

CALL TO ORDER and ROLL CALL

Mayor Warner called the May 26, 2009 Town Council Meeting to order at 7:31 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 12, 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. Life-Saving Medal Presentation - Chief Rick Holman of the Breckenridge Police Department and Chief Gary Green of the Red White and Blue Fire Department were present to recognize individuals involved in three life-saving incidents.

Chief Holman presented a Commendation for Public Service award to citizen Dick Carleton for his response and assistance at the scene of a serious head-on accident between a lodging shuttle bus and passenger car on Ski Hill Road on March 7. Mr. Carleton was the first on scene, recognized the severity of injuries, helped prevent further injuries, contacted emergency personnel and was able to provide the Police Department with additional information on the driver who fled the scene.

Chief Green then honored Officer Tyler Stonum of the Breckenridge Police Department. Officer Stonum was first on the scene of an incident at 400 S. French Street on March 6. Officer Stonum provided CPR until emergency personnel arrived. The firefighters went above and beyond, providing advanced lift support and employing creative problem solving to remove the person from their third floor unit using the ladder truck. Officer Stonum was presented with a Life Saving award from the Police Department. Fire Department responders included Chief Paul Kuhn, John Zeising, Chris Sutton and three other members who were unable to attend the meeting, Bobby Gertson, Brett Bonenberger, and Emmalee Moore.

Next honored was Grand Timber Lodge employee Laura Anderson who called 911 and initiated CPR on a 66-year old female in seizure and cardiac arrest. Also responding on this incident were Capt. Ryan Roberts, Steve Webster and Tally McNeil.

Chief Green noted that these people have all made a significant difference in the lives of individuals. In closing, he introduced the two board members present, Teresa Perkins and Wayne Randall.

B. Citizen's Comments - (Non-Agenda Items ONLY; 3 minute limit please) – Gene Dayton Nordic Center operator shared a cross section of a 132-year old lodge pole pine taken from the gondola lift line. Mr. Dayton would like to recycle the logs, and has been talking with the Town Council and Tim Casey about building a new nature/Nordic center.

CONTINUED BUSINESS

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

1. Council Bill No. 14, Series 2009 - AN ORDINANCE ADOPTING CHAPTER 13 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE CONCERNING SPECIAL EVENTS

Town Attorney Tim Berry explained this is the same ordinance as reviewed at a work session two weeks ago. The item was continued because of a publication issue that has now been resolved. There are two minor modifications proposed from first reading concerning denial of a permit for failure to pay for damages arising from a previous special event, and adding language authorizing suspension or revocation of a permit if the event poses a threat to town property.

Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Mr. Mamula moved to approve Council Bill No. 14, Series 2009 in the form presented in the agenda packet. Ms. McAtamney seconded the motion. The motion passed 7-0.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILL, SERIES 2009

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 reviewed proposed changes to the ordinance since it was last discussed on April 14 including: adding the definition of a "snag" to one dead standing tree per acre for wildlife habitat; clarification to the Intergovernmental Agreement process with Red White and Blue; establishing

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hours for inspections between 8 a.m. and 6 p.m.; clarifying how the defensible space plan may be amended if there is a scientific reason that warrants a change to plan; adding the words “or permit” with regard to clear cutting, noting the intent is not to permit clear cutting but to preserve buffers while still providing defensible space; evaluating each property individually; clarification to zone 1 and zone 2 to allow healthy trees that are well pruned and spaced; clarifications to the appeal process; adding a June 1, 2012 compliance date; adding language to waive the fee if no changes are needed after inspection; establishing a cost for non-compliance consistent with the mountain pine beetle ordinance; adding the June 1, 2012 deadline to “unlawful acts”; adding condition precedent to challenge; and including language to remove the Town from certain liabilities from creation of defensible space. There was some discussion about waiving the permit fees for first year of the program. The Town would be required to compensate Red White and Blue for staff resources, estimated to be approximately \$23,000 for the first year.

Mayor Warner questioned the June 1, 2012 compliance date. Mr. Berry suggested July 1, 2012 which would allow three full years. Mr. Bergeron asked the Fire Chief his opinion on the importance of these measures. Chief Green believes this is critical, noting that homes can be saved by the action of firefighters, the preparedness of homeowners ahead of time, and that defensible space is key to saving homes in the case of wildfire. Mr. Rossi asked about the fire district boundaries (Hoosier Pass to Frisco), and suggested if the district has the authority to implement these provisions through the fire code, perhaps they should consider it. In that way, Blue River and the County properties could also be included. Chief Green responded that Red White and Blue relies on property tax and the majority comes from the Town; the County has had a mitigation code in place since 1992, though it is somewhat weaker; the Fire Code can address this to a certain degree, but with all the planning issues, it is felt that the Town could handle it better. Mr. Rossi asked if there were other communities that have enacted retroactive provisions to address the entire community, and not just new construction. Chief Green was not aware of other communities, but feels he is a resident of a progressive community that learns from disasters and that has the foresight to prepare better than some other communities, rather than waiting for a catastrophic fire to occur. Due to the forest health, increased tourism – this is the most visited forest in country, and age of the forest he believes there is considerable risk.

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

Mayor Warner opened the hearing for audience comments.

Ed Nolan explained that he will be affected by the proposed ordinance. He believes the Fire Chief is right about wildfires in California, where there are Santa Ana winds and no rain from January to December, but believes that those types of fires do not occur in Summit County because it is an entirely different type of climate. Mr. Nolan believes the latest ordinance modifications are a giant leap backwards from a homeowner perspective, and that the Town is trying to make a landowner destroy his own property, at his expense, and pay a permit fee to do so. Mr. Nolan was concerned about the amount of discretion given to the Director to amend the defensible space plan, based on scientific data. He noted that the word “ALL” was deleted from many sentences on Page 8. He was very concerned that only the Director gets to determine what “well spaced” means.

John Quigley, of the Shock Hill Association, struggled with the fact that he purchased his lot for the trees and under the current plan he will lose about 37 trees. No one wants to be forced to cut down trees, but given the chance to cut down a tree to save a life, he would rather not put people at risk if it can be prevented. Mr. Quigley has been involved since the beginning and realized it has been an arduous process, but a consensus process as well. He was concerned with how his association would react, but was surprised that 36 of 37 owners agreed to participate. He urged the Council to make the right decision.

Mr. Mamula suggested changes for second reading to include clarification of “well-spaced” in zone 1 and 2 language, and to add an exemption for irrigated landscaping, provided as part of an approved and required landscaping plan.

Ms. McAtamney understands people’s pain over this, but after reflecting, believes it comes back to a life and safety issue, and as an elected official, she must protect and preserve the community. This is a tool to keep people safe and when faced with this choice, Ms. McAtamney feels it is clear that she must support this ordinance.

Mr. Millisor feels similar to Ms. McAtamney that this is a life safety issue. He felt the public input in the process has been excellent, that we have come a long way with this ordinance, and are creating a safe community and homes, while providing flexibility. Mr. Millisor had a problem with not charging an inspection fee and doesn’t feel the community should subsidize individual landowners.

Mr. Rossi agreed with Mr. Mamula. He also felt that some of the language concerning “scientific data” seemed rather vague. Mr. Rossi agreed that this has been a long process, and that this is an example of an issue where public involvement creates a better ordinance. The philosophy of defensible space is wise and proven, but Mr. Rossi’s issue is with the mandatory nature of ordinance, and some issue with the timing and the fact that no other community in Colorado has a retroactive ordinance. Mr. Rossi would prefer to see that the mountain pine beetle ordinance has a chance to work, before adding another ordinance. Mr. Rossi appreciated the input and opinions, but he is not ready for it.

Mr. Joyce felt the public process has worked out well and that a lot of public input has been incorporated into the ordinance. He has lived through a catastrophic fire and seen the effect on areas without defensible space, noting there was loss of life in that fire. Therefore, Mr. Joyce is predisposed to an ordinance like this and cannot overlook the opportunity to prevent that from happening here. Mr. Joyce also agreed with Mr. Millisor that the Town should not be burdened with the permit fees.

Mr. Bergeron will choose to err on the side of information, noting his reasons for it are based on science and public safety. He can see both sides of the issue but has to side with the people who do this for a living. Mr. Bergeron was not in favor of absorbing the permit fee. He was gone on many site visits and does not feel the ordinance would be onerous.

Mr. Mamula does not disagree with the premise, noting he has had to cut some trees down and agrees in principle with the philosophy of defensible space. He noted some of the flexibility built into the ordinance has led to potential arbitrary and ambiguous language. Mr. Mamula believes this ordinance is better than the original, but has lost some of the “buffer” language between homes and the intent to preserve healthy trees. He would like to see some of the original language included in the “intent” chapter for second reading. Mr. Mamula believes the fire department and staff have done a great job getting to this point, but he does not agree with ordinance. Mr. Mamula understands the reason to make this mandatory, but as a property owner whose property abuts the county, he believes it defeats the purpose unless everyone does it. Mr. Mamula would rather the requirements be voluntary and would like to think that everyone would do this.

Mayor Warner thanked everyone for their comments. He will vote in favor of the ordinance. Mayor Warner agreed that this is not California and he doesn't know much about fires, but knows that the professionals here have provided unbiased advice. He appreciates the staff's, Red White and Blue's and the public's input. Mr. Warner was clear that he did not want to ever hear about a Town staff member being “attacked” at a grocery store, in public again, and that staff doesn't deserve disrespect. Mayor Warner does not have a concern that there will be a loss of continuity in interpretation in the future. He does struggle with fact that the Town is surrounded by county and forest service land and that the system does not hold up unless all entities get involved.

The motion passed 5-2, with Mr. Mamula and Mr. Rossi voting “no”. Mayor Warner reminded those in attendance that the public hearing will be in two weeks.

The meeting recessed at 8:45 p.m.
The meeting reconvened at 8:48 p.m.

PLANNING MATTERS

A. Planning Commission Decisions of May 19, 2009

With no requests for call up, Mayor Warner stated the Planning Commission decisions of the May 19, 2009 meeting would stand as presented. Mr. Mamula expressed concern that the Vail Gondola Lot Master Plan will come to the Town Council as one very large application. If possible, he would like to see it as a scheduled event.

B. Report of Planning Commission Liaison

Mayor Warner had no report.

REPORT OF TOWN MANAGER AND STAFF

Mr. Gagen reported that the joint meeting with the Breckenridge Open Space Advisory Commission has been rescheduled to the Town Council's second meeting in June.

REPORT OF MAYOR AND COUNCILMEMBERS

A. **CAST/MMC** (Mayor Warner) – Mayor Warner reported the next meeting is June 4.

B. **Breckenridge Open Space Advisory Commission** (Mr. Joyce) – Mayor Warner and Mr. Bergeron reported. Mr. Berry conducted training on conflict of interest and executive session. Mayor Warner noted that email communications that discuss content and which occur between three or more members may be in violation of the Open Meeting Act. Jeff Cospolich was named Vice Chair; Dennis Kuhn is the Chairman. The Summit Huts proposal to construct a hut in the Black Gulch area jointly owned by the Town and County was discussed. Mr. Montepare will get clarification on whether there is a problem with building a structure on County open space land. Some forest fuels are being removed from the “White Wolf” area. Discussion took place about features such as berms and air being added to some Town trails and perhaps that maintenance should be the first priority for dollars spent. There was then discussion about what level of development and marketing of backcountry use for mountain biking is the Council comfortable with. Council would like to discuss this issue with BOSAC to find a common ground for use – regionally significant vs. mountain biking mecca. Mayor Warner would also like to reach an understanding of what the level of management of the trail system should be – are there signs at every intersection or just a trailhead sign and map? Mayor Warner also wondered if BOSAC should take on more of a planning role for events such as granting permits, and if they should be involved in promoting/marketing events. Council would like to see BOSAC provide more guidance to the Town Council on open space acquisitions, particularly as it relates to the percent of Town ownership with the County, for instance when the Town purchased a 25 percent interest in a property near Hoosier Pass, rather than a 50/50 split.

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- C. **Breckenridge Resort Chamber** (Ms. McAtamney) – The meeting is tomorrow.
- D. **Summit Combined Housing Authority** (Mr. Millisor) – The meeting is tomorrow.
- E. **Breckenridge Heritage Alliance** (Mr. Bergeron) – The next meeting is in June.
- F. **Neighborhood Preservation** (Eric Mamula) – Mr. Mamula missed the meeting due to a scheduling conflict. He thinks the process will be great.
- G. **Sustainability** (Rob Millisor) – The next meeting is on Friday.
- H. **Peak 6 Task Force** (Mr. Bergeron) – The next meeting will take place during the first week in June.

OTHER MATTERS

Ms. McAtamney took donations for a gift.

Mr. Bergeron met with people from Sensible Colorado who propose to decriminalize cannabis for adults over 21 years of age. The group is prepared for a ballot issue. Mr. Bergeron asked if the Council was interested in proposing an ordinance. He noted that in 2006, a state-wide vote did not pass, but 72% of Breckenridge voters were in favor of the issue. Mr. Gagen clarified that the Council could propose an ordinance or place a question on the ballot without a petition. In that way, the Council can decide on the language. It was believed that Denver and Pitkin County have already approved similar measures.

Mr. Mamula noted a building foundation that is not built on and has been sitting that way for over a year. If this is going to happen more frequently because of the economic realities, he would like to see foundations fenced and secured. Mr. Gagen suggested it could be defined in the nuisance code. An executive session to discuss water matters will be scheduled at the next meeting.

Mr. Joyce noted some problems with enforcement of real estate open house signs, after seeing six signs for one open house on Four O'clock Road. Mayor Warner added that he saw two non-conforming signs in the Weisshorn. Staff will follow up with the realtor association to help with enforcement.

Mr. Rossi noted that some seasonal decorations and lighting are still up along Main Street and that they look pretty bad. He has also seen quite a few instances of camping along French Gulch Road for the past two weekends. Mr. Rossi asked about a lot in Vista Point that is being used as a construction staging area.

Mayor Warner brought a nice letter from Rebecca Johnson to the Council's attention. Ms. Johnson is very pleased with the Town scholarship program. Gene Dayton is talking with Tim Casey about the nature/Nordic center. Mr. Warner would like to hear what the Town Attorney and Police Chief think about the Sensible Colorado issue.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 9:42 p.m.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor