



TOWN OF
BRECKENRIDGE

Town Council Regular Meeting

Tuesday, July 27, 2021, 7:00 PM

Town Hall Council Chambers

150 Ski Hill Road

Breckenridge, Colorado

THE TOWN OF BRECKENRIDGE IS NOW HOLDING HYBRID MEETINGS. THIS MEETING WILL BE HELD IN PERSON AT BRECKENRIDGE TOWN HALL. ALL MEMBERS OF THE PUBLIC ARE INVITED TO ATTEND. MASKS ARE RECOMMENDED FOR UNVACCINATED INDIVIDUALS. IN PERSON ATTENDEES MUST NOT ACCESS THE VIRTUAL MEETING WHILE IN COUNCIL CHAMBERS. This meeting will also be broadcast live over Zoom. Log-in information is available in the calendar section of our website: www.townofbreckenridge.com. Questions and comments can be submitted prior to the meeting to Mayor@townofbreckenridge.com.

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF MINUTES

A. TOWN COUNCIL MINUTES - JULY 13, 2021

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS TO COUNCIL

A. CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

B. BRECKENRIDGE CREATIVE ARTS UPDATE

V. CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILLS, SERIES 2021

1. *COUNCIL BILL NO. 18, SERIES 2021 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODES OF THE TOWN OF BRECKENRIDGE BY ADOPTING BY REFERENCE THE NATIONAL ELECTRICAL CODE, 2020 EDITION*

2. *COUNCIL BILL NO. 19, SERIES 2021 - AN ORDINANCE AMENDING SECTION 4-1-8-1 OF THE BRECKENRIDGE TOWN CODE CONCERNING UNREASONABLE NOISE EMANATING FROM AN ACCOMMODATION UNIT*

3. *COUNCIL BILL NO. 20, SERIES 2021 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH ZACHARY DAVID HIMMELMAN AND TARYN ELIZABETH POWER (63 Bridge Street)*

VI. NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2021

1. *COUNCIL BILL NO. 21, SERIES 2021 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," CONCERNING RECREATIONAL AND LEISURE AMENITY CLUBS; AND AMENDING CHAPTER 3 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE OFF STREET PARKING ORDINANCE," CONCERNING REQUIRED OFF STREET PARKING FOR RECREATIONAL AND LEISURE AMENITY CLUBS*

B. RESOLUTIONS, SERIES 2021

1. *RESOLUTION NO. 18, SERIES 2021 - A RESOLUTION APPROVING THE EMPLOYMENT OF SQUIRE PATTON BOGGS LLP AS SPECIAL COUNSEL*

C. OTHER

VII. PLANNING MATTERS

- A. PLANNING COMMISSION DECISIONS

VIII. REPORT OF TOWN MANAGER AND STAFF

IX. REPORT OF MAYOR AND COUNCIL MEMBERS

A. CAST/MMC (MAYOR MAMULA)

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MS. GIGLIELLO)

C. BRECKENRIDGE TOURISM OFFICE (MR. KUHN)

D. BRECKENRIDGE HERITAGE ALLIANCE (MR. KUHN)

E. BRECKENRIDGE CREATIVE ARTS (MS. OWENS)

F. BRECKENRIDGE EVENTS COMMITTEE (MS. SAADE)

G. CHILD CARE ADVISORY COMMITTEE (MS. OWENS)

H. WORKFORCE HOUSING COMMITTEE (MR. CARLETON)

I. SOCIAL EQUITY ADVISORY COMMISSION (MS. SAADE, MR. CARLETON, MS. GIGLIELLO)

X. OTHER MATTERS

XI. SCHEDULED MEETINGS

- A. SCHEDULED MEETINGS FOR JULY, AUGUST AND SEPTEMBER

XII. ADJOURNMENT

D) CALL TO ORDER, ROLL CALL

Mayor Mamula called the meeting of July 13, 2021 to order at 7:00pm. The following members answered roll call: Ms. Saade, Ms. Gigliello, Mr. Carleton, Mr. Kuhn, Mr. Bergeron, Ms. Owens and Mayor Mamula.

II) APPROVAL OF MINUTES

A) TOWN COUNCIL MINUTES – JUNE 22, 2021

With no changes or corrections to the meeting minutes of June 22, 2021 Mayor Mamula declared they would stand approved as presented.

III) APPROVAL OF AGENDA

Mr. Holman stated there were no changes to the agenda. Mayor Mamula declared the agenda approved as presented.

IV) COMMUNICATIONS TO COUNCIL

A) CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

Mayor Mamula opened Citizen's Comment. Meeting attendees were encouraged to email their comments in advance of the meeting to the Mayor.

There were no comments and Citizen's Comment was closed.

B) BRECKENRIDGE TOURISM OFFICE UPDATE

Ms. Lucy Kay, director of the BTO, asked Council if it had questions or comments about the new Oktoberfest idea. She clarified that there were challenges with the number of vendors, staffing and on several other levels. Ms. Kay stated that for June the Town ended up at 38% occupancy compared to 40% in 2019. She further stated occupancy is tracking fairly normally, but the busy feeling the Town is experiencing is due to day visitors, and not correlated to lodging occupancy. Ms. Kay stated they have started a "Better Breckenridge" group and are weaving the stewardship and kindness messages into that, with the hope that it will invite people to Breckenridge who will treat the community the way we do. Mr. Bergeron asked how we quantify day visitors, and Ms. Kay said they are working on that.

V) CONTINUED BUSINESS

A) SECOND READING OF COUNCIL BILLS, SERIES 2021 - PUBLIC HEARINGS

1) COUNCIL BILL NO. 16, SERIES 2021 - AN ORDINANCE AMENDING SECTION 9-1-5 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," CONCERNING THE MEASUREMENT OF BUILDING HEIGHT IN FLOODPLAIN AREAS IN LAND USE DISTRICTS 31 AND 43

Mayor Mamula read the title into the minutes. Mr. Mark Truckey stated there were no changes to this ordinance from first reading.

Mayor Mamula opened the public hearing.

There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 16, SERIES 2021 - AN ORDINANCE AMENDING SECTION 9-1-5 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," CONCERNING THE MEASUREMENT OF BUILDING HEIGHT IN FLOODPLAIN AREAS IN LAND USE DISTRICTS 31 AND 43. Mr. Kuhn seconded the motion.

The motion passed 7-0.

2) COUNCIL BILL NO. 17, SERIES 2021 - AN ORDINANCE CONCERNING A FOR RENT WORKFORCE HOUSING PROJECT AND IN CONNECTION THEREWITH AUTHORIZING THE PROJECT, THE LEASING OF CERTAIN TOWN PROPERTY, AND THE EXECUTION AND DELIVERY OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, AND OTHER DOCUMENTS

Mayor Mamula read the title into the minutes. Ms. Leslie Edwards stated there were no changes to this ordinance from first reading.

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

Mr. Bergeron moved to approve COUNCIL BILL NO. 17, SERIES 2021 - AN ORDINANCE CONCERNING A FOR RENT WORKFORCE HOUSING PROJECT AND IN CONNECTION THEREWITH AUTHORIZING THE PROJECT, THE LEASING OF CERTAIN TOWN PROPERTY, AND THE EXECUTION AND DELIVERY OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, AND OTHER DOCUMENTS. Ms. Saade seconded the motion.

The motion passed 7-0.

VI) NEW BUSINESS

- A) FIRST READING OF COUNCIL BILLS, SERIES 2021
- 1) COUNCIL BILL NO. 18, SERIES 2021 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODES OF THE TOWN OF BRECKENRIDGE BY ADOPTING BY REFERENCE THE NATIONAL ELECTRICAL CODE, 2020 EDITION
Mayor Mamula read the title into the minutes. Mr. Truckey stated this ordinance would amend Town Code by adopting the 2020 National Electrical Code. He further stated this is a routine update, which is typically done every three years.

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

Mr. Bergeron moved to approve COUNCIL BILL NO. 18, SERIES 2021 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE BUILDING CODES OF THE TOWN OF BRECKENRIDGE BY ADOPTING BY REFERENCE THE NATIONAL ELECTRICAL CODE, 2020 EDITION. Mr. Carleton seconded the motion.

The motion passed 7-0.

- 2) COUNCIL BILL NO. 19, SERIES 2021 - AN ORDINANCE AMENDING SECTION 4-1-8-1 OF THE BRECKENRIDGE TOWN CODE CONCERNING UNREASONABLE NOISE EMANATING FROM AN ACCOMMODATION UNIT
Mayor Mamula read the title into the minutes. Ms. Shannon Haynes stated this ordinance would address noise coming from short term rentals. She stated this ordinance would change the qualifications of a noise violation as tied to Town Code and our noise ordinance, and details are included in the memo in the packet.

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

Mr. Bergeron moved to approve COUNCIL BILL NO. 19, SERIES 2021 - AN ORDINANCE AMENDING SECTION 4-1-8-1 OF THE BRECKENRIDGE TOWN CODE CONCERNING UNREASONABLE NOISE EMANATING FROM AN ACCOMMODATION UNIT. Ms. Gigliello seconded the motion.

The motion passed 7-0.

- 3) COUNCIL BILL NO. 20, SERIES 2021 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH ZACHARY DAVID HIMMELMAN AND TARYN ELIZABETH POWER (63 Bridge Street)
Mayor Mamula read the title into the minutes. Ms. Julia Puester stated this development agreement would allow for a bonus room to be constructed in the Wellington Neighborhood. She further stated staff will make the changes recommended in the Work Session before second reading.

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

Mr. Bergeron moved to approve COUNCIL BILL NO. 20, SERIES 2021 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH ZACHARY

DAVID HIMMELMAN AND TARYN ELIZABETH POWER (63 Bridge Street). Ms. Carleton seconded the motion.

The motion passed 7-0.

- B) RESOLUTIONS, SERIES 2021
- 1) RESOLUTION NO. 16, SERIES 2021 - A RESOLUTION MAKING SUPPLEMENTAL AND REDUCED APPROPRIATIONS TO THE 2021 TOWN BUDGET

Mayor Mamula read the title into the minutes. Ms. Edwards stated this resolution would change the appropriations to the Town's budget as a result of the issuance of COPs. She stated the details of this resolution are included in the memo in the packet.

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

Mr. Bergeron moved to approve RESOLUTION NO. 16, SERIES 2021 - A RESOLUTION MAKING SUPPLEMENTAL AND REDUCED APPROPRIATIONS TO THE 2021 TOWN BUDGET. Ms. Gigliello seconded the motion.

The motion passed 7-0.

- 2) RESOLUTION NO. 17, SERIES 2021 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN, SUMMIT COUNTY GOVERNMENT, THE TOWN OF BLUE RIVER, AND THE STATE OF COLORADO, DEPARTMENT OF TRANSPORTATION

Mayor Mamula read the title into the minutes. Mr. James Phelps, Public Works Director, stated this resolution would approve an IGA with the Colorado Department of Transportation to allow for specific vehicular access of Highway 9.

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

Mr. Bergeron moved to approve RESOLUTION NO. 17, SERIES 2021 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN, SUMMIT COUNTY GOVERNMENT, THE TOWN OF BLUE RIVER, AND THE STATE OF COLORADO, DEPARTMENT OF TRANSPORTATION. Ms. Saade seconded the motion.

The motion passed 7-0.

- C) OTHER

VII) PLANNING MATTERS

- A) PLANNING COMMISSION DECISIONS

Mayor Mamula declared the Planning Commission Decisions would stand approved as presented.

VIII) REPORT OF TOWN MANAGER AND STAFF

No report.

IX) REPORT OF MAYOR AND COUNCIL MEMBERS

- A. CAST/MMC (MAYOR MAMULA)
Mayor Mamula stated there was no report.
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MS. GIGLIELLO)
Ms. Gigliello stated there was no report.
- C. BRECKENRIDGE TOURISM OFFICE (MR. KUHN)
Mr. Kuhn stated there was a recent Washington Post article about Breckenridge, and essential workers attended the parade on the lawn of the Barney Ford House.
- D. BRECKENRIDGE HERITAGE ALLIANCE (MR. KUHN)
Mr. Kuhn stated there was no additional update.
- E. BRECKENRIDGE CREATIVE ARTS
Ms. Owens stated the Airstage came to Wellington Neighborhood and it was well received.
- F. BRECKENRIDGE EVENTS COMMITTEE (MS. SAADE)

- Ms. Saade stated the report was covered during the afternoon work session.
- G. CHILD CARE ADVISORY COMMITTEE (MS. OWENS)
Ms. Owens stated there was no report.
- H. WORKFORCE HOUSING COMMITTEE (MR. CARLETON)
Mr. Carleton stated there was no report.
- J. SOCIAL EQUITY ADVISORY COMMISSION
Ms. Saade stated Monday's meeting is open to the public and available on Zoom.

X) OTHER MATTERS

Ms. Saade stated there is a change in the resident population and she is wondering about ways to engage these new members in our community. She further stated some ideas include a trail building event or volunteering and then a Q&A with the Council. Mayor Mamula further stated we are losing a segment of the population that used to be very involved in local non-profits, and there are many new residents who come from other places where it is not as critical to the community to be involved. Ms. Gigliello stated it may be difficult to try to find these people, and they may be looking for information about the Town. Mr. Bergeron stated maybe a hike in Cucumber Gulch with information would be a good idea.

Mr. Kuhn asked about the new Little Mountain Trail, and Mr. Scott Reid explained it will be done by the end of the summer and will be hiking only.

Ms. Gigliello stated the Backstage Theater play is very good, and the NRO is doing well.

Mr. Carleton stated he has had alot of people approach him about a building height or size ordinance, and Mayor Mamula stated the easiest thing would be to bring back the home size restriction ordinance the Town already worked on.

Mayor Mamula stated the Coopers are leaving to move to Arizona and Mrs. Cooper would like to give a statue to the Town called Bird Lady. He further stated Ms. Tamara Park from the BCA will coordinate the statue and placement if Council approves. Council agreed with the idea and Ms. Gigliello stated she thought this would be a nice idea as we don't have many women-oriented statues around Town.

XI) SCHEDULED MEETINGS

- A) SCHEDULED MEETINGS FOR JULY, AUGUST AND SEPTEMBER

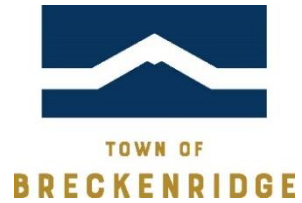
XII) ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:43pm. Submitted by Helen Cospolich, CMC, Town Clerk.

ATTEST:

Helen Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor



Memo

To: Mayor and Town Council Members
From: Tim Berry, Town Attorney
Date: July 20, 2021 (for July 27th meeting)
Subject: Council Bill No. 18 (adopting 2020 National Electrical Code)

The second reading of the ordinance adopting by reference the 2020 National Electrical Code is scheduled for your meeting on July 27th. There are no changes proposed to ordinance from first reading.

I will be happy to discuss this matter with you on Tuesday.

1 ***FOR WORKSESSION/SECOND READING – JULY 27***

2
3 ***NO CHANGE FROM FIRST READING***

4
5 Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 18

9
10 Series 2021

11
12
13 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE
14 TOWN CODE CONCERNING THE BUILDING CODES OF THE TOWN OF
15 BRECKENRIDGE BY ADOPTING BY REFERENCE THE NATIONAL ELECTRICAL
16 CODE, 2020 EDITION

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

20
21 Section 1. Item H in the list of codes adopted by reference in Section 8-1-3 of the
22 Breckenridge Town Code is amended as follows:

23
24 H. National Electrical Code, ~~2017~~**2020** Edition, published by the National Fire
25 Protection Association.

26
27 Section 2. Section 8-1-11 of the Breckenridge Town Code is amended to read as follows:

28
29 8-1-11: AMENDMENTS TO THE NATIONAL ELECTRICAL CODE: There
30 are no amendments to the National Electrical Code, ~~2017~~**2020** edition.

31
32 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
33 various secondary codes adopted by reference therein, shall continue in full force and effect.

34
35 Section 4. The Town Council finds, determines, and declares that it has the power to
36 adopt this ordinance pursuant to: (i) Section 31-15-601, C.R.S.; (ii) Section 5.13 of the
37 Breckenridge Town Charter; and (iii) the powers granted to home rule municipalities by Article
38 XX of the Colorado Constitution.

39
40 Section 5. This ordinance shall be published and become effective as provided by Section
41 5.9 of the Breckenridge Town Charter.

42
43 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
44 PUBLISHED IN FULL this ____ day of _____, 2021. A Public Hearing shall be held at the

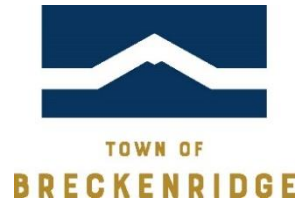
1 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
2 ____, 2021, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
3 Town. A copy of the adopted code is available for inspection at the office of the Town Clerk.

4
5 TOWN OF BRECKENRIDGE, a Colorado
6 municipal corporation
7

8
9
10 By: _____
11 Eric S. Mamula, Mayor
12

13 ATTEST:
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17 _____
18 Helen Cospolich, CMC,
19 Town Clerk
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Memo

To: Mayor and Town Council Members
From: Tim Berry, Town Attorney
Date: July 20, 2021 (for July 27th meeting)
Subject: Revised Accommodation Unit Noise Ordinance

The second reading of the ordinance amending the BOLT Ordinance concerning noise emanating from an accommodation unit is scheduled for your meeting on July 27th. There are no changes proposed to ordinance from first reading.

I will be happy to discuss this matter with you on Tuesday.

1 **FOR WORKSESSION/SECOND READING – JULY 27**

2
3 **NO CHANGE FROM FIRST READING**

4
5 Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 19

9
10 Series 2021

11
12 AN ORDINANCE AMENDING SECTION 4-1-8-1 OF THE BRECKENRIDGE TOWN CODE
13 CONCERNING UNREASONABLE NOISE EMANATING
14 FROM AN ACCOMMODATION UNIT

15
16 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
17 COLORADO:

18
19 Section 1. Section 4-1-8-1(A)(3) of the Breckenridge Town Code is amended to read as
20 follows:

21
22 **4-1-8-1: SPECIAL CONDITIONS OF LICENSE - ALL**
23 **ACCOMMODATION UNITS:**

24
25 A. Special Conditions: Except as provided in subsection G of this section, in
26 addition to the other requirements of this chapter, the owner of an accommodation
27 unit licensed pursuant to this chapter shall, as a condition of such license, be
28 subject to the following requirements:

29
30 . . .

31
32 ~~3. While occupying an accommodation unit, no person shall: a) make, cause or~~
33 ~~control unreasonable noise upon the accommodation unit which is audible upon a~~
34 ~~private premises that such occupant has no right to occupy in violation of~~
35 ~~subsection 6-3C-1A2 of this Code, or b) violate title 5, chapter 8 of this Code. **No**~~
36 ~~**unreasonable noise shall be permitted to emanate from an accommodation**~~
37 ~~**unit or the real property upon which an accommodation unit is located. In**~~
38 ~~**determining whether a particular noise is unreasonable, the Hearing Official**~~
39 ~~**shall consider: (i) the time of the day that the noise emanated from the**~~
40 ~~**accommodation unit; (ii) the location of the noise in relation to the location of**~~
41 ~~**the person who heard such noise; and (iii) all other relevant factors.**~~

42
43 ~~4. No accommodation unit shall be operated in such a manner as to constitute a~~
44 ~~nuisance pursuant to title 5, chapter 1 of this Code. **DELETED**~~

1
2 Section 2. Section 4-1-8-1(B) of the Breckenridge Town Code is amended to read as
3 follows:
4

5 B. Owner Liable: Compliance with the special conditions set forth in Subsection A of
6 this Section shall be the nondelegable responsibility of the owner of an
7 accommodation unit; and each owner of an accommodation unit shall be strictly
8 liable for **any violation of the special** ~~complying with the~~ conditions set forth in
9 Subsection A of this Section **occurring on the premises of the owner's**
10 **accommodation unit.**
11

12 Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the
13 various secondary codes adopted by reference therein, shall continue in full force and effect.
14

15 Section 4. The Town Council hereby finds, determines and declares that this ordinance is
16 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
17 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
18 thereof.
19

20 Section 5. The Town Council finds, determines, and declares that it has the power to
21 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
22 of the Colorado Constitution, and, particularly, Section 12.1 of the Breckenridge Town Charter.
23

24 Section 6. This ordinance shall be published and become effective as provided by Section
25 5.9 of the Breckenridge Town Charter.
26

27 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
28 PUBLISHED IN FULL this ____ day of _____, 2021. A Public Hearing shall be held at the
29 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of
30 _____, 2021, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
31 Town.
32

33 TOWN OF BRECKENRIDGE, a Colorado
34 municipal corporation
35

36
37 By: _____
38 Eric S. Mamula, Mayor
39

40 ATTEST:
41
42

43 _____
44 Helen Cospolich, CMC,
45 Town Clerk
46

47 4-3-11 Accommodation Unit Noise Ordinance Amendment_5 (07-21-21)(Second Reading)



Memo

To: Town Council

From: Chapin LaChance, AICP
Planner II, Community Development Dept.

Date: 7/21/2021

Subject: Second Reading of proposed Development Agreement between the Town of Breckenridge and Taryn Power/Zachary Himmelman regarding proposed bonus room at 63 Bridge St. (Wellington 2 Sub #1 Block 5 Lot 29A)

The Council reviewed Taryn Power and Zachary Himmelman's application for a Development Agreement at the July 13th meeting and approved the draft of the ordinance on first reading, with a minor requested revision. The attached Ordinance and Development Agreement have been prepared by the Town Attorney for the Council's review.

Since the first reading, paragraph H of the Ordinance and paragraph 5 of the Development Agreement have been revised to provide clarity that the rent for the bonus room shall be capped at 80% AMI. The occupant does not need to meet the 80% AMI (e.g. they could exceed the 80% AMI with their income). The Housing Division has also provided the attached Restrictive Covenant to be recorded for the Bonus Room. The Covenant that has been drafted for Bonus Rooms in Phase 2 of Wellington, including Lincoln Park, includes the specific changes that have been discussed including:

- the Bonus Room be occupied by a Qualified Occupant,
- the rent will be capped at 80% AMI,
- specific allowance for the additional Capital Improvement,
- the Bonus Room must be occupied and not be left vacant or used for other purpose, and
- a provision from our more current Restrictive Covenants to require the unit be in good condition at the time of resale.

The Housing Manager is not recommending any additional changes at this time, so all other restrictions from the Wellington Phase 2 Covenant will apply and are not changed. Among other things, that includes the real estate commission of 3% and very specific and generous income caps that were established for Wellington Phase 2. If this Bonus Room were in Phase 1 of Wellington, then staff would recommend additional changes to address issues and deficiencies with the Phase 1 Covenant, particularly related to the real estate commission allowance which is quite high in Phase 1. It should be noted that the Housing Manager is working on upgraded Restrictive Covenant templates for both Phase 1 and Phase 2 of Wellington that will include some provisions/incentive for maintenance and hope to have those new templates later in 2021 for owners to consider as an opt in.

Staff has provided below the approximate value of fees which are requested by the applicants to be waived. These estimates are provided using rates for the year 2020 and are subject to increase annually.

- Development Agreement application fee (\$6,050),
- Development Permit application fee (\$1,790),
- Building Division fees (\$3,000 estimated),
 - Building Permit application
 - Building Permit plan review fee
 - Mechanical Permit fee
 - Electrical Permit fee
 - Plumbing Permit fee
- Water Plant Investment Fee (no increase).
- Town to transfer 0.18 SFEs of density to the property (\$17,828 value),

The fee waivers above total approximately \$28,668.00.

Council Action

Approval of a Development Agreement is entirely at the discretion of the Council. Staff finds that the proposal enables the Town to attain a public benefit not otherwise required by the Development Code, and recommends the Council approve the Development Agreement on second reading.

1 ***FOR WORKSESSION/SECOND READING – JULY 27***

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

5
6 COUNCIL BILL NO. 20

7
8 Series 2021

9
10 AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
11 ZACHARY DAVID HIMMELMAN AND TARYN ELIZABETH POWER
12 (63 Bridge Street)

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

16
17 Section 1. Findings. The Town Council of the Town of Breckenridge finds and
18 determines as follows:

19
20 A. Zachary David Himmelman and Taryn Elizabeth Power (collectively, the “**Owner**”)
21 own the following described real property in the Town of Breckenridge, Summit County,
22 Colorado:

23
24 LOT 29A, BLOCK 5, RESUBDIVISION PLAT OF LOT 29, BLOCK 5,
25 WELLINGTON 2, FILING NO, 1, RECORDED MAY 25, 2007 AT
26 RECEPTION NO. 856372 OF THE RECORDS OF THE CLERK AND
27 RECORDER OF SUMMIT COUNTY, COLORADO;

28
29 also known as 63 Bridge Street, Breckenridge, Colorado 80424

30
31 (“**Property**”).

32
33 B. The Owner proposes to construct a 484 square feet bonus room addition above the
34 existing garage located on the Property. Such work is referred to in this ordinance as the
35 “**Project**.” The improvements to be constructed pursuant to the Project are referred to as the
36 “**Unit**.” The Unit is considered a “Bonus Room” under the Wellington Neighborhood Master
37 Plan.

38
39 C. A duplex residence is currently located on the Property. Owner owns one of the
40 duplex units as described above.

41
42 D. There is not sufficient density remaining on the Property to allow for the construction
43 of the Project. Therefore, a development agreement is necessary in order to authorize the Project.
44

1 E. A proposed development agreement between the Town and the Owner has been
2 prepared, a copy of which is marked **Exhibit “A”**, attached hereto and incorporated herein by
3 reference (“**Development Agreement**”).
4

5 F. The Town Council has received a completed application and all required submittals
6 for a development agreement; had a preliminary discussion of such application and submittals;
7 and determined that it should commence proceedings for the approval of the Development
8 Agreement.
9

10 G. The Town Council has reviewed the proposed Development Agreement.
11

12 H. As the commitment proposed by the Owner in connection with the Development
13 Agreement, the Owner will execute and deliver to the Town a Restrictive Covenant and
14 Agreement (“**Restrictive Covenant**”). The Restrictive Covenant shall provide that the Unit shall
15 be rented to and occupied only by a Qualified Occupant for a monthly rental (including utilities)
16 equal to or less than an amount that is affordable to individuals earning 80% or less of the
17 applicable Area Median Income **that does not exceed eighty percent (80%) of the Area**
18 **Median Income (AMI) for Breckenridge, Colorado (or if not available, for the Area**
19 **Median Income for Summit County, Colorado) most recently available immediately prior**
20 **to such Unit being rented.** Such proposed commitment is found and determined by the Town
21 Council to be adequate.
22

23 I. The approval of the proposed Development Agreement is warranted in light of all
24 relevant circumstances.
25

26 J. The procedures to be used to review and approve a development agreement are
27 provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such
28 Chapter have substantially been met or waived in connection with the approval of the proposed
29 Development Agreement and the adoption of this ordinance.
30

31 Section 2. Approval of Development Agreement. The Development Agreement between
32 the Town, Zachary David Himmelman and Taryn Elizabeth Power (**Exhibit “A”** hereto), is
33 approved, and the Town Manager is authorized, empowered, and directed to execute such
34 agreement for and on behalf of the Town of Breckenridge.
35

36 Section 3. Notice of Approval. The Development Agreement shall contain a notice in the
37 form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in
38 compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code shall be
39 published by the Town Clerk one time in a newspaper of general circulation in the Town within
40 fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of
41 Section 24-68-103, C.R.S.
42

43 Section 4. Police Power Finding. The Town Council finds, determines, and declares that
44 this ordinance is necessary and proper to provide for the safety, preserve the health, promote the
45 prosperity, and improve the order, comfort, and convenience of the Town of Breckenridge and
46 the inhabitants thereof.

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Section 5. Authority. The Town Council finds, determines, and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 6. Effective Date. 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 _____, 2021. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of _____, 2021, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

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1800-530\Development Agreement Ordinance (07-21-21)(Second Reading)

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EXHIBIT “A”

APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED
PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED
STATUTES, AS AMENDED

DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is made as of the ____ day of _____, 2021 (“**Effective Date**”) between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the “**Town**”), and ZACHARY DAVID HIMMELMAN and TARYN ELIZABETH POWER (collectively, the “**Owner**”). The Town and the Owner are sometimes collectively referred to in this Agreement as the “**Parties**,” and individually by name or as a “**Party**.”

Recitals

A. The Owner owns the following described real property in the Town of Breckenridge, Summit County, Colorado:

LOT 29A, BLOCK 5, RESUBDIVISION PLAT OF LOT 29, BLOCK 5, WELLINGTON 2, FILING NO, 1, RECORDED MAY 25, 2007 AT RECEPTION NO. 856372 OF THE RECORDS OF THE CLERK AND RECORDER OF SUMMIT COUNTY, COLORADO;

also known as 63 Bridge Street, Breckenridge, Colorado 80424

(“**Property**”).

B. The Owner proposes to construct a 484 square feet bonus room addition above the existing garage located on the Property. Such work is referred to in this Agreement as the “**Project**.” The improvements to be constructed pursuant to the Project are referred to as the “**Unit**.” The Unit is considered a “Bonus Room” under the Wellington Neighborhood Master Plan.

C. A duplex residence is currently located on the Property. Owner owns one of the duplex units as described above.

D. There is not sufficient density remaining on the Property to allow for the construction of the Project. Therefore, a development agreement is necessary in order to authorize the Project.

1
2 E. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has
3 the authority to enter into a development agreement.
4

5 F. The commitment proposed by the Owner in connection with this Agreement is set
6 forth hereafter and is found and determined by the Town Council to be adequate.
7

8 G. The Town Council has received a completed application and all required submittals
9 for a development agreement; had a preliminary discussion of such application and submittals;
10 determined that it should commence proceedings for the approval of this Agreement; and, in
11 accordance with the procedures set forth in Section 9-9-10(C) of the Breckenridge Town Code,
12 has approved this Agreement by non-emergency ordinance.
13

14 Agreement

15

16 1. Subject to the provisions of this Agreement, the Town's Planning Commission¹ is
17 hereby authorized to review and approve the Owner's Development Permit Application for the
18 Project ("**Development Permit Application**"), subject to compliance with all other applicable
19 development policies of the Town.
20

21 2. So long as the Development Permit Application is not materially amended prior to the
22 Planning Commission's final decision, the following provisions of the following policies of the
23 Town's Development Code² shall not be applied to the Development Permit Application:
24

- 25 A. Section 9-1-19-2A, "Policy 2 (Absolute) Land Use Guidelines";
- 26 B. Section 9-1-19-4R, "Policy 3 (Relative) Density/Intensity;" and
- 27 C. Section 9-1-19-4R, "Policy 4 (Relative) Mass."
28

29 3. In consideration of the Owner's commitments as described in Section 5 of this
30 Agreement, the Town agrees to provide, at no cost to the Owner, the 180 square feet of density
31 required for the Project. For avoidance of doubt, no negative points shall be assessed against the
32 Development Permit Application under either Section 9-1-19-3R, "Policy 3 (Relative)
33 Density/Intensity" or Section 9-1-19-4R, "Policy 4 (Relative) Mass," of the Breckenridge Town
34 Code with respect to the 180 square feet of density to be provided by the Town for the Project.
35

36 4. Except as specifically provided in Section 2, above, all other requirements of the
37 Development Code shall be applied to the Development Permit Application in accordance with

¹ The term "Planning Commission" as used in this Agreement includes the Town Council of the Town of Breckenridge, if the decision of the Planning Commission on the Development Permit Application is "called up" by the Town Council pursuant to Section 9-1-18-5 of the Development Code. In the event of a call up, the Town Council shall make the final decision on the Development Permit Application.

² Chapter 1 of Title 9 of the Breckenridge Town Code

1 the Planning Commission’s normal process for evaluating an application for a development
2 permit.

3
4 5. As the commitment encouraged to be made in connection with a Development Permit
5 Application for a development agreement pursuant to Section 9-9-4 of the Breckenridge Town
6 Code, prior to the issuance of a certificate of occupancy for the Project the Owner shall execute
7 and deliver to the Town a Restrictive Covenant and Agreement in substantially the form that is
8 marked **Exhibit “A”**, attached hereto, and incorporated herein by reference (“**Restrictive**
9 **Covenant**”). The Restrictive Covenant shall provide that the Unit shall be rented to and occupied
10 only by a Qualified Occupant for a monthly rental (including utilities) ~~equal to or less than an~~
11 ~~amount that is affordable to individuals earning 80% or less of the applicable Area Median~~
12 ~~Income~~ **that does not exceed eighty percent (80%) of the Area Median Income (AMI) for**
13 **Breckenridge, Colorado (or if not available, for the Area Median Income for Summit**
14 **County, Colorado) most recently available immediately prior to such Unit being rented.**
15

16 6. The Project shall not be considered to be an Accessory Dwelling Unit under the
17 Development Code.

18
19 7. An additional parking space is not required for the Project under the Town’s Off-
20 Street Parking Ordinance³ or the Wellington Neighborhood Master Plan that is applicable to the
21 Property.

22
23 8. The Town agrees to waive the following fees in connection with the Project (i) the
24 application fee for this Agreement; (ii) the application fee for the Development Permit; (iii) all
25 building permit (and inspection) fees; and (iv) the Plant Investment Fee (PIF).
26

27 9. Notwithstanding anything to the contrary contained in the Amended and Restated
28 Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement
29 dated March 25, 2014, and recorded May 23, 2014, at Reception No. 1055483 of the records of
30 the Clerk and Recorder of Summit County, Colorado, as amended, the Town agrees that when
31 the Owner sells the Property an amount equal to fifty percent (50%) of the cost of constructing
32 the Project, or Fifty Thousand Dollars (\$50,000.00), whichever amount is less, may be added to
33 the maximum amount for which the Property may be sold. No interest shall be allowed on such
34 amount. The Owner agrees to submit verification acceptable to the Town of the actual amount
35 spent to construct the Project.
36

37 10. The term of this Agreement shall commence on the Effective Date and shall end,
38 subject to earlier termination in the event of a breach of this Agreement, eighteen (18) months
39 from the Effective Date unless prior to such date the Development Permit Application has finally
40 been approved by the Town, and the development permit for the work on the Property has been
41 executed and signed by the Owner.
42

³ Chapter 3 of Title 9 of the Breckenridge Town Code

1 11. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided
2 for herein, the execution of this Agreement shall not preclude the current or future Development
3 Permit Application of municipal, state, or federal ordinances, laws, rules, or regulations to the
4 Property (collectively, “laws”), including, but not limited to, building, fire, plumbing,
5 engineering, electrical, and mechanical codes, and the Town’s Development Code, Subdivision
6 Standards⁴, and other land use laws, as the same may be in effect from time to time throughout
7 the term of this Agreement. Except to the extent the Town otherwise specifically agrees, any
8 development of the Property shall be done in compliance with the then-current laws of the Town.
9

10 12. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of
11 the Town to adopt or amend any Town law, including, but not limited to the Town’s: (i)
12 Development Code, (ii) Comprehensive Plan, (iii) Land Use Guidelines, and (iv) Subdivision
13 Standards.
14

15 13. This Agreement shall run with the title to the Property and be binding upon the
16 Owner and Owner’s successors and assigns.
17

18 14. Prior to any action against The Town for breach of this Agreement, the Owner shall
19 give the Town a sixty (60) day written notice of any claim of a breach or default by the Town,
20 and the Town shall have the opportunity to cure such alleged default within such time period.
21

22 15. The Town shall not be responsible for, and the Owner shall have any remedy against
23 the Town if the Project is prevented or delayed for reasons beyond the control of the Town.
24

25 16. The Owner not shall commence work on its Project until Owner obtains such other
26 and further Town permits and approvals as may be required from time to time by applicable
27 Town ordinances.
28

29 17. No official or employee of the Town shall be personally responsible for any actual or
30 alleged breach of this Agreement by the Town.
31

32 18. The Owner agrees to indemnify and hold the Town, its officers, employees, insurers,
33 and self-insurance pool, harmless from and against all liability, claims, and demands, on account
34 of injury, loss, or damage, including without limitation claims arising from bodily injury,
35 personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind
36 whatsoever, which arise out of or are in any manner connected with this Agreement, if such
37 injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in
38 part by, the negligence or intentional act or omission of the Owner; any subcontractor of the
39 Owner, or any officer, employee, representative, or agent of the Owner or of any subcontractor
40 of the Owner, or which arise out of any worker’s compensation claim of any employee of the
41 Owner, or of any employee of any subcontractor of the Owner; except to the extent such liability,
42 claim or demand arises through the negligence or intentional act or omission of the Town, its

⁴ Chapter 2 of Title 9 of the Breckenridge Town Code

1 officers, employees, or agents. The Owner agrees to investigate, handle, respond to, and provide
2 defense for and defend against, any such liability, claims, or demands at the sole expense of the
3 Owner. The Owner also agrees to bear all other costs and expenses related thereto, including
4 court costs and attorney's fees.
5

6 19. If any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall
7 not affect or impair the validity, legality, or enforceability of the remaining provisions of the
8 Agreement.
9

10 20. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24,
11 Colorado Revised Statutes, as amended.
12

13 21. No waiver of any provision of this Agreement shall be deemed or constitute a waiver
14 of any other provision, nor shall it be deemed to constitute a continuing waiver, unless expressly
15 provided for by a written amendment to this Agreement signed by the Parties; nor shall the
16 waiver of any default under this Agreement be deemed a waiver of any subsequent default or
17 defaults of the same type.
18

19 22. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit
20 County, Colorado.
21

22 23. Nothing contained in this Agreement shall constitute a waiver of the Town's
23 sovereign immunity under any applicable state or federal law.
24

25 24. Personal jurisdiction and venue for any civil action commenced by any Party to this
26 Agreement shall be deemed to be proper only if such action is commenced in the District Court
27 of Summit County, Colorado. The Owner expressly waives any right to bring such action in or to
28 remove such action to any other court, whether state or federal. **BOTH PARTIES WAIVE ANY
29 RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION TO ENFORCE, INTERPRET OR
30 CONSTRUE THIS AGREEMENT.**
31

32 25. Any notice required or permitted hereunder shall be in writing and shall be sufficient
33 if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:
34

35 If to the Town: Rick G. Holman, Town Manager
36 Town of Breckenridge
37 P.O. Box 168
38 Breckenridge, CO 80424
39

40 With a copy (which
41 shall not constitute
42 notice to the Town) to: Timothy H. Berry, Esq.
43 Town Attorney
44 P.O. Box 2

1 Leadville, CO 80461

2
3 If to the Owner:

Zachary David Himmelman
Taryn Elizabeth Power
P.O. Box 9896
Breckenridge, CO 80424

7
8 Notices mailed in accordance with the provisions of this Section 25 shall be deemed to have been
9 given upon delivery. Notices personally delivered shall be deemed to have been given upon
10 delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the
11 Colorado Rules of Civil Procedure for service of civil process.

12
13 26. This Agreement shall be interpreted in accordance with the laws of the State of
14 Colorado without regard to principles of conflicts of laws.

15
16 27. This Agreement constitutes the entire agreement and understanding between the
17 Parties relating to the subject matter of this Agreement and supersedes any prior agreement or
18 understanding relating to such subject matter.

19
20 TOWN OF BRECKENRIDGE, a Colorado
21 municipal corporation

22
23
24
25 By: _____
26 Rick G. Holman, Town Manager

27
28 ATTEST:

29
30
31
32 _____
33 Helen Cospolich, CMC, Town
34 Clerk

35
36
37 _____
38 Zachary David Himmelman

39
40
41 _____
42 Taryn Elizabeth Power

1 STATE OF COLORADO)
2) ss.
3 COUNTY OF SUMMIT)
4

5 The foregoing was acknowledged before me this ____ day of _____,
6 2021 by Rick G. Holman, as the Town Manager, and Helen Cospolich, CMC, as the Town Clerk,
7 of the Town of Breckenridge, a Colorado municipal corporation.
8

9 Witness my hand and official seal.

10
11 My commission expires: _____
12
13

14 _____
15 Notary Public
16

17
18
19
20 STATE OF COLORADO)
21) ss.
22 COUNTY OF SUMMIT)
23

24 The foregoing was acknowledged before me this ____ day of _____,
25 2021, by Zachary David Himmelman and Taryn Elizabeth Power.
26

27
28 Witness my hand and official seal.

29
30 My commission expires: _____
31
32

33 _____
34 Notary Public
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NOTE: ENTIRE EXHIBIT "A" IS NEW

EXHIBIT "A"

RESTRICTIVE COVENANT AND AGREEMENT
(Wellington Phase 2 Bonus Room)

THIS RESTRICTIVE COVENANT AND AGREEMENT ("Restrictive Covenant") dated _____, is between ZACHARY DAVID HIMMELMAN and TARYN ELIZABETH POWER (collectively, the "Owner") and the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town").

Recitals

A. Owner owns the real property situate described in Section 1 of this Restrictive Covenant.

B. Owner requested the Town to issue a development permit for the development of a 484 square foot Bonus Room above the existing garage located on the Property.

C. Town issued to Owner Development Permit No. _____ ("Development Permit").

D. As a condition of the Development Agreement, the Owner agreed to rent the Bonus Room to a Qualified Occupant at an affordable rent, and to accept other specific amendments to the Amended and Restated Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement dated March 25, 2014 and recorded in Summit County, Colorado on May 23, 2014.

E. It was a condition of the Development Permit that the Owner create a valid and enforceable covenant running with the land to insure the Bonus Room is rented to a qualified occupant at an affordable rent. The Amended and Restated Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement dated March 25, 2014 and recorded on May 23, 2015 at reception # 1055483 remains in full force and effect except as specifically amended in the Restrictive Covenant.

E. Owner declares and covenants that the regulatory and restrictive covenants contained in this Restrictive Covenant are covenants running with the land and are binding upon the Owner and all subsequent owners of the real property described in Section 1 unless this Restrictive Covenant is released and terminated by the Town.

NOW, THEREFORE, in consideration of the issuance of the Development Permit, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Owner, the Owner and the Town agree as follows:

1 1. Property Subject To Covenant. This Restrictive Covenant applies to the following
2 real property located in Summit County, Colorado:

3
4 Lot 29A, BLOCK 5, RESUBDIVISION PLAT OF LOT 29, BLOCK 5, WELLINGTON
5 2, FILING NO. 1 RECORDED MAY 25, 2007 AT RECEPTION NO. 856372 OF THE
6 RECORDS OF THE CLERK AND RECORDED OF SUMMIT COUNTY,
7 COLORADO; ALSO KNOWN AS 63 BRIDGE STREET, BRECKENRIDGE,
8 COLORADO 80424
9

10 2. Definitions. As used in this Restrictive Covenant:

11
12 **"Bonus Room"** means the approximately 483 square foot bonus room to be
13 constructed above the existing garage located on the Property pursuant to the
14 Development Agreement.
15

16 **"Original Covenant"** means the Amended and Restated Phase II Wellington
17 Neighborhood Employee Housing Restrictive Covenant and Agreement dated
18 March 25, 2014 and recorded on May 23, 2014 in Summit County at Reception
19 #1055482
20

21 **"Property"** means the real property described in Section 1 of this Restrictive
22 Covenant.
23

24 **"Qualified Occupant"** means a person 18 years of age or older who, during the
25 entire period of his or her occupancy of the Bonus Room, earns his or her living
26 working for a business located in and serving in Summit County, Colorado at
27 least 30 hours per week, together with such person's spouse and minor children, if
28 any.
29

30 **"Short Term Rental"** means any rental, lease, or occupancy of the Bonus Room for a
31 term of less than three (3) consecutive months.
32

33 3. Occupancy Restriction. Except as provided in Section 6, the Bonus Room shall be
34 rented to and used and occupied only by a Qualified Occupant. The Bonus Room may not be left
35 vacant for a period of thirty (30) or more consecutive days (as reasonably determined by the
36 Town). The Town, may, in its sole and absolute discretion, and in addition to any other remedies,
37 require that the Bonus Room be offered for rent. Short term rental of the Bonus Room is
38 prohibited.
39

40 4. Rent Restriction. The Bonus Room will be rented for a monthly rental amount
41 (including utilities) ~~equal to or less than an amount that is affordable to individuals earning 80%~~
42 ~~or less of the applicable Area Median Income~~ **that does not exceed eighty percent (80%) of the**
43 **Area Median Income (AMI) for Breckenridge, Colorado (or if not available, for the Area**
44 **Median Income for Summit County, Colorado) most recently available immediately prior**
45 **to the Bonus Room being rented.** The maximum allowable monthly rent will be based on the
46 Summit County Housing Authority Area Median Income/Rent calculation for a studio unit, ~~or~~

1 ~~successor index, or if no successor index, such other generally accepted index selected by the~~
2 ~~Town.~~

3
4 5. Resale Restrictions. The Resale Restrictions outlined in the Section 5 of the Original
5 Covenant are amended to allow the Owner to increase the Maximum Allowed Sale Price by an
6 amount equal to 50% of the costs incurred to construct the Bonus Room, but not to exceed
7 \$50,000. In calculating the amount only the Owner's actual out-of-pocket costs and expenses for
8 labor and material shall be eligible for inclusion.

9
10 6. Exceptions. It is not a violation of this Restrictive Covenant if the Bonus Room is
11 occupied or used by:

- 12
13 (i) A person age fifty five (55) years or older who works at paid employment in
14 Summit County, Colorado for a business located in and serving Summit
15 County at least fifteen (15) hours per week on a year-round basis during the
16 entire period of his or her ownership or occupancy of the Bonus Room,
17 together with such person's spouse and minor children;
- 18 (ii) A person age sixty two (62) years or older who is no longer a Qualified
19 Occupant because he or she no longer works the required number of hours as
20 described in the Original Covenant if such person occupied the Bonus Room
21 as a Qualified Occupant for a minimum of seven (7) consecutive years prior to
22 ceasing to be a Qualified Occupant
- 23 (iii) a person otherwise authorized to occupy the Bonus Room pursuant to this
24 Restrictive Covenant who becomes disabled after commencing lawful
25 occupancy of the Bonus Room such that he or she cannot work the required
26 number of hours each week required by this Restrictive Covenant; provided,
27 that such person is permitted to occupy the Bonus only for a maximum period
28 of 1 year following the commencement of such person's disability unless a
29 longer period of occupancy is authorized by the Town.

30
31 7. Maximum Resale Price. In addition to the resale restrictions established for the
32 Property in Section 5A of the Original Covenant which remains in full force and effect the
33 Owner shall be responsible for ensuring that at the Transfer of his or her Property, the Bonus
34 Room is clean, the appliances are in working order, and that there are no health or safety
35 violations. Prior to the sale of the Property the Town is authorized to take necessary actions and
36 incur necessary expenses for bringing the Bonus Room into saleable condition. Such actions and
37 expenses include, but are not limited to, cleaning the Bonus Room and making necessary repairs
38 to or replacement of appliances and/ fixtures, such as windows, doors, cabinets, countertops,
39 carpets, flooring and lighting fixtures, and/or correcting any health or safety violations. Expenses
40 incurred by the Town to bring the Bonus Room into a saleable condition shall be itemized and
41 documented by the Town and deducted from Owner's proceeds at the transfer of the Property.

42
43 8. Records; Inspection; Monitoring.

44
45 A. The Town may examine, inspect and copy the Owner's records concerning the use
46 and occupancy of the Bonus Room upon reasonable advance notice. The Town may enter the

1 Bonus Room to determine compliance with this Restrictive Covenant, but the Town will first
2 attempt to secure the permission of any occupant of the Bonus Room before making entry. The
3 Town's rights under this subsection may also be exercised by the Town's authorized agent.
4

5 B. The Owner will submit to the Town any information, document or certificate
6 regarding the occupancy and use of the Bonus Room which the Town reasonably deems to be
7 necessary to confirm the Owner's compliance with the provisions of this Restrictive Covenant.
8

9 9. Default; Notice. If the Owner fails to comply with this Restrictive Covenant, the
10 Town may inform the Owner by written notice of such failure and provide the Owner a period of
11 time to correct such failure. If the failure is not corrected to the satisfaction of the Town within
12 the specified time, which will be at least 30 days after the date the Town mails the written notice
13 to the Owner, or within such further time as the Town determines is necessary to correct the
14 violation (but not to exceed any limitation set by applicable law), the Town may without further
15 notice declare a default under this Restrictive Covenant effective on the date of such declaration
16 of default. The Town may then proceed to enforce this Restrictive Covenant.
17

18 10. Equitable Relief. The Town may specifically enforce this Restrictive Covenant. The
19 Town may obtain from any court of competent jurisdiction a temporary restraining order,
20 preliminary injunction and permanent injunction to obtain specific performance. Any equitable
21 relief provided for in this Section may be sought singly or in combination with such legal
22 remedies as the Town may be entitled to, either pursuant to the provisions of this Restrictive
23 Covenant or under the laws of the State of Colorado.
24

25 11. Liquidated Damages. The Owner acknowledges that the unavailability of adequate
26 employee housing within the Town of Breckenridge requires the expenditure of additional Town
27 funds to provide required governmental services and thereby results in an economic loss to the
28 Town. The Town and the Owner further recognize the delays, expense and unique difficulties
29 involved in proving in a legal proceeding the actual loss suffered by the Town in such
30 circumstance. Accordingly, instead of requiring such proof, Town and Owner agree that Owner
31 shall pay to Town the sum of \$100 per day for each day in which the Bonus Room is not used in
32 strict compliance with the provisions of Section 3 or Section 4 of this Restrictive Covenant.
33 Such amount is agreed to be a reasonable estimate of the actual damages which the Town will
34 suffer in the event of a violation of Section 3 or Section 4 of this Restrictive Covenant. The
35 provisions of this Section 11 do not apply to any violation of this Restrictive Covenant other than
36 a violation of Section 3 or Section 4. The liquidated damages shall commence as of the date on
37 which the Bonus Room is first used in violation of Section 3 or Section 4 of this Restrictive
38 Covenant, and not on the date when the Town learns of such violation or on the date when the
39 Town gives notice of default as provided in Section 9. Further, the total amount of liquidated
40 damages payable to the Town under this Section may not exceed the then-current value of the
41 Property. The liquidated damages provided for in this Section 11 may be collected personally
42 from the Owner by the Town, either singly or in combination with an action for equitable
43 enforcement of this Restrictive Covenant as provided in Section 10 of this Restrictive Covenant.
44 Town may, in its discretion, waive the liquidated damages as provided herein and recover any
45 actual damages suffered by Town as a result of a breach of this Restrictive Agreement.
46

1 12. Town Authority To Enforce. The restrictions, covenants and limitations created by
2 this Restrictive Covenant are only for the benefit of the Town. Only the Town may enforce this
3 Restrictive Covenant.
4

5 13. Enforcement in Municipal Court. In addition to such other methods of enforcement
6 as may be available to Town, the Town may enforce this Restrictive Covenant by bringing an
7 appropriate action in the Breckenridge Municipal Court or other court of competent jurisdiction.
8

9 14. Waiver; Termination; Modification Of Covenant. The restrictions, covenants and
10 limitations of this Restrictive Covenant may be waived, terminated or modified only with the
11 written consent of both the Town and the person who owns the Property on the date of the
12 waiver, termination or modification. No waiver, modification, or termination will be effective
13 until the proper instrument is executed and recorded in the office of the Clerk and Recorder of
14 Summit County, Colorado. The Town may also terminate this instrument by recording a release
15 in recordable form without the signature of the owner of the Property. For convenience, such
16 instrument may run to "the owner or owners and parties interested" in the Property.
17

18 15. Statute of Limitations. Owner hereby waives the benefit of and agrees not to assert in
19 any action brought by the Town to enforce this Restrictive Covenant any applicable statute of
20 limitation, including, but not limited to, the provisions of §38-41-119, C.R.S. If any statute of
21 limitation may lawfully be asserted by Owner in connection with an action brought by the Town
22 to enforce the terms of this Restrictive Covenant, each and every day during which any violation
23 of this Restrictive Covenant occurs is to be deemed to be a separate breach of this Restrictive
24 Covenant for the purposes of determining the commencement of the applicable statute of
25 limitations period.
26

27 16. No Conflicting Agreement. Owner warrants to the Town that the execution and
28 delivery of this Restrictive Covenant does not violate any existing agreement concerning the
29 Property. Owner will not execute any agreement concerning the Property with provisions
30 contradictory to, or in opposition to, the provisions of this Restrictive Covenant. In any event, the
31 provisions of this Restrictive Covenant are paramount and controlling, and supersede any
32 conflicting provision of any other agreement concerning the Property.
33

34 17. Attorney's Fees. If any action is brought in a court of law by either party concerning
35 the enforcement, interpretation or construction of this Restrictive Covenant, the prevailing party,
36 either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs, including
37 expert witness's fees, incurred in the prosecution or defense of such action.
38

39 18. Notices. All notices provided for or required under this Restrictive Covenant must be
40 in writing, signed by the party giving the notice, and will be deemed properly given when
41 actually received or 2 days after mailed, postage prepaid, certified, return receipt requested,
42 addressed to the parties hereto at their addresses appearing on the signature pages. Each party,
43 by written notice to the other party, may specify any other address for the receipt of such
44 instruments or communications. A notice to any owner of the Property subsequent to the Owner
45 may be sent to the address to which tax notices are sent according to the records of the Summit
46 County Treasurer.

1
2 19. Recording And Filing; Covenant Running With The Land.
3

4 A. This Restrictive Covenant is to be recorded in the real property records of Summit
5 County, Colorado.
6

7 B. The Owner agrees that all of the requirements of the State of Colorado which must be
8 satisfied for the provisions of this Restrictive Covenant to constitute a restrictive covenant
9 running with the land are deemed to be fully satisfied. All requirements of privity of estate are
10 intended to be satisfied, or in the alternative, an equitable servitude is created to insure that these
11 restrictions run with the land. During the term of this Restrictive Covenant, each and every
12 contract, deed or other instrument executed relating to the Property will expressly provide that
13 such contract, deed or instrument is subject to this Restrictive Covenant. However, the
14 covenants contained in this Restrictive Covenant survive and will continue to be effective as to
15 successors and assigns of all or any portion of the Property regardless of whether such contract,
16 deed or other instrument provides that it is subject to this Restrictive Covenant.
17

18 20. Applicable Law. This Restrictive Covenant is to be interpreted in accordance with
19 the laws of the State of Colorado without regard to its choice of law rules.
20

21 21. Vesting and Term. The Town's rights under this Restrictive Covenant vest upon the
22 execution of this Restrictive Covenant. This Restrictive Covenant will remain in full force and
23 effect in perpetuity unless it is terminated in accordance with Section 14.
24

25 22. Section Headings. Section headings are inserted for convenience only and in no way
26 limit or define the interpretation to be placed upon this Restrictive Covenant.
27

28 23. Terminology. Wherever applicable, the pronouns in this Restrictive Covenant apply
29 to all genders. Wherever applicable within this Agreement, the singular includes the plural, and
30 the plural includes the singular.
31

32 24. Severability. If any provision of this Restrictive Covenant is finally determined to be
33 invalid, illegal or unenforceable, such determination does not affect the remaining provisions of
34 this Restrictive Covenant.
35

36 25. Entire Agreement. This Restrictive Covenant constitutes the entire agreement and
37 understanding between the parties relating to the subject matter of this Restrictive Covenant, and
38 supersedes any prior agreement or understanding relating thereto.
39

40 26. Binding Effect. This Restrictive Covenant is binding upon, and inures to the benefit
41 of parties, and their respective heirs, successors, assigns, legal representatives, and personal
42 representatives, and all subsequent owners of the Property, or any interest therein.
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Zachary David Himmelman

Taryn Elizabeth Power

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Rick G. Holman, Town Manager

ATTEST:

Helen Cospolich, CMC, Town
Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____,
2021 by Rick G. Holman, as the Town Manager, and Helen Cospolich, CMC, as the Town Clerk,
of the Town of Breckenridge, a Colorado municipal corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

1 STATE OF COLORADO)
2) ss.
3 COUNTY OF SUMMIT)
4

5 The foregoing was acknowledged before me this _____ day of _____,
6 2021, by Zachary David Himmelman and Taryn Elizabeth Power.
7

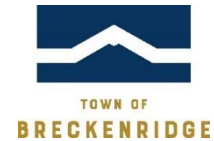
8
9 Witness my hand and official seal.

10
11 My commission expires: _____
12
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15 _____
16 Notary Public
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1800-530\Restrictive Covenant (07-21-21)

Memo



To: Town Council
From: Chris Kulick AICP, Senior Planner
Date: July 21, 2021 (for meeting of July 27, 2021)
Subject: First Reading: Amenity Club Code Amendments

At the previous Council worksession on May 25, 2021 regarding Amenity Club regulations, the Council was unanimously in favor of establishing a framework to regulate Amenity Clubs. Staff is proposing changes to the existing Development and Parking Codes, and to carry out that request through an ordinance. A summary of Code changes includes:

- Establishing a definition for Recreation and Leisure Amenity Clubs.
- Establishing a definition for Recreation Centers (A commercial recreational facility that is not part of residential development).
- Repealing the existing definition of Timeshare Unit and replacing it with a new definition for Timeshare Interest.
- Requiring a covenant for Recreation and Leisure Amenity Clubs to limit non-overnight guests to the number of vacant divisible units.
- Clarifying that space utilized for a Recreation and Leisure Amenity Club is eligible for an additional twenty-five percent (25%) of aboveground floor area, provided there is any remaining space after all common areas have been counted.
- Establishing that the Conversion of Recreation and Leisure Amenity Space to a Recreation and Amenity Club requires commercial density if the space is above the additional twenty-five percent (25%) of allowed aboveground floor area.
- Clarifying that no additional parking for Recreation and Leisure Amenity Clubs shall be provided beyond a development's required residential or commercial parking. Parking for Recreation Centers shall continue to be the existing requirement for indoor and outdoor commercial recreation, which is by special review of the Community Development Director and Planning Commission.

The ordinance is attached for review. Staff will be available at the meeting to answer any questions.

1 **FOR WORKSESSION/FIRST READING – JULY 27**

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2021

9
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE, KNOWN AS THE “TOWN OF BRECKENRIDGE DEVELOPMENT CODE,”
12 CONCERNING RECREATIONAL AND LEISURE AMENITY CLUBS; AND AMENDING
13 CHAPTER 3 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE
14 “TOWN OF BRECKENRIDGE OFF STREET PARKING ORDINANCE,” CONCERNING
15 REQUIRED OFF STREET PARKING FOR RECREATIONAL AND LEISURE AMENITY
16 CLUBS

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

20
21 Section 1. The definition of “Timeshared Unit” in Section 9-1-5 of the Breckenridge
22 Town Code is repealed and replaced with the following definition of “Timeshare Interests”:

23
24 ~~Timeshared Unit: A residential unit which is owned by more than one person with~~
25 ~~the ownership interest being divided by specific periods of time.~~

26
27 **Timeshare Interests: Interval estates, timeshare estates, timespan estates,**
28 **and other timesharing interests as defined in the Condominium Ownership**
29 **Act, Article 33, Title 38, C.R.S., as amended from time to time.**

30
31 Section 2. Section 9-1-5 of the Breckenridge Town Code, entitled “Definitions,” is
32 amended by the inclusion of the following definitions:

<u>RECREATION CENTER:</u>	<u>A commercial use requiring density and mass located within a residential use property, which may include, but is not limited to, facilities for aerobic exercises, running and jogging, weight training, game courts, swimming facilities, saunas, showers and lockers. Recreation Centers may also include eating facilities and shops selling a variety of sports equipment and clothing. Instruction programs and fitness classes may be offered. A Recreation Center is neither: (a) an amenity club, nor (b) common indoor space located in a condominium, condominium/hotel, hotel, lodge, or inn pursuant to</u>
----------------------------------	---

	<p><u>Subsection A of Section 9-1-19-24A, “Policy 24 (Absolute) The Social Community,” of this Chapter.</u></p>
<p><u>RECREATION AND LEISURE AMENITY CLUB OR AMENITY CLUB:</u></p>	<p><u>The meaning of Amenity Club depends upon the type of residential property in which the property’s amenity components (as defined below) are located:</u></p> <p><u>In a hotel/lodge/inn or a condominium that does not include one or more timeshare estates an Amenity Club:</u></p> <ol style="list-style-type: none"> <u>1. allows admission to the property’s amenity components by a person who is not a registered overnight guest at the property; and</u> <u>2. requires payment of a fee, a club membership, or other consideration given by the user of the property’s amenity components.</u> <p><u>In a condominium that includes one or more timeshare estates an Amenity Club permits admission to the property’s amenity components by a person who is not an overnight guest at the property.</u></p> <p><u>No residential property other than a hotel/lodge/inn or a condominium may contain an Amenity Club.</u></p> <p><u>An Amenity Club is classified as a commercial use and requires density above the allowed mass.</u></p> <p><u>An Amenity Club may include, but shall not be limited to, the following amenity components:</u></p> <ol style="list-style-type: none"> <u>A. Personal lockers,</u> <u>B. Boot dryers,</u> <u>C. Ski storage racks,</u> <u>D. Ski tuning,</u> <u>E. Areas for congregation and/or socializing,</u> <u>F. Restrooms and/or shower facilities,</u> <u>G. Movie theaters</u> <u>H. Game rooms</u> <u>I. Clubhouse food amenities</u>

	<u>J. Concierge ski services,</u> <u>K. Access to an aquatics facility or other recreational facilities, and/or</u> <u>L. Parking.</u>
--	--

1
2 Section 3. Section 9-1-19-3A, “Policy 3 (Absolute) Density” of the Breckenridge Town
3 Code is amended by the addition of a new section 2.5 which shall read as follows:
4

5 **2.5 Space that is utilized for a Recreation and Leisure Amenity Club may be**
6 **included in the additional twenty-five percent (25%) of aboveground floor area**
7 **allowed under Subsection A4 of Section 9-1-19-4R, “Policy 4 (Relative) Mass,” of**
8 **this Chapter, provided there is any remaining space after all common areas have**
9 **been counted. Any additional common area space above this additional 25% shall**
10 **be counted as commercial density.**

11
12 Section 4. Subsection A4 of Section 9-1-19-4R, “Policy 4 (Relative) Mass” of the
13 Breckenridge Town Code is amended to read as follows:
14

15 (4) Condominiums, Hotels, Inns, And Lodges: Condominiums, hotels, inns,
16 lodges, and other similar uses may be allowed an additional twenty-five percent
17 (25%) of aboveground floor area for the provision of amenities and/or common
18 areas. **Space that is utilized for a Recreation and Leisure Amenity Club may**
19 **be included in this additional twenty-five percent (25%) of aboveground**
20 **floor area, provided there is any remaining space after all common areas**
21 **have been counted. Any additional common area space above this additional**
22 **25% shall be counted as commercial density as specified in Section 9-1-19-**
23 **3A, “Policy 3 (Absolute) Density/Intensity,” of this Chapter.**
24

25 Section 5. Subsection D of Section 9-1-19-24R, “Policy 24 (Relative) Social
26 Community,” of the Breckenridge Town Code is amended to read as follows:
27

3 x (θ <u>-2/+2)</u>	D.	Meeting And Conference Rooms Or Recreation And Leisure Amenities: The provision of meeting and conference facilities or recreation and leisure amenities, over and above that required in section 9-1-19-24A, “Policy 24 (Absolute) The Social Community”, subsection A, of this chapter is strongly encouraged. (These facilities, when provided over and above that required in section 9-1-19-24A, “Policy 24 (Absolute) The Social Community”, subsection A, of this chapter, shall not be assessed against the density and mass of a project when the facilities are legally guaranteed to remain as meeting and conference facilities or recreation and leisure amenities, and they do not equal more than 200 percent of the area required under section 9-1-19-24A, “Policy 24 (Absolute) The Social Community”, subsection A, of this chapter.) <u>The square footage of any portion of previously approved Recreation and Leisure Amenity space that is proposed to be converted into an Amenity</u>
-------------------------	----	--

Club that is above the allowed mass specified in Section 9-1-19-4R shall be treated as commercial density.

Section 6. Section 9-1-19-24R, “Policy 24 (Relative) Social Community,” of the Breckenridge Town Code is amended by the addition of a new section G, which shall read as follows:

G. Recreation and Leisure Amenity Club:

1. The operator of an Amenity Club shall use a managed reservation system such that daily admission to the Amenity Club is limited to the total number of vacant units within the property in which the Amenity Club is located on such day. Each day a maximum of four (4) persons from one household may be admitted to the Amenity Club for each vacant unit.

2. Prior to the issuance of a certificate of occupancy for a property that contains an Amenity Club the developer shall execute and record with the Clerk and Recorder of Summit County, Colorado a restrictive covenant in accordance with the requirements of Section 9-1-26 of this Chapter. Such restrictive covenant shall require that the Amenity Club be operated in continuous compliance with the requirements of subsection 1 of this section, and other applicable provisions of this Code. Without limiting the generality of the preceding the required restrictive covenant shall authorize the Town to audit the property’s managed reservation system upon request.

Section 7. Section 9-3-8B of the Breckenridge Town Code is amended by the addition of the following provision in that part of the table that concerns property that is “Commercial”:

<u>Recreation and Leisure Amenity Club</u>	<u>No additional parking shall be required or allowed for a development that includes a Recreation and Leisure Amenity Club beyond the required residential or commercial parking, as applicable.</u>
---	--

Section 8. 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 9. 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 10. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers);

1 (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
2 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
3 contained in the Breckenridge Town Charter.
4

5 Section 11. This ordinance shall be published and become effective as provided by
6 Section 5.9 of the Breckenridge Town Charter.
7

8 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
9 PUBLISHED IN FULL this ____ day of _____, 2021. A Public Hearing shall be held at the
10 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
11 _____, 2021, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the
12 Town.
13

14 TOWN OF BRECKENRIDGE, a Colorado
15 municipal corporation
16
17

18
19 By: _____
20 Eric S. Mamula, Mayor
21

22 ATTEST:
23
24
25

26 _____
27 Helen Cospolich, CMC,
28 Town Clerk
29

30 APPROVED IN FORM
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34 _____
35 Town Attorney
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500-419\Amenity Club Ordinance_4 (07-21-21)(First Reading)



Memo

To: Town Council
From: Rick G. Holman, Town Manager
Date: 7/21/2021
Subject: Resolution to Appoint Special Legal Counsel

The Town Charter allows the Town Council to appoint special legal counsel to assist the Town Attorney as needed. It is the desire of the Town to partner with Summit County Government and share the legal costs of hiring the firm of Squire Patton Boggs to represent the Town and the County in advocating for the 2021-2022 congressional redistricting process. Keith Bradley will be the primary attorney working for us.

Attached to this memo is the engagement letter with Squire Patton Boggs which I have already executed. In addition is the scope of work. There is a "not to exceed" cap of \$75,000 in this agreement along with review milestones at \$25,000 and \$50,000 in which we can decide if we want to continue to move forward with the scope of work. We will be splitting the costs 50/50 with the County.

Passage of the resolution is necessary to ratify my execution of the agreement.

1 **FOR WORKSESSION/ADOPTION – JULY 27**

2
3 RESOLUTION NO. ____

4
5 Series 2021

6
7 A RESOLUTION APPROVING THE EMPLOYMENT OF SQUIRE PATTON BOGGS LLP
8 AS SPECIAL COUNSEL
9

10 WHEREAS, Section 8.1 of the Breckenridge Town Charter authorizes the Town Council
11 to employ special counsel to serve under the direction of the Town Council; and
12

13 WHEREAS, the Town requires the services of special counsel to help the Town advocate
14 at the Congressional Commission on the placement of the Town in a congressional district for
15 the coming decade; and
16

17 WHEREAS, the Town Manager has recommended to the Town Council that the law firm
18 of Squire Patton Boggs LLP be employed as the Town’s special counsel for the purpose stated
19 above; and
20

21 WHEREAS, the Town Council finds and determines that the law firm of Squire Patton
22 Boggs LLP be employed as the Town’s special counsel for the purpose stated above.
23

24 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
25 BRECKENRIDGE, COLORADO:
26

27 Section 1. The Town Manager is authorized, empowered, and directed to engage the law
28 firm of Squire Patton Boggs LLP as the Town’s special counsel to help the Town advocate at the
29 Congressional Commission on the placement of the Town in a congressional district for the
30 coming decade. In connection therewith the Town Manager is authorized to execute a formal
31 engagement letter with Squire Patton Boggs LLP on behalf of the Town, and if the Town
32 Manager has executed such engagement letter prior to the adoption of this resolution the Town
33 Council ratifies and confirms the signing of such engagement letter.
34

35 Section 2. This resolution is effective upon adoption.
36

37 RESOLUTION APPROVED AND ADOPTED this ____ day of ____, 2021.
38

39 TOWN OF BRECKENRIDGE
40

41
42
43 By: _____
44 Eric S. Mamula, Mayor
45
46

1 ATTEST:

2

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4

5

6 _____
7 Helen Cospolich, CMC,
8 Town Clerk

8

9 APPROVED IN FORM

10

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14 _____
15 Town Attorney Date

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July 21, 2021

Scott Vargo
County Manager
Summit County
208 Lincoln Avenue Bridgeway Avenue
Breckenridge, CO 80424

Rick G. Holman
Town Manager
Town of Breckenridge
150 Ski Hill Road
Breckenridge, CO 80424

Re: Redistricting

Dear Mr. Vargo and Mr. Holman:

We thank you for the opportunity to represent Summit County and the Town of Breckenridge in advocating about the 2021-2022 congressional redistricting process.

A written engagement agreement is required or recommended by the law of professional ethics in the jurisdictions in which we practice law. The engagement agreement between us consists of this letter and the enclosed Standard Terms and Conditions of Engagement (“Standard Terms”). In case of any contradiction between this letter and the Standard Terms, this letter controls for purposes of this representation. The engagement agreement is designed to address our responsibilities to each other and to outline for you certain important matters that are best established early as we form an attorney-client relationship with you in this matter.

The engagement agreement responds to requirements in the rules of professional ethics and is intended to achieve a better understanding between us. We request that you review this agreement carefully. By proceeding with this engagement you will be indicating to us that you have done so. It is important that you review and understand the terms of our relationship, such as the section on “Conflicts of Interest.”

Our fees will be based primarily on the billing rate for each person devoting time to this matter. Our hourly rates for associates, partners and other personnel throughout the United States currently range from \$240 for new associates to \$1,600 or higher for our most senior partners and from \$135 for new legal assistants to \$485 for experienced legal assistants, with most legal assistant billing rates falling within the range of \$270 to \$410. We anticipate that the principal work on this matter will be from me, potentially assisted by one or two associates, and from Mara Sheldon and Mike Dino with whom you have already worked. I will be discounting my ordinary rate of \$750 per hour by 20%. Billing rates are subject to change, usually as of January 1 each year. Please note that, under our Standard Terms, invoices for our fees are payable within thirty days of the date of our statement. We understand that Summit County and the Town of Breckenridge have agreed to equally share in the cost and as such we will bill 50% of accrued costs to both the County and the Town.

We will review our work with you at the following points: (a) when our work billed on the matter reaches \$25,000; (b) when we have developed a first alternative map fulfilling the County's and the Town's strategic goals; (c) when our work billed on the matter reaches \$50,000; and (d) when we have completed a substantive outline of arguments to be used in support of the County's and Town's preferred alternative map(s). At each point, we will not proceed further until we have received your authorization.

Any of the following alternative methods for acceptance of this engagement agreement will be effective: (i) signing and returning the copy of this letter that is enclosed for that purpose, or (ii) assigning us work, including continuing any previous assignment of work, or (iii) sending us a letter or e-mail clearly referencing this engagement agreement and agreeing to it. However, even if you accept this engagement agreement by methods (ii) or (iii), I would appreciate it if you would confirm your acceptance by countersigning the enclosed copy of this letter and returning it to me. If you do not agree with one or more of the provisions of the engagement agreement, please contact me so that we can try to address your concerns. As explained in the attached Standard Terms, you can terminate our services at any time. Of course, if you have any questions or concerns regarding the foregoing, please call me.

You should also feel free to consult with independent counsel before signing. Throughout our relationship, we want you to be satisfied with the professional services that we perform on your behalf. Accordingly, we encourage you to contact us just as soon as you have any questions or concerns regarding our services or our fees.

Squire Patton Boggs (US) LLP

Mr. Scott Vargo
Mr. Rick Holman
July 21, 2021
Page 3

Sincerely,

Squire Patton Boggs (US) LLP



Keith Bradley

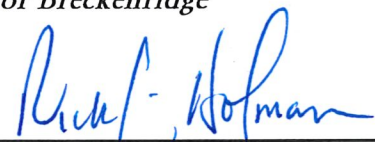
Letter and Standard Terms Accepted,
including section on "Conflicts of Interest" and "Public Policy Practice"

Summit County

By: _____ Scott Vargo

Title: _____

Town of Breckenridge

By: 
Rick G. Holman

Date: July 21, 2021

Title: TOWN MANAGER

Attachment

Standard Terms and Conditions of Engagement Applicable Worldwide

The engagement agreement with you includes the accompanying cover letter and, as applicable, any separate Matter Acknowledgment Letter (collectively and individually “Engagement Letter”). It also consists of these additional Terms and Conditions of Engagement applicable worldwide and any Terms and Conditions of Engagement applicable for particular jurisdictions (collectively and individually “Standard Terms and Conditions of Engagement” or “Standard Terms”). The engagement agreement is the means by which you are retaining the Firm (as defined in these Standard Terms) to provide legal services. “You” and “yours” refers to our client(s) defined more fully below in the section entitled WHO IS OUR CLIENT. For your convenience, set forth below are the topics covered in these Standard Terms:

The Firm..... 1
 What Professionals Will Provide the Legal Services? 2
 Our Services to You..... 2
 Who is Our Client?..... 3
 Conflicts of Interest 4
 Public Policy Practice 5
 Requesting Legal Services Activates Engagement Terms 6
 Termination of Representation 6
 How We Set Our Fees..... 7
 Other Charges 8
 Billing Arrangements and Payment Terms . 9
 Taxes 10
 Data Protection and Privacy 10
 Client and Firm Documents 11
 Equality and Diversity 12
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 Severability 12
 Primacy 12
 Entire Agreement..... 12
 Interpretations..... 13
 Governing Law, Courts and Bar Associations 13
 In Conclusion 13

THE FIRM

“Squire Patton Boggs” is the collective trade name for an international legal practice comprised of partnerships or other entities authorized to practice law in various nations or other jurisdictions. The “Firm” means Squire Patton Boggs (US) LLP,¹ Squire Patton Boggs (UK) LLP,² Squire Patton Boggs (AU),³ or Squire Patton Boggs (MEA) LLP,⁴ and/or an affiliate listed at <https://www.squirepattonboggs.com/en/footer/legal-notices> in all cases including the entity or

¹ Squire Patton Boggs (US) LLP is a limited liability partnership organized under the laws of the State of Ohio, USA.
² Squire Patton Boggs (UK) LLP (trading as Squire Patton Boggs) is a Limited Liability Partnership registered in England and Wales with number OC 335584 authorised and regulated by the Solicitors Regulation Authority. A list of the members and their professional qualifications is open to inspection at 7 Devonshire Square, London, EC2M 4YH.
³ Squire Patton Boggs (AU) is a general partnership established under the laws of Western Australia.
⁴ Squire Patton Boggs (MEA) LLP is a limited liability partnership organized under the laws of Washington, D.C.

entities lawfully permitted to practice law in the jurisdiction or jurisdictions necessary or appropriate to provide your legal services. Your engagement in this instance is with the entity⁵ which sent you these Standard Terms and, as applicable, with such other Squire Patton Boggs entity or entities necessary or appropriate for your legal services, in which case the entity which sent you these Standard Terms is acting on their behalf. These Standard Terms apply to your relationship with all Squire Patton Boggs entities which provide you services. “We” or “us” or “our” refer not only to the entity sending you these Standard Terms, but also to all Squire Patton Boggs entities unless the context or applicable law requires reference only to the specific entity or entities you contract with. The use of “Squire Patton Boggs” as a trade or business name or brand by all or any of such entities shall not imply that the international legal practice is itself engaged in the provision of legal or other services. For further information please see www.squirepattonboggs.com.

This engagement agreement shall apply to all matters for which you might now or in the future request our assistance, unless of course you and we agree in the future to an updated version of this engagement agreement or to a new or revised engagement agreement expressly referring to and superseding this engagement agreement in whole or in part. We encourage you to retain this engagement agreement.

WHAT PROFESSIONALS WILL PROVIDE THE LEGAL SERVICES?

In most cases one of our lawyers will be your principal contact. From time to time that attorney may delegate parts of your work to other lawyers or to legal assistants or nonlegal personnel in the Firm or to outside “contract” personnel.

OUR SERVICES TO YOU

In our letter that presents these Standard Terms to you, or in a separate Matter Acknowledgement Letter, we will describe the matter or case in which we will be representing you. Unless we agree in writing to expand the scope of our representation, an important part of our engagement agreement is that we are not your counsel in other matters, and you will not rely upon us to provide legal services for matters other than that described in the relevant letter. For example, unless specified in the relevant letter, our representation of you does not include any responsibility for: review of your insurance policies to determine the possibility of coverage relating to this matter; for notification of your insurance carriers about the matter; advice to you about your disclosure obligations under securities laws or any other laws or regulations; or advice on tax consequences. The description of the nature and scope of our services in any letter or e-mail concerning the inception of our engagement is generally made at the beginning of our representation and is sometimes, of necessity, described in broad terms. The actual nature and extent of our representation may be narrower and more precise and is to be determined over the life of the representation by your requests for our legal services and our response based on the letters, e-mails, or other documents exchanged between us. Of course, you and we can enter into an additional engagement agreement for services outside any general description in any letters or e-mails at the beginning of our engagement. If at any time you do not have a clear understanding of the legal services to be provided or if you have questions regarding the scope of our services, we are relying on you to communicate with us.

⁵ Squire Patton Boggs includes partnerships or other entities in a number of different nations. Due to local laws on regulation of the legal profession, the formal legal name may differ in some nations.

We will apply our professional skill, experience and judgment to achieve your objectives in accordance with the honored standards of our profession that all attorneys are required to uphold. However, we cannot guarantee the outcome of any matter. Any expression of our professional judgment regarding your matter or the potential outcome is, of course, limited by our knowledge of the facts and based on the law at the time of expression. It is also subject to any unknown or uncertain factors or conditions beyond our control, including the unpredictable human element in the decisions of those with whom we deal in undertaking your representation.

We will comply properly and fully with the duty of confidentiality as described in the rules of professional conduct governing our profession which provide special and stringent protection for ethically protected information concerning our representation of you (hereinafter client "confidential information"). In compliance with such rules on confidential information and this engagement agreement, we will not disclose to any other client or use against you any of your confidential information and likewise will not disclose to you the confidential information of any other client or use that client's confidential information against it.

Your responsibilities to us in each representation that you ask us to undertake include providing full, complete and accurate instructions and other information to us in sufficient time to enable us to provide our services effectively.

WHO IS OUR CLIENT?

An essential condition of our representation is that our only client is the person or entity identified in the accompanying letter. In the absence of an express identification of our client in the text of the letter, our client is the person or entity to whom the letter is addressed, even though in certain instances the payment of our fees may be the responsibility of others. In situations in which our client is an entity, we have addressed the letter to an authorized representative of the client. Throughout these standard terms, "you" refers to the entity that is our client, not the individual addressed.

Unless specifically stated in our letter, our representation of you does not extend to any of your affiliates and we do not assume any duties with respect to your affiliates. You are our only client. Unless we state specifically in our letter, we do not represent a corporate family or other group of which you may be a part, do not represent its members other than you, and do not owe them any duties. For example, if you are a corporation, our representation does not include any of your direct or indirect parents, subsidiaries, sister corporations, partnerships, partners, joint ventures, joint venture partners, any entities in which you own an interest, or, for you or your affiliates, any employees, officers, directors, or shareholders. If you are a partnership or limited liability company, our representation does not extend to the individual partners of the partnership or members of the limited liability company. If you are a joint venture, our representation does not extend to the participants. If you are a trade association, our representation excludes members of the trade association. If you are a governmental entity, our representation does not include other governmental entities, including other agencies, departments, bureaus, boards or other parts of the same government. If you are an individual, our representation does not include your spouse, siblings, or other family members. If you are a trust, you are our only client. The beneficiaries are not our clients, nor is the trustee in any capacity other than as the fiduciary for the particular trust in our representation. It would be necessary for related parties, including all those listed above, to enter into a written engagement agreement with us much like

this one before they would become clients and we would assume duties towards them. You should know that our engagement agreements with a number of other clients have a similar provision.

If you provide us with any confidential information of your related parties or any other entities or individuals during our representation of you, we will treat it as your information and maintain its confidentiality in accordance with our duties to you as our client under applicable law, but insofar as applicable law permits us to agree on our respective rights and duties, you are the only party to whom we owe duties regarding such information.

Except as specifically agreed by both of us, the advice and communications that we render on your behalf are not to be disseminated to or relied upon by any other parties without our written consent.

CONFLICTS OF INTEREST

Squire Patton Boggs is international with over half of our lawyers based in Offices outside the United States. Our clients inside and outside the U.S. should understand that this provision is designed to treat all of our clients on the same basis and that the result of this provision is similar to the result otherwise applicable under the professional standards for lawyers in almost all jurisdictions outside the U.S. (and under the Texas Disciplinary Rules of Professional Conduct). Since our legal practice began over 100 years ago, thousands of corporations, other businesses, individuals, governmental bodies, trusts, estates, and other clients have asked our lawyers to represent them, in many cases in large and usual matters. With over 10,000 current clients, you should understand that during the course of our representation of you we may represent any other client in any kind of matter; you should not assume any exceptions. Information on the nature of our clients and practice is available upon request and on the internet. An advantage to proceeding with our representation of you may be the services of specific individuals, or of a large team, or of a special nature, or in particular jurisdictions. We understand and agree that this is not an exclusive agreement, and you are free to retain any other counsel of your choosing in this and other matters. We commit that the lawyers who are personally working for you will not work for any other client adverse to you throughout the representation unless you agree otherwise. Further, throughout the representation we commit that our other lawyers shall not represent any other client with interests materially and directly adverse to your interests in this matter or in any other matter (i) which is substantially related to our representation of you or (ii) where there is a reasonable probability that confidential information you furnished to us could be used to your material disadvantage, including by examining or cross-examining your personnel, unless you agree otherwise. Finally, we commit that after the representation has ended, unless you agree otherwise, the lawyers who have personally worked for you shall not represent any other client with interests materially and directly adverse to your interests in this matter or in any other matter (i) which is substantially related to their representation of you or (ii) where there is a reasonable probability that confidential information you furnished to them could be used to your material disadvantage, including by examining or cross-examining your personnel, unless you agree otherwise. You agree that these commitments entirely replace any rule that might otherwise treat approximately 1,500 lawyers with Squire Patton Boggs as one lawyer for conflicts purposes and any imputation or vicarious treatment of knowledge or conflicts among all lawyers in Squire Patton Boggs.

For further explanation of the provision being replaced see https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_10_imputation_of_conflicts_of_interest_general_rule.html including Comment ¶ [2].

For explanation of “substantially related” matters see https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_9_duties_of_former_clients.html especially Comment ¶ [3].

You understand and agree that, consistent with those commitments, we are free to represent other clients, including clients whose interests conflict with your interests in litigation, business transactions, negotiations, alternative dispute resolution, administrative proceedings, discovery disputes, or other legal matters. Our lawyers value their individual professional independence and you also agree that the interests of other clients represented by our other lawyers will not create a material limitation on your representation by the lawyers who personally represent you. For further explanation of “material limitations” see https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients/comment_on_rule_1_7.html especially Comment [8]. You agree that a precondition to our forming an attorney/client relationship with you and undertaking your representation is your agreement that our representation of you will not prevent or disqualify us from representing clients adverse to you in other matters and that you consent in advance to our undertaking such adverse representations, subject to the exceptions and commitments explicitly set forth above. Please let us know if you would like to discuss excluding particular parties or matters from your agreement. Our agreements and yours are effective immediately. In similar engagement agreements with a number of our other clients, we have asked for similar agreements to preserve our ability to represent you.

PUBLIC POLICY PRACTICE

Among the wide array of legal services that we provide to clients in particular representations in many but not all nations, States, and other jurisdictions around the world in compliance with their law are representations with respect to the legislative, executive, administrative and other functions of governments (herein “public policy” representations). We have a public policy practice in business regulation, defense, energy, resources and environmental matters, financial services, food and drug, domestic and international trade, health care, taxation, transportation, and numerous other areas affected by government action. Information on the extensive scope of our public policy practice, the other areas in which we offer legal services, and the large number and diversity of our clients is available on request or on the internet. Given the breadth of our public policy practice, in agreeing to our representation of you, you should not discount the possibility that our representation of other clients in public policy matters at present or in the future might adversely affect your interests, directly or indirectly, or might be deemed to create a material limitation on our representation of you. A precondition to our forming an attorney/client relationship with you and undertaking your representation is your agreement that so long as such public policy representations are not substantially related to our representation of you and do not involve the use of material ethically protected client information to your disadvantage, the scope of the public policy representations that we can provide to existing or new clients will not be diminished in any respect by our undertaking our representation of you even if there would

otherwise be a conflict. Agreement by our other clients to an analogous waiver may protect the scope of legal services that we can provide for you.

REQUESTING LEGAL SERVICES ACTIVATES ENGAGEMENT TERMS

These Standard Terms and any accompanying engagement letter will become effective when you: (i) sign in the space provided and return the copy of any engagement letter accompanying these Standard Terms, or (ii) assign us work, including continuing any previous assignment of work, or (iii) send us a letter or e-mail clearly referencing these Standard Terms and any accompanying engagement letter and agreeing to them. If we have stated that these Standard Terms are a draft for discussion, they do not become legally effective during any period limited exclusively to discussion of the terms. However, after receipt of these Standard Terms, if you request us to perform legal services, including asking us to continue providing legal services, the following provisions in these Standard Terms become legally effective: (1) all provisions that ethics law of the applicable State, nation, or other jurisdiction requires in an engagement agreement, (2) all provisions that address the ability of other existing and prospective clients to retain us as their lawyers, including but not limited to “Who is Our Client,” “Conflicts of Interest,” “Public Policy,” and “Primacy;” (3) all provisions in these Standard Terms on the date 30 days following the later of both (a) your receipt of these Standard Terms and (b) your request that we perform legal services. You can terminate our engagement agreement with prospective effect at any time. Provisions that became effective through your request for legal services can later be amended or replaced provided we both agree in writing.

TERMINATION OF REPRESENTATION

You may terminate our representation at any time, with or without cause, upon written notice to us. After receiving such notice, or upon our termination of the representation as permitted by applicable ethical and/or court rules, we will cease to render services to you as soon as allowed by such rules, which may include court approval of our withdrawal from litigation. Termination of our services will not affect your responsibility for payment of legal services rendered and other charges incurred both before termination and afterwards in connection with an orderly transition of the matter, including fees and other charges arising in connection with any transfer of files to you or to other counsel, and you agree to pay all such amounts in advance upon request.

You agree that the Firm has the right to withdraw from its representation of you if continuing the representation might preclude the Firm’s or any other Squire Patton Boggs entity’s continuing representation of existing clients on matters adverse to you or if there are any circumstances even arguably raising a question implicating professional ethics, for example, because a question arises about the effectiveness or enforceability of this engagement agreement, or a question arises about conduct addressed by it, or an apparent conflict is thrust upon the Firm or any other Squire Patton Boggs entity by circumstances beyond its reasonable control, such as by a corporate merger or a decision to seek to join litigation that is already in progress, or there is an attempt to withdraw consent.

In any of these circumstances, you agree that we would have the right to withdraw from the representation of you. Regardless of whether you or we terminate the representation, we would (with your agreement) assist in the transition to replacement counsel by taking reasonable steps

in accordance with applicable ethical rules designed to avoid foreseeable prejudice to your interests as a consequence of the termination. You agree that regardless of whether you or we terminate the representation (A) we would be paid by you for the work performed prior to termination; (B) our representation of you prior to any termination would not preclude the Firm or any other Squire Patton Boggs entity from undertaking or continuing any representation of another party; and (C) as a result of the Firm's or any other Squire Patton Boggs entity's representation of another party you would not argue or otherwise use our representation of you prior to any termination to contend that the Firm or any other Squire Patton Boggs entity should be disqualified.

When we complete the specific services you have retained us to perform, our attorney-client relationship for that matter will be terminated at that time regardless of any later billing period. To eliminate uncertainty, our representation of you ends in any event whenever there is no outstanding request from you for our legal services that requires our immediate action and more than six (6) months (180 days) have passed since our last recorded time for you in the representation, unless there is clear and convincing evidence of our mutual understanding that the representation has not come to an end. After termination, if we choose to perform administrative or limited filing services on your behalf, including but not limited to receiving and advising you of a notice under a contract, lease, consent order, or other document with continuing effect, or filing routine or repeated submissions or renewals in intellectual property or other matters, or advising you to take action, our representation of you lasts only for the brief period in which our task is performed, unless you retain us in writing at that time to perform further or additional services. After termination, if you later retain us to perform further or additional services, our attorney-client relationship will commence again subject to these terms of engagement unless we both change the terms in writing at that time. Following termination of our representation, changes may occur in applicable laws that could impact your future rights and liabilities. Unless you actually engage us in writing to provide additional advice on issues arising from the matter after its completion, we have no continuing obligation to advise you with respect to future legal developments.

During or following our representation of you, we will be entitled to recover from you fees for any time spent and other charges, calculated at the then applicable rates if we are asked to testify or provide information in writing as a result of our representation of you or any legal requirements, or if our records from our representation of you are demanded, or if any claim is brought against any Squire Patton Boggs entity or any of its personnel based on your actions or omissions (in addition to any other costs involving the claim), or if we must defend the confidentiality of your communications under the attorney-client or any other legal professional privilege (in which case we will to the extent that circumstances permit make reasonable efforts to inform you of the requirement made upon us and give you the opportunity to waive privilege).

HOW WE SET OUR FEES

Unless another basis for billing is established in this engagement agreement, we will bill you monthly for the professional fees of attorneys, paralegals, and other personnel incurred on your behalf based on their applicable rates and the number of hours they devote to your representation. Overall fees will be in accord with the factors in the applicable rules governing professional responsibility. The billing rates of the personnel initially assigned to your representation are generally specified in the accompanying engagement letter. The billing rates

of our attorneys, paralegals, and other personnel vary, depending generally upon the experience and capabilities of the individual involved. Unless otherwise agreed in writing, we will charge you for their services at their applicable rates. Our hourly billing rates are adjusted from time to time, usually at the beginning of each year, both on a selected and firm wide basis. In addition, as personnel gain experience and demonstrate improved skills over time, they may advance into categories that generally have higher hourly billing rates. Advancements to a higher category are typically made annually. Upon any adjustment in the applicable rates, we will charge you the adjusted rates.

At times clients ask us to estimate the total fees and other charges that they are likely to incur in connection with a particular matter. Whenever possible, we are pleased to respond to such requests with an estimate or proposed budget. Still, it must be recognized that our fees are often influenced by factors that are beyond our control or unforeseeable or both. This is particularly true in litigation and other advocacy contexts in which much of the activity is controlled by the opposing parties and the Judge, Arbitrator or other decision-maker. Accordingly, such an estimate or proposal carries the understanding that, unless we agree otherwise in writing, it does not represent a maximum, minimum, or fixed fee quotation. The ultimate cost frequently is more or less than the amount estimated. Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. We will not be obliged to continue work if the fees or other charges accrued on a matter reach an estimate previously given and a revised estimate cannot be agreed. It is also expressly understood that payment of our fees and charges is in no way contingent on the ultimate outcome of the matter.

OTHER CHARGES

As an adjunct to providing legal services, we may incur and pay a variety of charges on your behalf or charge for certain ancillary support services. Whenever we incur such charges on your behalf or charge for such ancillary support services, we bill them to you separately or arrange for them to be billed to you directly. We may also require an advance payment from you for such charges. These charges typically relate to long-distance telephone calls; messenger, courier, and express delivery services; facsimile and similar communications; document printing, reproduction, scanning, imaging and related expenses; translations and related charges; filing fees; depositions and transcripts; witness fees; travel expenses; computer research; and charges made by third parties (such as outside experts and consultants, printers, appraisers, local and foreign counsel, government agencies, airlines, hotels and the like). Other charges will generally be itemized on your bill, and will also be subject to VAT where applicable. Any bank charges which we incur when making check payments or telegraphic transfers of money will be charged to you inclusive of a handling fee. Our charges for these ancillary support services generally reflect our direct and indirect costs, but charges for certain items exceed our actual costs. For some services, particularly those that involve significant technology and/or support services which we provide (such as imaging documents and computer research), we attempt from time to time to reduce costs by contracting with vendors to purchase a minimum volume of service that is beyond the needs of any single client. In those cases, we may bill you at a per unit rate that may not reflect the quantity discounts we obtain. In many cases the total quantity that will be used by all of our clients over a year or other period of time is not certain. Our charge for fax services is typically based on a charge per page rather than the cost of the telephone usage. In the event any of our statements for such services are

not paid by their due dates, you agree that we have the right not to advance any further amounts on your behalf.

When you send us a letter at the request of your auditors asking us for a response on any loss contingencies, we will charge you a fixed fee for our response that varies with the level of difficulty of the response.

Letter Type	Description	Rate
Clean	No litigation reported	US \$550
Normal	1-3 cases	US \$850
Extraordinary	>3 cases	US \$1,350
Update	Update of prior response	US \$400
No-Services	Verifying no work for client during fiscal year	US \$75

Notwithstanding our advance payments of any charges, you will be solely responsible for all invoices issued by third parties. It is our policy to arrange for outside providers of services involving relatively substantial charges (such as the fees of outside consultants, expert witnesses, appraisers, and court reporters) to bill you directly.

Prompt payment by you of invoices generated by third-party vendors is often essential to our ability to deliver legal services to you. Accordingly, you agree that we have the right to treat any failure by you to pay such invoices in a timely manner to be a material breach of your obligation to cooperate with us.

Unless we agree specifically in writing and you advise any other law firm, professionals, or third-parties in writing that they must comply with our directions, we are not responsible for them.

BILLING ARRANGEMENTS AND PAYMENT TERMS

We will bill you on a regular basis – normally, each month – for both fees and other charges. You agree to make payment within thirty (30) days of the date of our statement, unless a different period of time is specified in the Engagement Letter. If you have any issue with our statement, you agree to raise it specifically before thirty (30) days from the date of our statement or any other due date established in an Engagement Letter. If the issue is not immediately resolved, you agree to pay all fees and other charges not directly affected by the issue before thirty (30) days from the original bill or any other due date established in an Engagement Letter and all amounts affected by the issue within ten (10) days of its resolution. If we have rendered a final bill and we become liable for other charges incurred on your behalf, we will be entitled to render a further bill or bills to recover those amounts. In the event that a statement is not paid in full before thirty (30) days from the date of our statement or any other due date established in an Engagement Letter late charges will be imposed on any unpaid fees and/or costs at the

combined rate of eight percent (8%) per annum or at any lower rate legally required by a particular jurisdiction. If the cover letter accompanying these Standard Terms of engagement specifies an event or an alternate date upon which payment is due, late charges will be imposed on any unpaid fees and/or costs thirty (30) days after the specified event or date or any other period specified in an Engagement Letter. The purpose of the late payment charge is to encourage prompt payment, thus reducing our billing and collection costs.

In addition, if your account becomes delinquent and satisfactory payment terms are not arranged, we may postpone or defer providing additional services or withdraw, or seek to withdraw, from the representation consistent with applicable rules. You will remain responsible for payment of our legal fees rendered and charges incurred prior to such withdrawal.

When personnel from other Squire Patton Boggs entities have provided services to you, the portion of any invoice to you including such services is issued on behalf of the other Squire Patton Boggs entities that have provided services to you. The portion of your payment of fees and charges for the services and expenses of any such other Squire Patton Boggs entities will be attributed to them in accordance with our agreement with them, which reflects in major part the work performed by their personnel and expenses they incurred.

If our representation of you results in a monetary recovery by litigation or arbitration award, judgment, or settlement, or by other realization of proceeds, then (when permitted by applicable law) you hereby grant us an attorneys' lien on those funds in the amount of any sums due us.

We look to you, the client, for payment regardless of whether you are insured to cover the particular risk. From time to time, we assist clients in pursuing third parties for recovery of attorneys' fees and other costs arising from our services. These situations include payments under contracts, statutes or insurance policies. However, it remains your obligation to pay all amounts due to us before expiration of thirty (30) days from the date of our statement unless a different period is established in an Engagement Letter.

TAXES

You will be responsible for any applicable VAT or other sales tax that any jurisdiction may impose on our fees and other charges for this representation.

DATA PROTECTION AND PRIVACY

We each have our respective obligations to relevant government authorities and to individuals whose personal data we process to comply with applicable data protection laws. Where the European Union ("EU") General Data Protection Regulation ("GDPR") and national implementing legislation apply in relation to any personal data that you provide to us, we each act as a controller in our own right in regard to our respective processing of the personal data. Please refer to our Global Website Privacy Notice; our Privacy Notice for our Australian offices; and, in particular, our Privacy Notice for our EU offices ("EU Privacy Notice"). These are published on the Squire Patton Boggs website at www.squirepattonboggs.com. Our EU Privacy Notice describes the processing activities of our EU offices as controllers of the personal data of our clients, individuals connected to our clients and other business contacts, in accordance with GDPR requirements. In fulfilling our duties to relevant government authorities and individuals

under applicable law our EU offices will process personal data that you share with us, or that we obtain from other sources on your behalf, only for the relevant purposes that are set out in our EU Privacy Notice or any supplemental notice that we may provide to you in connection with a particular matter. You may also have obligations under the GDPR and you will reasonably cooperate with us with respect to any personal data that are shared between us, in order to facilitate compliance with the relevant provisions of the GDPR. If you disclose or transfer to us personal data concerning individuals who are connected to you, or are otherwise relevant to a matter on which we have been retained to provide legal services to you, it shall be your responsibility as the controller of that data to transfer or otherwise disclose such personal data in compliance with GDPR requirements including (without limitation) by: (A) transferring the personal data to us only as necessary for us to provide the legal services for which you have retained us; (B) having a lawful basis for disclosing the personal data to us; (C) providing all the information required to be provided by the GDPR, in the applicable circumstances, to the relevant individuals concerning the transfer of their personal data to us (including, where possible, a link to the EU Privacy Notice published on the Squire Patton Boggs website); and (D) assuming the primary responsibility for responding to data subject access requests in relation to personal data that you have shared with us.

We will cooperate with you when reasonably possible to ensure that the required information referred to above is made accessible to the relevant individuals; and we will meet our own obligations to provide information directly to the individuals concerned, such as any customized privacy notice that we may issue to address a specific matter if required by particular circumstances; but in most cases, it would be impossible, or would require disproportionate effort on our part to provide notice directly to all individual third parties that are connected to you when you share their personal data with us. The description of our respective obligations under applicable data protection laws covers our respective obligations to relevant government authorities and to individuals whose personal data we process, but does not create new duties or obligations between us by virtue of these Standard Terms (except as explicitly stated concerning cooperation and our respective roles as controllers of personal data).

CLIENT AND FIRM DOCUMENTS

We will maintain any documents you furnish to us in our client files for this matter. At the conclusion of the matter (or earlier, if appropriate), it is your obligation to advise us promptly as to which, if any, of the documents in our files you wish us to turn over to you. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and other charges. Your documents will be turned over to you in accordance with ethical requirements and subject to any lien that may be created by law for payment of any outstanding fees and costs. We may keep a copy of your files if you ask us to return or transfer your files. We will retain our own documents and files, including our drafts, notes, internal memos, administrative records, time and expense reports, billing and financial information, accounting records, conflict checks, personnel materials, and work product, such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, and other materials prepared by or for the internal use of our lawyers. All such documents which we retain will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage charges, we have the right to destroy or otherwise dispose of any such documents or other materials retained by us seven (7) years after the termination of the engagement, unless applicable law

permits or requires a shorter or longer period for preservation of documents, or unless a different period is specified in a special written agreement signed by both of us.

With regard to any documents containing EU personal data that you transfer to us that we have not previously destroyed as explained above, we will act under your instructions in relation to the timing of the deletion for such data in order to comply with the GDPR storage limitation principle or to assist you in responding to a valid data subject request for the deletion of personal data.

EQUALITY AND DIVERSITY

We have a written Equality and Diversity policy to which we seek to adhere at all times in the performance of our services. A copy will be provided to you upon your written request and is available on our website.

DISCLOSURE OF YOUR NAME

We are proud to serve you as legal counsel and hope to share that information with other clients and prospective clients. On occasion, we provide names of current clients in marketing materials and on our Web site. We may include your name on a list of representative clients. We may also prepare lists of representative transactions or other representations, excluding of course any we believe are sensitive. If you prefer that we refrain from using your name and representation in this manner, please advise us in writing.

SQUIRE PATTON BOGGS ATTORNEY/CLIENT PRIVILEGE

If we determine during the course of the representation that it is either necessary or appropriate to consult with our General Counsel, one of our Ethics Lawyers or other specially designated lawyer or outside counsel, we have your consent to do so with the confidentiality of our communications with such counsel protected by an attorney-client privilege which will not be diminished by our representation of you.

SEVERABILITY

In the event that any provision or part of this engagement agreement, including any letters expressly stated to be part of the engagement agreement, should be unenforceable under the law of the controlling jurisdiction, the remainder of this engagement agreement shall remain in force and shall be enforced in accordance with its terms.

PRIMACY

Unless expressly superseded by explicit reference the sections “Who is our Client,” “Conflicts of Interest,” and/or “Public Policy Practice” are fully effective notwithstanding another provision in case of any duplication and to the fullest extent possible in case of inconsistency.

ENTIRE AGREEMENT

This engagement agreement supersedes all other prior and contemporaneous written and oral agreements and understandings between us and contains the entire agreement between us.

This engagement agreement may be modified only by a signed written agreement by you and by us. You acknowledge that no promises have been made to you other than those stated in this engagement agreement.

INTERPRETATIONS

This agreement shall be interpreted to effectuate the intention of the Parties to observe all applicable present and future ethical and legal requirements and prohibitions. To the extent that any existing or future legal or ethical requirement or prohibition in any applicable jurisdiction does not allow or otherwise conflicts with any provision of this engagement agreement or service contemplated in it, then it shall not apply in whole or in part to the extent of such conflict or prohibition. Further, any such provision or service offering shall be deemed modified to the extent necessary to make it valid and consistent with such requirements and prohibitions.

GOVERNING LAW, COURTS AND BAR ASSOCIATIONS

All questions arising under or involving this engagement or concerning rights and duties between us will be governed by the law (excluding choice of law provisions) and decided exclusively by the courts and Bar authorities of the jurisdiction in which the lawyer sending you this engagement agreement has his or her principal office unless another jurisdiction is specified in the letter accompanying these Standard Terms. When another jurisdiction provides that its law or courts or Bar authorities will govern notwithstanding any agreement, that other law may of course control, at least on certain questions.

IN CONCLUSION

We look forward to a mutually satisfying relationship with you. If you have any questions about, or if you do not agree with one or more of these terms and conditions, please communicate with your principal contact at the Firm so that we can try to address your concerns. Your principal contact can recommend changes that will be effective once you receive written notice of approval of any revisions, which, depending on the nature of the request, will be made by a Lawyer in Management and/or an Ethics Lawyer. Thank you.

SUMMIT COUNTY AND TOWN OF BRECKENRIDGE: REDISTRICTING ADVOCACY

SCOPE AND PLAN OF WORK

We will be helping Summit County and the Town of Breckenridge advocate at the Congressional Commission, on the placement of Summit County and other areas in congressional districts for the coming decade. Our understanding is that the County and the Town will not require assistance regarding the redistricting of the state legislature. This plan of work is intended to respect a budget of no more than \$75,000, which will be split equally between the County and the Town.

I. Develop concept and argument for alternative maps.

A. Investigate “legislative history” for the concept of communities of interest specific to the Colorado redistricting amendments.

- Among the standards guiding the Commission’s choice of a map, maintaining communities of interest is the one best suited to support the County’s arguments. “Communities of interest” is a concept with extensive history in voting law, but we will need to understand the “legislative history” (not literally legislative, given how the redistricting amendments came to pass) informing how the Commission and courts will understand the concept in the Colorado context.

B. Preliminary development of alternative maps.

- The Commission has said numerical equivalency between districts is its highest priority. We will engage a consultant to assess what degree of equivalency its preliminary map achieves, and to develop one or more alternative maps (if possible) that place Summit County in a better position while achieving equivalency comparable to the Commission’s preliminary map.

C. Identify common interests, cultural features, etc., that support the alternative map(s).

- These will be the issues that drive an argument that the alternative map(s) will be better in terms of preserving communities of interest.

- These are not just commonalities between Summit County and other areas. An alternative map will necessarily shift the district of some other areas, and we can also argue that those changes will better preserve those other communities of interest.

D. Identify potential disadvantages of the alternative map(s).

1. Do our alternatives break any fairly obvious communities of interest?
2. [For the consultant] Are our alternatives notably worse than the preliminary map in terms of numerical distributions?

E. Assess whether we can communicate to commissioners.

We expect this stage to cost around \$25,000, and it will likely lead to a first milestone review, under the engagement letter, at either the “first map” or the \$25,000 point.

II. Build a coalition.

A. Identify potential coalition partners.

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- Once we have alternative maps in mind, we can scope out what other areas, municipalities, counties, or groups might be willing coalition partners. Clear Creek County will obviously have to be on board. But we can also try to work with other areas across the state that would be affected by our alternative(s), and statewide groups.

B. Outreach to potential partners.

- Communications to potential partners to explore interest in working together.

C. Negotiate a common position.

- We will want to know whether potential partners have concerns about our alternative map(s) or about the arguments we're developing; or other ideas they have to support the shared goals.

This work can begin tentatively right away, and will begin in earnest once we have our first alternative map, and before we've completed the first stage above. Part II will likely cost around \$5,000-\$8,000 (this part represents most, but not all, of menu item E from the proposal).

III. Prepare a substantive outline of the arguments.

A. With the maps and the basic concepts in hand from Stage I, and the coalition partners identified and their arguments in hand, we will draft the substantive outline laying out the arguments in enough detail for Summit County/Town of Breckenridge and/or us to present them in various fora (at the hearings, in communications to commissioners, etc.)

B. The consultant will prepare the maps in a form appropriate for submitting to the Commission.

C. We will ask the consultant to analyze how competitive the districts would be under the Commission's preliminary map and under our alternative(s). Competitive districts is not the highest priority for the Commission but could still be an important point of comparison.

We expect this stage will cost around \$25,000. Thanks to coalition-building work going in Part II, we will likely to trigger the \$50,000 review milestone before being quite finished with the substantive outline.

IV. Monitor the arguments of others and develop rebuttals.



Memo

To: Breckenridge Town Council Members
From: Mark Truckey, Director of Community Development
Date: July 21, 2021
Subject: Planning Commission Decisions of the July 20, 2021 Meeting

DECISIONS FROM THE PLANNING COMMISSION MEETING, July 20, 2021:

CLASS A APPLICATIONS:

1. Ridge Street Residences, 201 N. Ridge Street, PL-2021-0028
A proposal to remove a non-historic commercial building (McGraphix) and construct four new residential duplex units totaling 5,527 sq. ft. of density, and relocate and restore a shed along N. Ridge Street. *Approved, see second memo.*

2. Highland Greens Lodge Spa Remodel, 34 Highfield Trail, PL-2021-0235
A proposal to remove 2 existing outdoor spas and replace with 1 new in-ground outdoor spa in the same location, install 1,120 sq. ft. of outdoor heated spa deck, replace all existing decking and fencing around the spa, install a new outdoor fireplace and trellis over the spa deck, and convert 3 existing parking spaces to electric vehicle parking spaces. *Continued to the August 3, 2021 Planning Commission Meeting.*

CLASS B APPLICATIONS: None.

CLASS C APPLICATIONS:

1. Shoop Residence, 1110 Bright Hope Drive, PL-2021-0096
A proposal to build a new 6,381 sq. ft. single family residence with 5 bedrooms and 5 bathrooms over the Illinois Gulch. *Continued to a future meeting, date TBD.*

2. Goldreyer Residence Snowmelt, 422 Timber Trail, PL-2021-0290
A proposal to install 3,717 sq. ft. of outdoor heated space; 2,206 sq. ft. of which is existing but not permitted. Proposal to offset negative points includes additional landscaping and electric vehicle supply equipment. *Approved.*

TOWN PROJECT HEARINGS: None.

OTHER: None.

Memo

To: Town Council
From: Chris Kulick, AICP, Senior Planner
Date: July 20, 2021 for meeting of July 27, 2021
Subject: Ridge Street Residences Class A Planning Commission Approval Summary

A Final Hearing for the Ridge Street Residences, located at 201 North Ridge Street, was held by the Planning Commission on July 20, 2021. The development includes removing a non-historic commercial building (McGraphix) and constructing four new residential duplex units in two buildings totaling 5,527 sq. ft. of density and 4,531 sq. ft. of mass.

The project also proposes relocating and restoring a historic shed. The property is located at the northwest corner of North Ridge Street and Wellington Road. The site slopes downhill to the west from North Ridge Street at an average of 11%. The parking spaces are located in the rear of the property, 7 of which are located in garages and 2 are exterior spaces with paver strips. All parking is accessed via a common driveway from the alley. The project features an above average landscaping plan as determined by the Planning Commission and proposes abundant quantities of spruce, cottonwood and aspen trees.



The Commission found the proposal complied with all Priority Design Standards and Absolute Policies, and assigned a total cumulative score of positive one (+1) point under the Relative Policies. The Commission approved the application 7-0.

Staff will be available at the meeting to answer any questions.



Breckenridge South



Goldreyer Residence
Snowmelt, 422 Timber Trail

Ridge Street Residences,
201 N. Ridge Street

Shoop Residence,
1110 Bright Hope Rd.

PLANNING COMMISSION MEETING

The meeting was called to order at 5:30 p.m. by Chair Beckerman.

ROLL CALL

Christie Mathews-Leidal	Mike Giller	Jay Beckerman	Mark Leas
Tanya Delahoz	Steve Gerard	Allen Frechter	

APPROVAL OF MINUTES

Ms. Leidal: There are no meeting comments and questions? (Mr. Kulick: Correct, we have shortened the length to keep the minutes more succinct and to focus on final comments, motions, and decisions). If I want something in the written record, should I restate it during comments at the end? (Mr. Truckey: Yes, that is fine).

With no additional changes, the July 6, 2021 Planning Commission Minutes were approved.

APPROVAL OF AGENDA

With no changes, the July 20, 2021 Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- There were no comments.

CONSENT CALENDAR:

1. Shoop Residence (LS), 1110 Bright Hope Drive, PL-2021-0096

Mr. Gerard made a motion to call up the Shoop Residence (LS), 1110 Bright Hope Drive, PL-2021-0096, seconded by Ms. Leidal. The motion passed 7 to 0.

Ms. Delahoz disclosed that she was approached by the applicant. She had no knowledge of the application at that time. No votes to recuse Ms. Delahoz from this.

Mr. Sponable presented a proposal to build a new 5,181sf residence with 5 bedrooms and 5 bathrooms at 1110 Bright Hope Rd.

Mark Harris, Architect:

The line in purple is indicative of the FEMA and Wetland delineation, there two areas where we could or could not build in. We have to stay out of the hatch area, floor elevation needs to be 2 feet above the purple line, the floor is raised so we can build there. The two-foot discrepancy is a function of differing datums. The graphics has been shown appropriate. We have reached consensus that it is shown correctly. We will iron it out prior to building permit.

Commissioner Comments:

Mr. Giller: I am comforted by Chris McGinnis' letter that the applicant shall submit more detailed plans and to get the applicant to get a floodplain development permit.

Ms. Delahoz: None.

Mr. Gerard: I am extremely uncomfortable with this project. Multiple variances (utility line, driveway) permits that we don't know will be received. I don't think it is ready to go out of Planning. It sets a bad precedent for sending something forward that has a lot of question marks. We won't see the plans. I am not comfortable with the project. (Mr. Sponable: The utility line fee in lieu is written into the code, not a variance.)

Mr. Frechter: None.

- Mr. Leas: None.
- Ms. Leidel: I agree with Steve. There is a lot of unknown. The gravity of the changes in regard to the floodplain is a concern. We haven't done something this significant: conditioning absolute policies. I support a continuance. If this does go we need to edit the point analysis and the findings.
- Mr. Beckerman: This is uncomfortable and there are a lot of uncertainties. But there are comforts in Chris McGinnis' blessing. There is a list of things to be done. I want to see this come back. This looks more like a preliminary than a final.

Deborah Shoop, 1110 Bright Hope:

I would like to make it clear that prior to purchasing this home we met with your predecessors we asked about the floodplain, the setbacks, the neighbors that can build within 6 ft. we were given the blessing. We have had to deal with AECOM and FEMA and new regulations that have changed. It is frustrated that we have been held up by these parties. I am expressing frustration that we have been at hostage by government officials that have taken possession of our property. We have altered the design, and we submitted in January. We have been changing and amending our plan in order to meet these requirements. When I first met with Planning, we were given a blessing. Please take this into consideration.

Mr. Truckey: Does Chris McGinnis's letter address the concerns? What are the remaining issues? We can add Chris's letter as a condition of approval. Making sure the flood plain permit is pulled, that the issues in Chris's letter are addressed prior to approval, is this all the issues? The power line is taken care of per Luke.

Commissioner Questions / Comments:

- Ms. Delahoz: If everything in the engineering letter is taken care of, I am okay. All the planning issues, platting issues, have been addressed, but our opinions on this project should not be relevant. We should look at the code and support from engineering. I am ok moving on with conditions.
- Mr. Beckerman: Christie can you go over the point analysis being incorrect?
- Ms. Leidal: Page 14 under 18A parking complies, it requires compliance with chapter 3 off street parking, these call for 8% max grade. Chris doesn't say in the memo that he supports it, he just says "if" and that he would need to review. So I don't see that he is granting it. If so 18A needs to state why it's complying with engineering code. Policy 28 we need to get rid of N/A and put complies. Policy 31 absolute water it says it complies because it was platted in 1985 and the water quality regulations for setbacks was done in 1986 so it's legal non-conforming. For Policy 34A it says it complies, the plans as shown do not comply but it sounds like Chris is asking for additional information and revised plans in order to meet that policy. That is what needs to be changed. The findings: parking variance will need to be granted, 18A driveway grade, 25 foot setback, and another one for hazardous conditions policy 35. The posts are in the floodplain, so revise the plans to meet these. Are they going to be moved out? (Mr. Sponable: Where they are shown won't be signed off on by engineering, they will be moved or removed). 34A reads "Geologic hazards shall include, but not be limited to, avalanches, landslides, rockfalls, mudflows, debris fans, unstable or potentially unstable slopes, ground subsidence, faulting, expansive soil or rock, Pierre Shale, and mining related modifications or other manmade modifications of the natural geology which may pose some geologic hazard.". 34D reads "For all areas located within the special flood hazard areas as delineated on the flood boundary floodway map, the flood insurance rate maps and the flood insurance study, a plan of onsite flood prevention, control and hazard mitigation shall be prepared and implemented according to the provisions of the Breckenridge flood damage prevention ordinance." they can get a CLOMAR, or move the columns. (Mr. Kulick: On this we defer to Engineering's recommendations, we lean on them and their domain). (Mr. Sponable: What about a

- condition that all items in the engineering letter are met prior to BP approval? Since all of these items are in that letter?)
- Mr. Beckerman: I haven't seen an application come through with a laundry list of items still outstanding. That is my hesitation. (Mr. Sponable: Changes get documented, point changes would come back to Commission.)
- Mr. Frechter: What is the process? Engineering then planning again? (Mr. Sponable: Yes. Explains process.)
- Ms. Leidal: What good does our approval give them if they can't get Chris' approval without additional plans and revision? They can't turn dirt anyway. Revisions are forthcoming. (Mr. Kulick, generally they want to know that the development permit is good to go before moving onto the next stages, they want piece of mind before next step and full engineered plans).
- Mr. Beckerman: What the Commission has an issue with is it feels like we are going in a wrong order. There is an application in front of us with a laundry list of items that haven't been done. We would feel better if Chris McGinnis was here when this came back. We want to see plans come back that are satisfying these items. (Mark Harris: All we need to do is address comments – drainage, grades, none of it changes footprint or height). We want to be able to review changes that affect other things, the point analysis does not reflect. We want to see this come up. I will ask again for a motion.

Ms. Delahoz made a motion to approve the Shoop Residence (LS), 1110 Bright Hope Drive, PL-2021-0096 with the findings from Chris McGinnis's memo dated July 12th stating his recommendations and the revised point analysis for 18A and ensuring that 31A and 34A comply, as well as conditional approval for the parking variance. Seconded by Mr. Frechter. The motion failed 5-2, with all but Mr. Frechter and Ms. Delahoz dissenting.

The above motion was rescinded by Ms. Delahoz.

Mr. Gerard made a motion to continue the hearing for Shoop Residence (LS), 1110 Bright Hope Drive, PL-2021-0096 seconded by Ms. Leidal. This motion passed 7 to 0.

2. Goldreyer Residence Snowmelt (SS), 422 Timber Trail, PL-2021-0290 was approved with no call-ups.

FINAL HEARINGS:

1. Ridge Street Residences (CK), 201 N. Ridge Street, PL-2021-0028

Mr. Kulick presented a proposal to remove a non-historic commercial building (McGraphix) and construct four new residential duplex units totaling 5,527 sq. ft. of density, and relocate and restore a shed along North Ridge Street. The following specific questions were asked of the Commission:

1. Is the Commission comfortable with the proposed shed restoration work?
2. Does the Commission have any final comments regarding the proposed exterior parking design, specifically near the shed?
3. Does the Commission have any additional comments on the proposed project design?

Janet Sutterley, Architect:

I have one final thing to add, the two parking spots. We wanted to put heated gutter and down spout and low profile snow jacks that are meant for a corrugated metal roof in order to protect the vehicles, that will be added to the CDs. We are showing two spots there. The code doesn't require 9 we think that unit #1 should have more than just one. We want to provide the extra spot. We don't need more snow stack or landscaping so we want you to consider keeping both those spots. Thank you.

Commissioner Questions / Comments:

- Mr. Giller: 1. Acceptable and well crafted 2. This is acceptable kudos to the applicant and agent for using pavers. Context is great 3. This is a compatible infill and well designed, this will look good.
- Ms. Delahoz: 1. Yes 2. Yes love the pavers. 3. It is great let's do it.
- Mr. Gerard: Outstanding addition to the town I appreciate Janet's work on the historic shed, it will be defining to this project. I appreciate the pavers. 1. Yes 2. No comment I love it 3. Great project.
- Mr. Frechter: Great project. I know the site well and I am pleasantly surprised. 1. Yes, I have shed envy 2. Parking is a great solution 3. Good luck
- Mr. Leas: 1. Yes 2. Yes 3. Great project
- Ms. Leidal: 1. Yes 2. Yes 3. Looking forward to see this being built. 24R paragraph f4 – negative points cannot be assigned for moving the shed. Please add this as a finding #6 (Mr. Giller: And removing asphalt from the shed as well.)
- Mr. Beckerman: 1. Yes 2. Council has talked to us about not exceeding recommended parking. I think people will park there whether it is setup or not, and you have done it tastefully. 3. Look forward to this and excited. Thank you for taking our comments to heart.

Mr. Gerard made a motion to approve the Ridge Street Residences with the addition of finding #6.

6. The Commission determined the historic shed was not in its original location and had been moved to its existing location after 1942, the Town's Period of Significance. Based on this determination, the assessment of negative points is not warranted per Subsection F4 of Section 9-1-19-24R, "Policy 4 (Relative) Social Community" of the Breckenridge Town Code. The Commission further found the new location of the shed was established in context and the historical character was proposed to be improved.

The motion was seconded by Mr. Leas. The motion passed to 7 to 0.

COMBINED HEARINGS:

1. Highland Greens Lodge Spa Remodel (CL), 34 Highfield Trail, PL-2021-0235

Mr. LaChance presented a proposal to remove two (2) existing outdoor spas and replace with one (1) new in-ground outdoor spa in the same location, install 1,120 sq. ft. of outdoor heated spa deck, replace all existing decking and fencing around the spa, install a new outdoor fireplace and trellis over the spa deck, and to convert three (3) existing parking spaces to electric vehicle parking spaces.

Mr. Frechter noted a potential conflict of interest, no commissioners agreed that there was a conflict and determined that there was no need to recuse him from the hearing.

Anne Mead, HOA president Highland Greens:

(The commissioners had previously indicated an additional negative point should be assigned for the outdoor gas fireplace). There has never been a fireplace. Because of the ventilations system, we needed a way to hide the two big stacks. I understand the point, and the Commission is correct, this is a slight design issue. It was our assumption that we had less than 1,100 sf of heated decking so that we would have two negative points for the heated decking and negative one point for the fireplace. (7:16). I don't know if that is something we can take back to our structural engineers and architects. Maybe against the berm we can maybe have 2 sf of unheated. (Mr. LaChance: The Commission could add a Condition of Approval that the heated area be reduced to 999 sq. ft. or below, or that a fourth electric vehicle space be installed.) I am trying not to raise the price. (Ms. Mathews-Leidal: Would doing that cause any structural issues? I guess the applicants can figure that out.) They are trying to match the footprint but bringing it in a little bit should not be an issue. (Chair Beckerman: Do you want to take this back to your board?) Yes.

Mr. LaChance: Staff can revise point analysis to reflect the additional negative point for the proposed outdoor gas fire place.

Commissioner Questions / Comments:

Mr. Frechter: On the trellis, top layer, is there an engineering standard for top strips of wood? (Mr. LaChance: The Building Division would require a Building Permit and would review that at that time.)

Ms. Delahoz: It will look great, and nice to get those hot tubs useable. It'll be nice to have it renovated.

Mr. Giller: Sheet SP1.3, Notes 2 and 3 are incorrect and should be corrected.

Applicant asked for a continuance rather than a condition of approval in order to verify with the board on potential changes to make up points.

Mr. Gerard made a motion to continue the Highland Greens Lodge Spa Remodel for two weeks allowing the applicant to resolve issues, seconded by Mr. Leas. The motion passed 7 to 0.

OTHER MATTERS:

1. Town Council Summary

ADJOURNMENT:

The meeting was adjourned at 7:43 pm.

Jay Beckerman, Chair



TOWN OF BRECKENRIDGE
TOWN COUNCIL

Scheduled Meetings

Shading indicates Council required 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.

July 2021

Tuesday, July 27th, 2021 **3:00 pm / 7:00 pm** **Council Chambers** **Second Meeting of the Month**

August 2021

Tuesday, August 10th, 2021 **3:00 pm / 7:00 pm** **Council Chambers** **First Meeting of the Month**

Tuesday, August 24th, 2021 **3:00 pm / 7:00 pm** **Council Chambers** **Second Meeting of the Month**

August 26th & 27th, 2021

CAST Conference

Telluride, CO

September 2021

September 4th, 2021

Rubber Duck Race

Blue River

Tuesday, September 14th, 2021 **3:00 pm / 7:00 pm** **Council Chambers** **First Meeting of the Month**

September 15th - 20th, 2021

Breck Film Festival

Throughout Town

September 22nd - 24th, 2021

Colorado Municipal League Conference

Westminster, CO

September 24th - 26th, 2021

Oktoberfest

Riverwalk Center

September 25th, 2021

RAM Walk

Carter Park

Tuesday, September 28th, 2021 **3:00 pm / 7:00 pm** **Council Chambers** **Second Meeting of the Month**

Other Meetings

July 26th, 2021

Open Space & Trails Meeting

5:30pm

July 27th, 2021

Board of County Commissioners Meeting

9:00am / 1:30pm

July 28th, 2021

Summit Stage Transit Board Meeting

8:15am

Summit Combined Housing Authority

9:00am

August 3rd, 2021

Board of County Commissioners Meeting

9:00am

Planning Commission Meeting

5:30pm

August 4th, 2021

Breckenridge Events Committee

9:00am

I-70 Coalition

10:00am

Childcare Advisory Committee

3:00pm

August 10th, 2021

Board of County Commissioners Meeting

9:00am / 1:30pm

Workforce Housing Committee

10:30am

August 11th, 2021

Breckenridge Heritage Alliance

Noon

August 12th, 2021

I-70 Coalition

9:30am

Upper Blue Sanitation District

5:30pm

August 16th, 2021

Social Equity Advisory Commission

9:00am

August 17th, 2021

Board of County Commissioners Meeting

9:00am

Liquor & Marijuana Licensing Authority

9:00am

Planning Commission Meeting

5:30pm



Scheduled Meetings

Shading indicates Council required 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.

August 19th, 2021	Transit Advisory Council Meeting	8:00am
August 23rd, 2021	Breckenridge Creative Arts	3:00pm
	Open Space & Trails Meeting	5:30pm
August 24th, 2021	Board of County Commissioners Meeting	9:00am / 1:30pm
August 25th, 2021	Summit Stage Transit Board Meeting	8:15am
August 26th, 2021	Breckenridge Tourism Office Board Meeting	8:30am
	Northwest CO Council of Governments	10:00am
	RW&B Board Meeting	3:00pm
September 1st, 2021	Police Advisory Committee	7:30am
	Breckenridge Events Committee	9:00am
	Childcare Advisory Committee	10:00am
September 7th, 2021	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
September 8th, 2021	Breckenridge Heritage Alliance	Noon
September 9th, 2021	I-70 Coalition	10:00am
	Upper Blue Sanitation District	5:30pm
September 14th, 2021	Board of County Commissioners Meeting	9:00am / 1:30pm
	Workforce Housing Committee	10:30am
September 16th, 2021	Transit Advisory Council Meeting	8:00am
September 20th, 2021	Social Equity Advisory Commission	9:00am
	Breckenridge Creative Arts	1:00pm
September 21st, 2021	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm
September 23rd, 2021	Breckenridge Tourism Office Board Meeting	8:30am
	RW&B Board Meeting	3:00pm
TBD	Water Task Force Meeting	8:00am
	Art Installation Meeting	2:00pm
	QQ - Quality and Quantity - Water District	1:15pm