changes proposed as by the Town Council at the February 24th worksession. Two minor changes have been added to the second reading draft:

Proposed Policy Changes since 1st reading:

- Wording change to definition of Solar Panel.
- Clarification of Section C(3) for solar heating systems.

Question:

Staff wanted to raise an issue which has recently come up from a solar thermal installer. The request is to allow for a tilted thermal panel system on buildings within the Conservation District. A potential tilt angle maximum could be set such as 1 foot or 5 degrees off the existing roofline. The existing and revised version of the code does not allow for tilted panels within the Conservation District. All panels must be flush mounted and run parallel to the roofline. Staff believes that tilted panels within the Conservation District could be visible in many cases and become visually detrimental to the character of the District. Based on discussions with the Planning Commission, staff is not supportive of modifying the proposed requirements for within the Conservation District. However, Staff wanted to raise the question to Council for input and direction.

Staff will be on hand to answer any questions from the Council. Staff requests that Council approve the Policy 5(*Absolute*) *Architectural Compatibility* attached regarding solar devices at Second Reading.

1 **FOR WORKSESSION/SECOND READING – APRIL 14**

2
3 Additions To The Ordinance As Approved on First Reading Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. _____

7
8 Series 2009

9
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”,
12 CONCERNING SOLAR PANELS, SOLAR DEVICES, AND SOLAR ARRAYS

13
14 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
15 COLORADO:

16
17 Section 1. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of
18 the following definitions:
19

BUILDING-INTEGRATED PHOTO-VOLTAIC DEVICE: Solar membranes; solar shingles; solar in glass; other non-panelized photo-voltaic technology; and any other solar technology of any kind that is proposed to be located on or outside of a structure which does not meet the definition of solar panel or solar array.

DETACHED SOLAR ARRAY: Any solar array that is mounted independently of the building structure.

ELEVATED SOLAR ARRAY: Any solar array that does not run parallel to the roofline.

HIGHLY VISIBLE: A solar device is highly visible if a majority of the solar device is always visible or capable of being observed from a public right of way during daylight hours by a person of normal visual acuity. Conversely, a solar device is not highly visible if a majority of the solar device is not visible or capable of being observed from a public right of way during daylight hours by a person of normal visual acuity.

MOUNTING STRUCTURE: Any racking, hardware, or material used to affix solar panels to a roof, wall, pole or to facilitate a detached array.

| | |
|------------------------|--|
| ORIENTATION (AZIMUTH): | The compass bearing that the collection surface faces. True south is defined as 13 degrees to the east of magnetic south. |
| RIDGELINE: | The intersection of two roof surfaces forming the horizontal line of the roof. |
| ROOFLINE: | The roof plane. |
| SOLAR ARRAY: | A grouping of solar panels that are connected together. The term “solar array” includes both detached and elevated solar arrays. |
| TILT ANGLE: | The angle above the horizon that the array faces. Optimum angle for year round production is equal to the latitude of the site (Breckenridge is at 40 degrees latitude). |

1
2 Section 2. The definition of ”Solar Device” in Section 9-1-5 of the Breckenridge Town
3 Code is amended to read in its entirety as follows:
4

| | |
|---------------|--|
| SOLAR DEVICE: | A solar panel; solar array; or building-integrated photo-voltaic device. |
|---------------|--|

5
6 Section 3. The definition of ”Solar Panel” in Section 9-1-5 of the Breckenridge Town
7 Code is amended to read in its entirety as follows:
8

| | |
|-------------|---|
| SOLAR PANEL | A device consisting of an array of connected solar cells which collects or harvests solar energy. A solar panel is used for the capture and creation of solar electric or solar thermal energy. including, without limitation, heated air and heated fluids (also referred to as a solar collector). |
|-------------|---|

9
10 Section 4. The definition of “Class C - Minor Development” set forth in Section 9-1-5 of
11 the Breckenridge Town Code is hereby amended by the addition of the following item:
12

- 13 — Installation of solar device within the Conservation District

14
15 Section 5. The definition of “Class D Development” set forth in Section 9-1-5 of the
16 Breckenridge Town Code is hereby amended by the addition of the following item:
17

- 18 — Installation of solar device outside the Conservation District

19

1 Section 6. Subsection E of Policy 5 (Absolute)(“Architectural Compatibility”) of Section
2 9-1-19 of the Breckenridge Town Code is amended to read in its entirety as follows:

3
4 E. Solar Devices:

- 5
6 1. Within the Conservation District: The preservation of the character of the
7 Conservation District and the historic structures and sites within the Conservation
8 District are of the utmost importance. The Town encourages the installation of
9 solar devices as an alternative energy source. However, there may be instances
10 where solar devices are not appropriate on a particular building or site if such a
11 device is determined by the Town to be detrimental to the character of the
12 Conservation District or would result in a reduced state, federal or local historic
13 rating.

14 The Town encourages solar device placement to be sensitive to the character of
15 the Conservation District and located away from the public right of way.

16
17 Within the Conservation District a solar device shall be located based upon the
18 following order of preference. Preference 1 is the highest and most preferred;
19 preference 6 is the lowest and least preferred. A solar device shall be located in
20 the highest preference possible. The order of preference for the location of a solar
21 device within the Conservation District is as follows: (1) as a building-integrated
22 photo-voltaic device; (2) as a detached solar device in the rear or side yard away
23 from view from a public right of way; (3) on non-historic structures or additions;
24 (4) on an accessory structure; (5) on the primary structure; and (6) highly visible
25 from the public right-of-way.

- 26
27 2. Within the Conservation District, no solar device shall be installed on a structure
28 or site without first obtaining a Class C minor development permit. Solar devices
29 are encouraged to be installed on a non-historic building or building addition and
30 integrated into the building design. To ensure that the character of the
31 Conservation District and its historic structures and sites are protected, an
32 application for a development permit to install a solar device within the
33 Conservation District will be reviewed under the following requirements:

- 34 a. Solar devices on roofs shall be placed on a non-character defining roofline
35 of a non-primary elevation (not highly visible from a public right-of-way).
36 For lots which have exhausted the preferred placement options as set forth
37 above, solar devices that are visible from the right of way may be
38 appropriate if they are designed to have minimal visual impacts from the
39 right of way and do not result in detrimental character to the Conservation
40 District, or a reduced state, federal or local historic rating for the structure
41 or surrounding structures. Roof mounted solar devices shall not break the
42 existing ridgeline of the roof to which the solar device is mounted. Solar
43 devices shall be setback from the edge of a flat roof to minimize visibility
44 and may be set at a pitch and elevated if not highly visible from public
45 right-of-way. On all other roof types, solar devices shall be located so as

1 not to alter a historic roofline or character defining features such as
2 dormers or chimneys. All solar devices shall run parallel the original
3 roofline and shall not exceed nine inches (9”) above the roofline as
4 measured from the bottom of the panel. Solar devices and related
5 mechanical equipment and mounting structures shall be non-reflective
6 such as an anodized finish. Mechanical equipment associated with the
7 solar device such as invertors, convertors and tubing attached to the
8 building fascia shall be painted to match the building color to blend into
9 the building.

10 b. Applications for new structures within the Conservation District are
11 encouraged to include building integrated solar devices into the initial
12 design, including a similar roof color, rather than as a later addition. Solar
13 devices which contrast with the color of the roof of new or historic
14 structures are inappropriate if found to be detrimental to the character of
15 the Conservation District.

16 c. Detached arrays of solar devices at a historic site may be located in the
17 rear or side yard if the arrays are not highly visible from a public right of
18 way and do not detract from other major character defining aspects of the
19 site. The location of detached arrays of solar devices shall also consider
20 visibility from adjacent properties, which shall be reduced to the extent
21 possible while still maintaining solar access.

22 d. On historic buildings, character defining elements such as historic
23 windows, walls, siding or shutters which face a public right-of-way or
24 contribute to the character of the building shall not be altered in
25 connection with the installation of solar devices. Solar devices in non-
26 historic windows, walls, siding or shutters which do not face a public right
27 of way are encouraged.

28 3. Outside the Conservation District: The Town encourages the installation of solar
29 devices on structures or sites located outside the Conservation District as an
30 alternative energy source. The following regulations shall apply to the installation
31 of solar devices outside the Conservation District:

32 a. No solar device shall be installed on a structure or site without first
33 obtaining a Class D development permit. The director shall have the
34 authority to reclassify an application as a Class C minor application, and
35 to require review by the Planning Commission, if he feels the purpose of
36 this code would be best served by the reclassification. Reclassification
37 shall be done pursuant to the definition of “Classification” in Section 9-1-
38 5 of this chapter.

39 Outside of the Conservation District a solar device shall be located based
40 upon the following order of preference. Preference 1 is the highest and
41 most preferred; preference 6 is the lowest and least preferred. A solar

1 device shall be located in the highest preference possible. The order of
2 preference for the location of a solar device outside of the Conservation
3 District is as follows: (1) as a building-integrated photo-voltaic device;
4 (2) flush mounted (9" above the roofline) panel on an accessory structure
5 roof, or as a detached array of solar devices; (3) flush mounted roof panel
6 on the primary structure or screened detached array; (4) a tilted roof
7 mounted panel that is not highly visible from the public right of way; (5) a
8 tilted or angled and tilted roof mounted panel that is not highly visible
9 from the public right of way; and (6) a tilted or angled and tilted roof
10 mounted panel that is highly visible from the public right of way.

11
12 b. Roof mounted solar devices shall run as closely parallel to the roofline as
13 possible while still maintaining efficient solar access. Solar devices and
14 related mechanical equipment and mounting structures shall be non-
15 reflective such as an anodized finish. Mechanical equipment associated
16 with the solar device such as invertors, convertors and tubing attached to
17 the building fascia shall be painted to match the building color to blend
18 into the building. New structures are encouraged to include building
19 integrated solar devices into the initial design, rather than as a later
20 addition.

21 c. Roof mounted solar devices shall not break the existing ridgeline of the
22 roof to which the panels are mounted. All mounting structures shall be on
23 the same roofline as the panels. Elevated solar arrays which follow the
24 orientation of the roofline are allowed. An east or west facing roof may
25 have an angled orientation in relation to the existing roofline. A maximum
26 tilt angle of 45 degrees is allowed for electrical solar devices. An elevated
27 array for a solar hot water heating system may have a maximum tilt angle
28 of 50 degrees and a maximum tilt angle of 55 degrees for a solar ~~device~~
29 **heating system.**

30 d. Solar devices which appear as an awning may be mounted onto building
31 facades or decks.

32 e. The location of detached solar devices shall also consider visibility from
33 adjacent properties and public right of way, which shall be reduced to the
34 extent possible while still maintaining solar access. Detached solar
35 devices which serve the structure on the site may be located outside of the
36 building or disturbance envelope if no significant existing vegetation must
37 be removed for the installation and an adequate buffer is provided to
38 adjacent properties.

39 4. Any solar devices that falls into a state of disrepair or that ceases to be fully
40 operational for more than 90 days shall be removed and properly discarded. The
41 landowner's obligation to comply with this requirement shall be contained in a
42 recorded restrictive covenant acceptable in form and substance to the Town
43 Attorney.

1 Section 7. Except as specifically amended hereby, the Breckenridge Town Code, and the
2 various secondary codes adopted by reference therein, shall continue in full force and effect.
3

4 Section 8. The Town Council hereby finds, determines and declares that this ordinance is
5 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
6 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
7 thereof.
8

9 Section 9. The Town Council hereby finds, determines and declares that it has the power
10 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,
11 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
12 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
13 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
14 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
15 contained in the Breckenridge Town Charter.
16

17 Section 10. This ordinance shall be published and become effective as provided by
18 Section 5.9 of the Breckenridge Town Charter.
19

20 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
21 PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be held at the
22 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
23 _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
24 Town.
25

26 TOWN OF BRECKENRIDGE, a Colorado
27 municipal corporation
28
29

30
31 By _____
32 John G. Warner, Mayor
33

34 ATTEST:
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36
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38 _____
39 Mary Jean Loufek, CMC,
40 Town Clerk
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MEMO

TO: Town Council
FROM: Town Attorney
RE: Liquor Offenses Ordinance
DATE: April 7, 2009 (for April 14th)

Recently, the Liquor Licensing Authority recommended that the Town Council consider incorporating several provisions of the State Liquor Code into the Town's municipal code. Doing this would permit the violations to be prosecuted in the Town's municipal court, instead of having to be filed in the Summit County court. This would allow for the liquor violations to be prosecuted more quickly, and would also allow the Town to have direct control over the prosecution and disposition of the cases. The LLA thought this would be in the Town's best interest.

The state laws that the LLA thought should be incorporated into the Town Code deal with the "afterhours" sale and consumption of alcoholic beverages at a liquor licensed premises. You will recall that not too long ago the Council incorporated several state liquor related laws into the Town Code. The LLA's suggestion is consistent with the Council's prior action.

Enclosed is a proposed ordinance to adopt the current state "afterhours" liquor laws as Town law.

Section 2 of the ordinance makes it a municipal offense for a person to consume an alcoholic beverage in a public room of a liquor licensed establishment between 2 A.M. and 7 A.M. This language is modeled after the current state law. However, state law does not include a definition of "public room", so a proposed definition is included in the ordinance.

Section 4 of the ordinance makes it a municipal offense for a licensee, or an employee of a licensee, to sell, serve, or distribute an alcoholic beverage at a licensed premises between the hours of 2 A.M. and 7 A.M. This language is also taken from the current state Liquor Code.

In the process of preparing this ordinance the Town Clerk discovered a conflict between two current code sections that staff feels needs to be resolved. The current Town Code allows for the possession and consumption of certain alcoholic beverages in certain Town parks. Section 6-3F-15 currently allows fermented malt beverage (3.2% beer) to be possessed at Kingdom Park, Carter Park, and the Riverwalk Center Lawn. However, Section 6-3F-16 allows regular beer and wine at Kingdom Park and Carter Park, but does not address 3.2% beer and also does not deal with the Rivewalk Center Lawn.

Staff proposes to reconcile these two sections by amending them to allow fermented malt beverages (3.2% beer), malt liquor (regular beer) and wine in Kingdom Park and Carter Park, but

to prohibit the possession or consumption of any alcoholic beverage on the Riverwalk Center Lawn (except, of course, when the Lawn is part of the Riverwalk Center licensed premises). This proposal is reflected in Sections 5 and 6 of the enclosed ordinance. The Police Chief has been consulted and supports this proposal.

I will be happy to discuss this ordinance with you next Tuesday.

1 ***FOR WORKSESSION/FIRST READING – APRIL 14***

2
3 Additions To The Current Breckenridge Town Code Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. ____

7
8 Series 2009

9
10 AN ORDINANCE AMENDING ARTICLE F OF CHAPTER 3 OF TITLE 6 OF THE
11 BRECKENRIDGE TOWN CODE CONCERNING MUNICIPAL OFFENSES RELATED TO
12 ALCOHOL, CIGARETTES AND AMUSEMENT ESTABLISHMENTS

13
14 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
15 COLORADO:

16
17 Section 1. Section 6-3F-1 of the Breckenridge Town Code is amended by the inclusion
18 of the following definition:

19
PUBLIC ROOM:

**A portion of the licensed premises which is
open to the public during normal business
hours.**

20
21 Section 2. Section 6-3F-15 of the Breckenridge Town Code is amended by the inclusion
22 of the following new subsection B.5:

23
24 **B.5 It shall be unlawful for any person to consume an alcoholic beverage in
25 a public room of a licensed premises between the hours of 2 A.M. and 7 A.M.**

26
27 Section 3. Subsection 6-3F-15(C) of the Breckenridge Town Code is amended to read in
28 its entirety as follows:

29
30 C. The provisions of subsection 6-3F-2F of this article shall be applicable to any
31 trial for a violation of subsection A, ~~or B~~ **or B.5** of this section.

32
33 Section 4. Article F of Chapter 3 of Title 6 of the Breckenridge Town Code is hereby
34 amended by the addition of a new Section 6-3F-20, entitled “Time Restriction—Licensee”,
35 which shall read in its entirety as follows:

36
37 **6-3F-20: TIME RESTRICTION—LICENSEE: It shall be unlawful for a
38 licensee or an employee of a licensee to sell, serve, or distribute an alcoholic
39 beverage at the licensed premises between the hours of 2 A.M. and 7 A.M.**

40
41 Section 5. Subsection A of Section 6-3F-15 of the Breckenridge Town Code is amended
42 to read in its entirety as follows:

1
2 A. It is unlawful for any person to consume any alcoholic beverage in or upon any
3 public place within the Town, except within an establishment licensed by the
4 Town to sell such beverages for consumption on the premises; provided, however,
5 that, subject to the provisions of subsection B of this section, it shall not be
6 unlawful for a person to consume any fermented malt beverage, **malt liquor or**
7 **vinous liquor as defined in the Colorado liquor code** in those public parks
8 known as "Kingdom Park"- **and** "Carter Park" ~~or "Riverwalk Center Lawn"~~.
9

10 Section 6. Subsection A(2) of Section 6-3F-16 of the Breckenridge Town Code is
11 amended to read in its entirety as follows:
12

13 2. The provisions of subsection A1 of this section shall not apply to the
14 possession of an open container or the consumption of an alcoholic beverage
15 within the licensed premises of an establishment licensed by the Town to sell such
16 beverage for consumption upon the premises, or to the possession of an open
17 container or the consumption of a **any fermented malt beverage**, malt liquor or a
18 vinous liquor as defined in the Colorado liquor code in those public parks known
19 as "Kingdom Park" and "Carter Park".
20

21 Section 7. Except as specifically amended hereby, the Breckenridge Town Code, and the
22 various secondary codes adopted by reference therein, shall continue in full force and effect.
23

24 Section 8 The Town Council hereby finds, determines and declares that this ordinance is
25 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
26 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
27 thereof.
28

29 Section 9. The Town Council hereby finds, determines and declares that it has the power
30 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
31 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
32

33 Section 10. This ordinance shall be published and become effective as provided by
34 Section 5.9 of the Breckenridge Town Charter.
35

36 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
37 PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be held at the
38 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
39 _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
40 Town.
41

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

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MEMORANDUM

To: Mayor and Town Council
From: Finance Department
Date: March 25, 2009
Subject: 2008 & 2009 Supplemental Appropriation Resolutions

Purpose: The two attached resolutions have been prepared for Council's review during the April 14th Work Session and subsequent action as appropriate during the Council meeting.

Description: The Resolution, titled "**A Resolution Making A Supplemental Appropriation to the 2008 Town Budget**" requests changes to the 2008 budget authority for the following purposes:

Section 1 authorizes an increase of \$255,000 in additional budget authority within the Excise Fund for the 2007 COP (for Childcare Facility construction) debt service payments unforeseen at the time of adoption of the 2008 budget.

Description: The Resolution, titled "**A Resolution Making A Supplemental Appropriation to the 2009 Town Budget for Projects not Completed in Budget Year 2008**" requests changes to the 2009 budget authority for the following purposes:

Section 1 authorizes \$9,711 of 2008 General Fund budget authority be rolled-over to 2009 to fund ongoing projects and programs budgeted and/or initiated in 2008, but not completed by year end. **Attachment A** provides an overview of the specific projects.

Section 2 authorizes \$52,100 of additional Special Projects Fund budget authority be rolled-over to 2009 to fund ongoing projects and programs budgeted and/or initiated in 2008, but not completed by year end. **Attachment A** provides an overview of the specific projects.

Recommended Action: We request that Council review the attached resolutions named above. Staff will be present during the April 14th Work Session to respond to any questions that Council may have. It is also requested that Council hold a public hearing and be prepared to vote on the resolutions during the April 14th Council Meeting.

A RESOLUTION

SERIES 2009

A RESOLUTION MAKING A SUPPLEMENTAL APPROPRIATION TO THE 2008 TOWN BUDGET

WHEREAS, the Town Council of the Town of Breckenridge desires to amend the Town's 2008 budget by making A supplemental appropriation in the amount of \$255,000; and

WHEREAS, pursuant to Section 10.12(a) of the Breckenridge Town Charter, the Finance Department, on behalf of the Town Manager, has certified that there are available for appropriation revenues in excess of those estimated in the Town's 2008 budget or revenues not previously appropriated in an amount sufficient for the proposed supplemental appropriation; and

WHEREAS, a public hearing on the proposed supplemental appropriation was held on APRIL 14, 2009, in accordance with the requirements of Section 10.12(a) of the Breckenridge Town Charter.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. A supplemental appropriation is made to the Excise Fund in the amount of \$255,000 to provide additional spending authority for unforeseen debt service payments.

Section 2. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 14th DAY OF APRIL 2009.

TOWN OF BRECKENRIDGE

ATTEST

By _____
John Warner, Mayor

Mary Jean Loufek, CMC, Town Clerk

APPROVED IN FORM

Town Attorney Date

A RESOLUTION

SERIES 2009

A RESOLUTION MAKING A SUPPLEMENTAL APPROPRIATION TO THE 2009 TOWN BUDGET FOR PROJECTS NOT COMPLETED IN BUDGET YEAR 2008

WHEREAS, the Town Council of the Town of Breckenridge desires to amend the Town's 2009 budget by making supplemental appropriations in the amount of \$103,897; and

WHEREAS, pursuant to Section 10.12(a) of the Breckenridge Town Charter, the Finance Department, on behalf of the Town Manager, has certified that there are available for appropriation revenues in excess of those estimated in the Town's 2009 budget or revenues not previously appropriated in an amount sufficient for the proposed supplemental appropriation; and

WHEREAS, a public hearing on the proposed supplemental appropriation was held on APRIL 14, 2009, in accordance with the requirements of Section 10.12(a) of the Breckenridge Town Charter.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. A supplemental appropriation is made to the General Fund in the amount of \$9,711 to rollover 2008 authority to continue funding of improvements, programming and equipment.

Section 2. A supplemental appropriation is made to the Special Projects Fund in the amount of \$52,100 to rollover 2008 authority to continue funding for consulting and programming.

Section 3. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 14th DAY OF APRIL 2009.

ATTEST

TOWN OF BRECKENRIDGE

Mary Jean Loufek, CMC, Town Clerk

By _____
John Warner, Mayor

APPROVED IN FORM

Town Attorney

Date

ATTACHMENT A

TOWN OF BRECKENRIDGE
BUDGETARY OVERVIEW-2008 ROLLOVERS

| | BUDGET | ACTUAL | EXCESS | |
|---|-----------|--------------|----------|---|
| GENERAL FUND | | | | |
| COMMUNITY DEVELOPMENT | 1,348,616 | 1,308,234 | 40,382 | |
| | | | | (2,000) ARTS DISTRICT PROGRAMMING-FUNDED BY \$7,000 DONATION |
| | | | | (5,000) DIPPING STATION-DEVELOPER CONTRIBUTION |
| | | | | (2,711) PIONEER REMEMBERED VIDEO |
| | | | (9,711) | TOTAL |
| | | | 30,671 | REMAINING BALANCE |
| REQUESTED ROLLOVERS FROM GENERAL FUND | | | | \$ (9,711) |
| | | | | |
| SPECIAL PROJECTS FUND | 2,268,286 | 2,079,837.00 | 188,449 | |
| | | | | (600) ICLEI DUES - ASSISTANCE IN MEASURING CARBON FOOTPRINT, ETC. |
| | | | | (1,500) MARKETING \$ TO SUPPORT CAST PLASTIC BAG CHALLENGE |
| | | | | (50,000) BRECK 150 |
| | | | (52,100) | TOTAL |
| | | | 136,349 | REMAINING BALANCE |
| REQUESTED ROLLOVERS FROM SPECIAL PROJECTS FUND | | | | \$ (52,100) |



Scheduled Meetings, Important Dates and Events

Shading indicates Council attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them. All Council Meetings are held in the Council Chambers, 150 Ski Hill Road, Breckenridge.

April 2009

| | |
|--------------------------------|-----------------------------|
| Tuesday, April 14; 2:00pm | Carter Museum Opening |
| Tuesday, April 14; 3:00/7:30pm | First Meeting of the Month |
| Tuesday, April 28; 3:00/7:30pm | Second Meeting of the Month |

MAY 2009

| | |
|------------------------------|--------------------------------------|
| Tuesday, May 12; Noon | Mini- Retreat Meeting |
| Tuesday, May 12; 3:00/7:30pm | First Meeting of the Month |
| Saturday, May 16 | Town Clean Up Day |
| Tuesday, May 26; 3:00/7:30pm | Second Meeting of the Month |
| Tuesday, March 31; 5:30-8:30 | FDRD Annual Party & Membership Drive |

OTHER MEETINGS

| | |
|--|--|
| 2 nd & 4 th Tuesday of the Month; 7:00pm | Planning Commission; Council Chambers |
| 1 st Wednesday of the Month; 4:00pm | Public Art Commission; 3 rd floor Conf Room |
| 2 nd Monday of the Month; 5:30pm | BOSAC; Council Chambers |
| 2 nd & 4 th Tuesday of the Month; 1:30pm | Board of County Commissioners; County |
| 3 rd Thursday of the Month; 7:00pm | Red White and Blue; Main Fire Station |
| 2 nd Thursday of the Month; 5:30pm | Sanitation District; |
| Last Wednesday of the Month; 8am | Breckenridge Resort Chamber; BRC Offices |
| 4 th Wednesday of the Month; 9am | Summit Combined Housing Authority; |
| 2 nd Wednesday of the Month; 12 pm | Breckenridge Heritage Alliance |

Other Meetings: CAST, CML, NWCCOG, RRR, QQ, I-70 Coalition