

***CALL TO ORDER and ROLL CALL***

Mayor Warner called the June 9, 2009 Town Council Meeting to order at 7:30 p.m. The following members answered roll call: Ms. McAtamney, Mr. Joyce, Mr. Millisor, Mr. Bergeron, Mr. Rossi, Mr. Mamula and Mayor Warner.

***APPROVAL OF MINUTES – May 21, 2009 Special Meeting and May 26, 2009 Regular Meeting***

There were no changes, and Mayor Warner declared the minutes were approved.

***APPROVAL OF AGENDA***

There were no changes and the agenda was approved.

***COMMUNICATIONS TO COUNCIL***

**A. Citizen's Comments - (Non-Agenda Items ONLY; 3 minute limit please)**

Josh Kappel spoke on behalf of Sean McAllister and the Sensible Colorado committee. The group is proposing an initiative for a sensible marijuana policy in Breckenridge. Mr. Kappel explained that 72 percent of Breckenridge voted in favor of a statewide measure in 2006. He addressed how many people had been criminally prosecuted over the past several years. Mr. Kappel also explained what the proposed initiative will do: amend the Town code to remove penalties for possession of less than one ounce of marijuana and for possession of marijuana paraphernalia; eliminate the stigma of being labeled a drug criminal and collateral results such as impacts on student loans, subsidized housing, and child custody. He also explained what the proposed initiative will not do: does not legalize public use, driving under the influence, cultivation or distribution. He thanked the Council for their time.

Kathleen Egan of Immediate Recycle is working to coordinate compost pick-up from restaurants, noting that about 85 percent of restaurant waste is compostable. She requested the Town look at its current trash pick-up contracts to see if there is a way to make compost pick-up work. Council is supportive of the effort and the Town Manager will review current contractual obligations.

Mike McCormick proposed the concept of Breckenridge Bike Week to Council. Mr. McCormick envisions an event that would showcase the Town's quality facilities and trail system, and which could include guided trail rides, historical site interpretation, movie nights at the Riverwalk Center with bike valet, Tour de France coverage each morning in the Blue River Plaza, participation from IMBA and other bike industry experts, bike demos and other events. Mr. McCormick believes the event could become the "Sea Otter" of the Rockies. The proposed date for 2009 is July 6-11, concurrent with the Breck Epic. He proposes a smaller event this year to get it off the ground, with a bigger push in year two.

**B. BRC Director – John McMahon** reported that Bike Week is an event the Resort Chamber wants to get behind. They are working with KBCO for front-range support and would like to see this event take place in June. Mr. McMahon brought a Breck 150 program guide that will be published in the newspaper. Kingdom Days are coming up on June 20. Other marketing issues discussed included: how to keep winter momentum going into April; May looks pretty soft; June has experienced some weather related issues; July looks like a strong month; feels there will be lots of last minute bookings; main market is the front range; strategy to invest "where the fish are biting"; several competitors are continuing additional marketing, BRC continues to look for supplemental marketing dollars; Aspen is looking to increase its lodging tax; and an upcoming meeting in Vail to discuss the health of tourism; Mr. McMahon informed that central reservations is struggling right now, but that they are there for the new customer to Breckenridge and he still feels it is an important part of their business. The BRC is looking for home-brewed events like Breck Epic that resonate with locals and guests that want to feel like locals. The annual meeting is coming up on July 29.

Shawna Henderson updated Council on groups coming to Town including the Model A Fords, MG club, Porsche event in Keystone with a rally through Breckenridge; and Vettes of the Rockies. She reported on the Pinnacle Award won for exceptional customer service; new group discount books; working closely with other lodging properties to collaborate marketing efforts; revised meeting planner guide; and quarterly email blasts using a newly expanded database.

***CONTINUED BUSINESS***

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

**1. Council Bill No. 15, Series 2009- AN ORDINANCE ADOPTING CHAPTER 12 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE; 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**

Planner Jennifer Cram provided a history of the mountain pine beetle epidemic. Efforts to keep the pine beetle at bay included cutting down infested trees and spraying healthy ones. For the past several years, the Town spent increasingly large sums of money on programs and incentives. It has now become

**TOWN OF BRECKERIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, JUNE 9, 2009  
PAGE 2**

evident that this battle cannot be won by cutting and spraying, so the Town needed to look at other methods to protect life and property in Breckenridge.

Ms. Cram then summarized the changes to the ordinance from first reading, including: Town intent to treat Town property the same as what private owners must do, explaining current Town efforts to create fuel breaks around Breckenridge and focus on water sheds; adding language regarding the abatement of nuisances; included preservation of buffers in the intent section; added what a public nuisance is; included a definition of "well spaced" along with sketch; moved and clarified language that Town approved landscaping be preserved; additional firewise landscaping is encouraged, with approval, to insure it meets the intent of the ordinance; for plan modifications, establish a three-member review panel to ensure fairness; section on waiving of permit fees was removed; unlawful acts section was updated to reflect a July 1, 2012 compliance date; July 1, 2012 date updated for Town properties; and Town-approved tree removal contractors was added.

After a few questions from Council, Mayor Warner opened the public hearing.

Rick Bly was concerned and expressed that since he has lived here, the idea has always been to try to preserve trees. He noted in 1989, seven days reached a high of -8 and the pine beetle was stopped. He reminded that it could happen this year. He explained a situation where trees on his property are within 19 feet of an adjacent property. Mr. Bly was troubled by "the Director" and thought some of the language was very nebulous. Mr. Bly felt that if we get a terrific fire nothing will make a difference, but he understands that the ordinance is well-meaning. He suggested the director give authority to the Red White and Blue to administer the ordinance.

Mary Grace McAllister of Pine Forest Estates was also concerned about the authority of "the Director." She met with Fire Department representatives and is in favor of defensible space, but has concerns with and distrust of the director. She was encouraged and forced to plant trees, and is now being asked to cut them down. She feels there is a disconnect between mountain pine beetle and defensible space. Ms. McAllister wants to be safe and in compliance, but doesn't feel this ordinance is the way to accomplish it.

Eric Buck of the Highlands had two points: first, the public sentiment is bad, very negative, and the second is the vague nature of the ordinance and the expense. He encouraged the Town Council to consider opinions. Mr. Buck believed if there was a vote on whether to make this ordinance mandatory or voluntary, the result would be overwhelmingly for voluntary implementation. On the science and public safety card, Mr. Buck said he has not seen the science. He has heard some professionals express opinions. If wildfire is coming through, it will devastate and 30 feet won't make a difference. Council is asking people to spend millions for something that may not improve the situation. Mr. Buck will implement voluntarily, but does not want Council to force legislation.

Erika Figueroa of The Highlands has looked at the legislation and is sorry to see the fee waiver eliminated. She does not think her home would be in violation. Ms. Figueroa asked about the 30 foot rule because her neighbor built within 10 feet of the property boundary and there are 8-10 trees on the side of house that belong to her. It was clarified that defensible space ends at the boundary line and the neighbor cannot do anything about the trees because they belong to her. She had questions about "substantial hardship" and "grouping of trees;" she also had a problem with "the director"; asked about the definition of "irrigated"; and questioned what "emergency" and "eminent danger to public health" meant. Ms. Figueroa asked if the Town would have to approve flowers in her flower beds and any saplings she might plant. She wondered if this is a fair process. She liked the appeal process and suggested a Town resident/landowner be included in the process. She felt this penalizes people who are trying to adhere to Town requirements. She asked the Council to enforce legislation such as mountain pine beetle which is already on the books, and suggested the Town should demonstrate flexibility. She felt bureaucrats would be proud of this legislation. She wants to preserve the small Town charm. In closing, Ms. Figueroa said that just because a lot of time has been spent on this ordinance, it doesn't mean we have to go forward with it. We want to prevent fires, but this is not the best way to go about it.

Ron Cousineau, forester with the Colorado State Forest Service, has been working with the fire district and the Town and he supports the intent of the ordinance. Mr. Cousineau explained that defensible space does work, and scientific data shows that. He realizes that it is very difficult to convince people that cutting trees is a good thing. However when a fire is approaching a community, people want something done. He noted that a big portion of this ordinance is for fire fighter safety, and is part of an overall forest management approach. Regarding communities with similar ordinances, Mr. Cousineau informed that Summit County has a defensible space ordinance, Fraser is talking about one right now and the Eagle county ordinance is retroactive if you pull a building permit.

Dave Garrett spoke on behalf of the Christie Heights homeowners association and asked if there is this type of legislation in other mountain communities? Fire Chief Gary Green answered that the State of California adopted a 100-foot mandatory ordinance. Several counties in California are moving into the enforcement phase of compliance. Nevada is starting something similar and this is happening across the western United States. Mr. Garrett expressed that it is hard to cut down healthy trees after cutting down beetle-infested trees. He has received many emails from homeowners that are against legislation at this time. He does not feel this is right for the community at this point in time.

Chief Green has listened to the feedback. He explained that the Town and Red White and Blue have received a lot of feedback that caused many modifications to be made to the ordinance. "Ambiguity

**TOWN OF BRECKERIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, JUNE 9, 2009  
PAGE 3**

versus flexibility” ... performance –based ordinances are a trend across the country. Progressiveness is often met with doubt, confusion and cynicism. Chief Green believes this is a progressive step based on the ecosystem. The physics of fire are heat, oxygen, and fuel. If you mitigate one of those, the fire goes out. The science is profound and undisputed. Chief Green then cited research noting that construction of a home structure coupled with defensible space led from 85 to 96 percent survivability of the structure. If you limit the amount of fuel adjacent to the structure, you limit the heat the structure must withstand. Firefighters will work to save lives and property. This ordinance allows firefighters more time to fight fires rather than serve as gardeners and loggers around homes. Of 200 inspections conducted, Chief Green the average was about 20 trees per home at a cost of \$40-60 per tree. The Chief supports this and believes that the discussion of the ordinance over last 12 months has served to educate.

Mr. Millisor asked why voluntary compliance doesn't work. The Chief explained that more education is needed and there is the issue of second homeowners who don't buy into the value. It makes it more difficult to protect subdivisions; it is important to be uniform. He added that Firewise.com is a good source for information.

Carol Rockne wondered how many days of wildfire danger there are in Breckenridge. (June to September based on weather conditions).

Hardy McAllister of Park Forest Estates asked to clarify the Town's commitment –is it the same as other owners, regardless of budgetary problems? Mr. Rossi said the open space master plan will be used to determine which parcels are treated and prioritized. Ms Cram added that the master plan looks at open space solely owned by the Town. Some prescriptions for open space prescribe clear cutting. Ecologically sensitive areas may need to be treated differently. All Town building properties will be treated similarly. There are some different prescriptions on open space parcels. The goal is to have a healthy and diverse forest.

Mr. Garrett commented that we need to also consider that we have a good fire department that can respond quickly.

Jim Merrick commented that he has neighbors that are surrounded by Town open space and the Town has not cut down mountain pine beetles trees around them. The Mayor assured that it will be done and added that the council is committed to having the Town “walking the walk”.

There was a clarification that inspection stops at the property line but homeowners can work together.

Mayor Warner closed public hearing at 9:32 p.m.

Mr. Millisor moved to approve Council Bill No. 15, Series 2009 in the form included in the packet. Ms. McAtamney seconded the motion.

Ms. McAtamney commented that she read every letter, went on tours and asked questions based on her concerns. She understands the heartburn and skepticism, but this is an important watershed and with the dramatic changes in terms of forest health, she has erred on the side of protection of people and property.

Mr. Millisor has listened to the experts and believes this is a life safety issue. He was amazed at the amount of public input – most comments in his five years on council. Making this ordinance more flexible for homeowners also makes it more nebulous. Owners do not have to clear cut. We've listened, changed, and it isn't perfect but he supports it.

Mr. Bergeron always thought defensible space was a good idea. He noted there have been strong philosophical arguments for and against. Folks that have wooded lots can save their homes and others. A year ago, Mr. Bergeron would have voted to have the Town absorb the permit fees, but not in this fiscal time. Mr. Bergeron wrote a check for \$450 to the Red White and Blue to pay for 10 inspections. It's not a lot of money if it can save homes or a firefighter's life. Mr. Bergeron doesn't believe everyone will do this voluntarily. He does feel it is his duty to support this and make difficult choices.

Mr. Rossi thought all the arguments were good. He believes in the issues of public safety and science and there is a lot of good evidence. As a public official, Mr. Rossi believes it is important to look at life safety, but he must also balance with all other issues. Sprinklers, and clear cuts, may be safer than a flexible plan. He noted that Council takes a lot of advice, listens to a lot of experts, and tries its best, as has the staff and fire department. He doesn't believe that making this mandatory is the way to go, noting that no other area in state has done a retroactive law like this and he worries about the unintended consequences. He understands that this is well-intentioned and urged people to continue to be vigilant.

Mr. Joyce believes all the public input has helped a lot and the ordinance has changed for the better as a result of the input. Mr. Joyce lived through a catastrophic fire, with no defensible space. Three thousand houses burned and there was significant loss of life. His personal experience sways him. Mr. Joyce believes what we are doing is important. We may only have a three-month fire season, but this is right for the community and right for the Council to support. He likes to be proactive and it doesn't bother him that other communities have not done this.

Mr. Mamula thanked Jenn and Matt for all the hard work, difficult circumstances and unpleasant conversations. He agrees with Mr. Rossi and has some problems with how the ordinance is written. He would rather see a more general Red White and Blue fire district ordinance, because he feels the solution should be more global. Mr. Mamula does not have a problem with doing this first. On comments about

“the Director”, Mr. Mamula explained that he was on the planning commission and the director is mentioned all the time. This verbiage is synonymous with the planning department and is legalese for the office of community development. People may be taking it out of context with the entire planning/development code and it sounds more ominous here. Mr. Mamula will vote against this because he feels it needs to be more global and seems nebulous to him. He thanked everyone for their input.

Mayor Warner also thanked the citizens for being here. He supports this for some of the same reasons Mr. Mamula does not support it. It does need to be global. We can lead by example and may be able to bring pressure on other agencies. This is science-based, he as listened to the professionals and did a lot of reading on-line, and feels we are doing the right thing. Mayor Warner respects the people who disagree with him and hopes people won't disrespect him.

The motion passed 5-2, with Mr. Mamula and Mr. Rossi voting “no”.

#### **NEW BUSINESS**

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

##### **1. Council Bill No. 16, Series 2009 - AN ORDINANCE AMENDING POLICY 9 (ABSOLUTE) AND POLICY 9 (RELATIVE) OF CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, CONCERNING BUILDING SETBACKS**

Planner Chris Neubecker explained the purpose of this ordinance is to address situations where historic structures are moved onto property and in some cases are unable to meet setbacks. Staff believes there should be incentives to stabilize and reuse historic structures to get them restored and saved. This proposal cannot increase a structure's non-conformity.

Mr. Bergeron moved to approve Council Bill No. 16, Series 2009. Mr. Mamula seconded the motion. The motion passed 7-0.

##### **2. Council Bill No. 17, Series 2009 - AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE SUBDIVISION STANDARDS”, BY ADOPTING A PROCEDURE FOR THE CORRECTION OF A RECORDED SUBDIVISION PLAT**

Mr. Neubecker explained this ordinance addresses situations where there is a typo or minor error on a plat. The current code does not have a simple process to fix minor mistakes and requires a new subdivision application. The ordinance establishes a procedure to shorten up the process to correct a recorded subdivision plat. In response to questions about the fee, Mr. Neubecker explained that quite a bit of staff time is still required, but the proposed fee is half the current fee and the process is much quicker.

Mr. Bergeron moved to approve Council Bill No. 17, Series 2009. Mr. Mamula seconded the motion. The motion passed 7-0.

##### **B. OTHER**

**1. Blacksmith Burn Permit** – Mr. Millisor moved to approve a special permit to allow a blacksmithing demonstration within the Arts District of Breckenridge as part of a scheduled demonstration for Kingdom Days, on June 20 and 21, 2009, from approximately noon to 4 p.m. In addition, he moved that two back-up dates for the pit firing within the Arts District of Breckenridge be approved for Saturday, June 13 or Saturday, June 27 from 9 a.m. to 3 p.m. in the event that the original pit-firing on June 6 is cancelled due to bad weather. All burning during the demonstration and pit-firing shall comply with the “Open Burning” requirements of Section 307 of the International Fire Code, 2000 Edition. In addition, the Town shall obtain an open burning permit from the Red, White and Blue Fire Department. Ms. McAtamney seconded the motion. The motion passed by unanimous consent.

#### **PLANNING MATTERS**

##### **A. Planning Commission Decisions of June 2, 2009**

With no requests for call up, Mayor Warner stated the Planning Commission decisions of the June 2, 2009 meeting would stand as presented.

##### **B. Report of Planning Commission Liaison**

Mayor Warner had no report.

#### **REPORT OF TOWN MANAGER AND STAFF**

Mr. Gagen had no report.

#### **REPORT OF MAYOR AND COUNCILMEMBERS**

**A. CAST/MMC (Mayor Warner)** – Mayor Warner could not attend the last meeting.

**B. Breckenridge Open Space Advisory Commission (Mr. Joyce)** – No meeting.

**C. Breckenridge Resort Chamber (Ms. McAtamney)** – Ms. McAtamney reported on her recent meeting: there was no extra spend in April and business was down; looking at central reservations as a marketing tool and don't want to let go; looking back to 2005 levels of funding – it was 40 percent less; three-year sponsorship contract with Budweiser; leveraging marketing dollars with the ski area; and

**TOWN OF BRECKERIDGE  
TOWN COUNCIL REGULAR MEETING  
TUESDAY, JUNE 9, 2009  
PAGE 5**

new website launched. Despite reporting to the contrary, Ms. McAtamney believes Breckenridge does not have the second highest taxes in the state.

D. **Summit Combined Housing Authority** (Mr. Millisor) – No report.

E. **Breckenridge Heritage Alliance** (Mr. Bergeron) – No report.

F. **Peak 6 Task Force** (Mr. Bergeron) – Mr. Bergeron reported on the June 5 meeting concerning mitigation of social issues. He did not feel there was anything brought that was concrete or quantifiable. There is a continued commitment to non-profits. There was discussion about not expanding beyond Peak 6, then no further than the ski area boundary (which is goes to Peak 5). The Task Force wants to be involved in the process of drafting the Memorandum of Understanding to include parking, transportation, social services, and other issues. He felt the task force was getting burnt out – it has been a long, tedious process with not many results. Mr. Gagen had not heard of the unique process of a task force drafting an MOU for the Town Council. Mr. Rossi saw the document and it seemed to him that most issues were left to be worked out later, and felt that this disenfranchises the public process. Mr. Bergeron also reported on the housing mitigation plan that utilizes Breck Terrace. Mr. Millisor asked if the facilitator could give the Council some feedback. He also asked if the task force will summarize/finalize its findings. It was suggested to get a read from the county about the findings and mitigation.

G. **Sustainability** (Rob Millisor) – The next meeting is on Thursday.

H. **Neighborhood Preservation** (Eric Mamula) – Mr. Mamula reported that the group has an agreement and has a Floor Area Ratio (FAR). The maximum sizes are pretty big, but limited. He felt is was a good first step, is sellable to the community and gets us at least part way. There will be no 10,000 square foot houses.

***OTHER MATTERS***

Mr. Mamula would like the compost business to be involved in his business, but he does not want to pay extra for trash removal. Perhaps the trash company can decrease its price by a comparable amount? Mr. Millisor questioned why restaurants shouldn't pay for this service. Mr. Gagen will check if the Town is contractually obligated, and noted the trash business is not subsidized by the Town.

Mr. Rossi asked why the softball field lights are on up to midnight.

Mr. Joyce reported on Dan Burden who is a “walkability” expert and has been honored by Time magazine as an influential person. He is in Breckenridge, spending time looking at how traffic flows, traffic calming to make streets safer for pedestrians and bicyclists and how to keep traffic flowing without adding more lanes. This program is being funded by a grant through the Summit Prevention Alliance. His summary will be provided at 4 p.m. on Thursday. Mr. Joyce also has been asked by swimmers about reciprocal rights while pool closed and is it possible to extend their Rec passes for the time they cannot swim at the Rec Center.

Mr. Gagen reminded about the recent discussion about revenue and expense.

***SCHEDULED MEETINGS***

***ADJOURNMENT***

With no further business to discuss, the meeting adjourned at 10:38 p.m.

ATTEST:

---

Mary Jean Loufek, CMC, Town Clerk

---

John Warner, Mayor