



**BRECKENRIDGE TOWN COUNCIL
WORK SESSION
Tuesday, July 28, 2009**

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

3:00 – 3:15 pm	I. <u>PLANNING COMMISSION DECISIONS</u>	Page 2
3:15 – 4:00 pm	II. <u>LEGISLATIVE REVIEW</u> *	
	Blue Front Easement	Page 32
	Silverthorne House Landmark	Page 59
	Elevator Ordinance	Page 63
	Entrada Ordinances (2)	Page 66 & 90
	LUD 5 Ordinance	Page 92
	Emergency Voluntary Defensible Space	Page 97
	Defensible Space Options	Page 107 & 111
	Department of Revenue IGA	Page 115
	Grand Celebration Fire Permit	Page 118
4:00 – 4:30 pm	III. <u>MANAGERS REPORT</u>	
	Public Projects Update	Page 12
	Housing/Childcare Update	Verbal
	Committee Reports	Page 13
	Financials	Page 15
4:30 – 5:00 pm	IV. <u>PLANNING MATTERS</u>	
	Neighborhood Preservation Policy Open House Update	Page 20
5:00 – 5:30 pm	V. <u>OTHER</u>	
	Marijuana Dispensary Regulations	Page 21
5:30 – 7:00 pm	VI. <u>EXECUTIVE SESSION</u>	
	Town Manager Evaluation	
	Property Acquisition	

Dinner will be served

***ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA** **Page 26**

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

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

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: July 22, 2009

Re: Town Council Consent Calendar from the Planning Commission Decisions of the July 21, 2009, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF June 21, 2009:

CLASS C APPLICATIONS:

1. Gardiner Addition and Remodel, PC#2009031, 109 Sunrise Point Drive
Addition to an existing single family residence to create a total of 7 bedrooms, 8 bathrooms, 5,901 sq. ft. of density and 6,869 sq. ft. of mass for a F.A.R. of 1:1.9. Approved.

CLASS B APPLICATIONS:

1. Entrada at Breckenridge Re-Subdivision, PC#2009033, 5-105 Huron Road (CR 450)
Re-subdivision of Tract A and Tract B, Entrada at Breckenridge, into two lots; a mini-storage Tract and a Town Tract which will be transferred to the Town of Breckenridge for possible location of affordable housing or other uses as the Town sees appropriate. Approved.

CLASS A APPLICATIONS:

1. Entrada at Breckenridge Master Plan, PC#2009024, 5-105 Huron Road (CR 450)
Master planning of the property at Tract A and Tract B, Entrada at Breckenridge (pending annexation, and resubdivision), into two office/commercial properties, one mini-storage property, and a tract to be transferred to the Town of Breckenridge for possible affordable housing or other uses as the Town sees appropriate. Approved.

2. Entrada at Breckenridge Development, PC#2009025, 5-105 Huron Road (CR 450)
Development of the property at Lot 1, 2 and 3, Entrada at Breckenridge (pending annexation, master plan, and resubdivision), with two office/commercial buildings and three mini-storage buildings. Tract A shall be transferred to the Town of Breckenridge for possible affordable housing or other uses as the Town sees appropriate. Approved.

PLANNING COMMISSION MEETING

THE MEETING WAS CALLED TO ORDER AT 7:04 P.M.

ROLL CALL

Rodney Allen	Michael Bertaux	Dave Pringle
JB Katz	Jim Lamb	Dan Schroder

Leigh Girvin was absent.

APPROVAL OF MINUTES

With no changes, the minutes of the July 7, 2009 Planning Commission meeting were approved unanimously (5-0). Mr. Schroder abstained as he was absent on July 7th.

APPROVAL OF AGENDA

With no changes, the July 21, 2009 Planning Commission agenda was approved unanimously (6-0).

CONSENT CALENDAR:

1. Gardiner Addition and Remodel (JP) PC#2009031, 109 Sunrise Point Drive

With no requests for call up, the consent calendar was approved as presented.

FINAL HEARINGS: *(Staff noted that the Master Plan, Development and Subdivision presentations for Entrada at Breckenridge were delivered concurrently and some of the comments seen below “overlap”. There were no Public Comments regarding the three applications.)*

1. Entrada at Breckenridge **Master Plan** (MM) PC#2009024, 5-105 Huron Road (CR 450)
Mr. Mosher presented the Master Plan, Development Plan (see Final Hearing item 2 description below) and Re-subdivision (see Combined Hearing Item 1 below) proposals concurrently.

The proposal was to master plan the property at Tract A and Tract B, Entrada at Breckenridge (pending annexation, and resubdivision) into two office/commercial properties, one mini-storage property, and a tract to be transferred to the Town of Breckenridge for possible affordable housing or other uses as the Town sees appropriate.

Changes since the June 6, 2009, meeting:

1. Master Plan Notes included:
 - a. Hours of operation for the mini-storage property
 - b. Design and location of the fence surrounding the mini-storage property
 - c. Restrictions of type of use for the two office properties
 - d. Parking for the mini-storage was addressed
2. The lots have been relabeled
3. A Use, Density and Parking matrix was included for Commission review

The applicants have been working with all of Town staff during the annexation process to ensure the proposal abided with the Development Code in all possible ways. The Planning Department recommended the Planning Commission uphold the Point Analysis showing a passing score of zero (0) and approve the Entrada at Breckenridge Master Plan (Class A, Final Hearing; PC#2009024) with the presented Findings and Conditions.

The applicant and representative thanked Mr. Mosher for his work on the project, and noted that they were present for questions.

Mr. Allen opened the hearing to public comment for both the Master Plan, item 1, Development Plan, item 2, and Re-subdivision, combined hearing item 1. No public comments were made and the hearing was closed.

Commissioner Questions/Comments for both the Master Plan and Development Plan:

Mr. Lamb: Final Comments: I have seen 4-5 proposals for this property over the years, and this one is the best. Agreed with the point analysis and think it is a great project.

- Ms. Katz: Final Comments: I am pleased that this project is moving forward.
- Mr. Schroder: Final Comments: I think it is a great application and it is great that the bank agreed to make the drive-thru less visible from the highway. The architectural approach is really nice and I think that the storage units are good as well. I am pleased with this proposal.
- Mr. Bertaux: Where does the density transfer from? (Mr. Mosher: From town owned property.) What would happen to Tract A if the town doesn't develop it and the other lots are developed? Would it be graded? (Mr. Mosher: The town will be maintaining it as a vacant lot. Weed erosion control will be looked after.) Is it possible that they could establish a buffer on the north side of the property to screen the entire property, and also screen along Tract A? (Mr. Mosher presented the plans and noted where landscape screening was provided. No landscaping is proposed on Tract A, since its not part of this development application. If some were planted, it might well be removed when the property is developed.) Can the town ask the owner of the other mini-storage lot to screen per the comments of the neighbors? (Mr. Mosher: It is really a County concern. It will be noted in the minutes.)
Final Comments: I agree with everything that is been said. I think that we need to pay close attention to Tract A and how it is treated in the future. I think we have a challenge with the landscaping plan to keep a lot of color along the building with such a large site. I think it has attractive architecture and deserves the positive points. I support the project.
- Mr. Pringle: The allowed uses for the master plan lots don't include uses for Tract A. (Mr. Mosher: the subdivision will dedicate Tract A to the town. The uses are decided by the Town and will be reviewed by the Planning Commission and Town Council. As far as uses go, it they are included in the annexation agreement). The uses for Lots 1, 2 and 3 are pretty specific, and then there is a note that says "any permitted use that is consistent with the specific uses". What does that statement mean? (Mr. Mosher: The note is intended to allow some flexibility for the professional offices. For example, if a veterinary office sells leashes or dog biscuits, or if the self storage wants to sell padlocks or things like that. But not intended for retail as a primary use. If a proposed use needs further discussion, it will be reviewed with the Planning Commission for impacts.)
Final Comments: I think it speaks volumes for the project that the applicant has worked through the process with the town staff and Planning Commission, and has come through with such a great project. We've seen lots of projects for this corner, and hopefully this one will go forward.
- Mr. Allen: Asked about the curb cut for the Entrada property accessing the mini-storage. (Mr. Mosher presented the curb cuts and access for the property. Engineering has looked at the access and had no concerns. Idea was to reduce the need for three curb cuts for the three properties. The mini-storage has a lesser intensity than the offices will.)
Final Comments: I think it is great. I support everything, it looks good.

Mr. Pringle made a motion to approve the point analysis for Entrada at Breckenridge Master Plan, PC#2009024, 5-105 Huron Road (CR 450). Ms. Katz seconded and the motion was approved unanimously (6-0).

Mr. Pringle made a motion to approve the Entrada at Breckenridge Master Plan, PC#2009024, 5-105 Huron Road (CR 450). Ms. Katz seconded and the motion was approved unanimously (6-0).

2. Entrada at Breckenridge **Development** (MM) PC#2009025, 5-105 Huron Road (CR 450)

Mr. Mosher presented the development plan proposal along with the master plan. The proposal was to develop the property at Lot 1, 2 and 3, Entrada at Breckenridge (pending annexation, master plan, and resubdivision) with two office/commercial buildings, three mini-storage buildings. Tract A would then be transferred to the Town of Breckenridge for possible affordable housing or other uses as the Town sees appropriate.

1. Building 1 would now be two stories (not three, with one level in the basement), resulting in a slightly larger footprint.
2. The architecture for Building 1 has been modified as a result.
 - a. The drive through bays would be located to the east (behind) the building.
 - b. Building foot print and roof forms were slightly modified, but all finishes, accents, window types, etc. have remained the same.
3. The site and parking layout has been modified slightly.
4. The northwest drive connection to Summit Ridge Center has been abandoned.

- 5. Detail of the dumpster enclosure was provided to the Planning Commission.
- 6. New renderings were provided to the Planning Commission.

Staff noted that Condition number 32 (regarding the Summit County Housing Authority housing impact fees) was not applicable and should be removed from the Findings and Conditions.

The applicants have been working with Town staff during the annexation process to ensure the proposal abided with the Development Code in all possible ways. The general design impacts (use, density, parking, etc.) of the mini-storage, which are not identified in the Code, are being addressed in the Annexation Agreement.

The revisions in this submittal reflect the comments heard from the Planning Commission at the last hearing along with changes/corrections from the applicants and their agent. The Planning Department recommended the Planning Commission uphold the Point Analysis showing a passing score of positive four (+4) points and approve the Entrada at Breckenridge Development (Class A, Final Hearing; PC#2009025) with the attached Findings and Conditions.

(See comments above under Master Plan regarding the Development presentation)

Mr. Pringle made a motion to approve the point analysis for Entrada at Breckenridge Development, PC#2009025, 5-105 Huron Road (CR 450). Mr. Lamb seconded and the motion was approved unanimously (6-0).

Mr. Pringle made a motion to approve the Entrada at Breckenridge Development, PC#2009025, 5-105 Huron Road (CR 450), with the deletion of condition number 32 which was waived by the town. Ms. Katz seconded and the motion was approved unanimously (6-0).

COMBINED HEARINGS:

- 1. Entrada at Breckenridge **Re-subdivision** (MM) PC#2009033, 5-105 Huron Road

Ms. Mosher presented a proposal to re-subdivide Tract A and Tract B, Entrada at Breckenridge, into two lots, a mini-storage Tract and a Town Tract which will be transferred to the Town of Breckenridge for possible location of affordable housing or other uses as the Town sees appropriate.

The review of the proposed subdivision plan outlines the conceptual land layout and land division. The Land Use Summary was:

Lot 1	28,879.00 SF	0.663 AC
Lot 2	28,879.00 SF	0.663 AC
Tract A (Town)	57,757.00 SF	1.326 AC
Lot 3	57,757.00 SF	1.326 AC
TOTAL	173,272.00 SF	3.978 AC

This submittal has been reviewed by Planning and Engineering staff without any major concerns. This report was presented as a combined Preliminary and Final hearing. Staff believed that the issues involved in the proposed project were such that no useful purpose would be served by requiring two separate hearings. If the Planning Commission believed there were further issues to discuss, staff recommended this application be continued rather than denied.

Staff recommended approval of the Entrada at Breckenridge Re-Subdivision, PC# 2009033, along with the presented Findings and Conditions.

(See comments above)

Mr. Bertaux made a motion to approve the Entrada at Breckenridge Re-subdivision, PC#2009033, 5-105 Huron Road (CR 450), with the conditions noted in the staff report. Ms. Katz seconded and the motion was approved unanimously (6-0).

PRELIMINARY HEARINGS:

- 1. Preservation Village at Maggie Placer (MM) PC#2008024, 9525 Colorado Highway 9

Mr. Mosher presented a proposal to develop 21 townhomes in the form of nine duplexes and one triplex. Four of the units would be sold as market-rate and 17 would be for workforce housing. There would be 16 three-bedroom units and five two-bedroom units. Each unit would have at least a one-car garage (some would have two-car garages).

Changes since the June 16 hearing:

1. An agreement between the Ski and Racquet Club and the Preservation Village at Maggie Placer team has been reached and access (via a new easement) to the development can now be taken from the full-movement intersection near the Ski and Racquet Club entrance. There will no longer be a right-in/right-out curb cut along Highway 9.
2. The site layout and a few units have been slightly modified to accommodate the change in access.

Since the last review, the last minute change on the site access to Maggie Placer has impacted the amount of detail drawings on site drainage and landscaping.

Staff welcomed any comment on the following:

1. The access change.
2. Placement of landscaping.
3. The architecture and color/material selections.

Mark Hogan with BHH Partners presented for the applicant. Mr. Hogan presented the team members that were present at the meeting, including; Jon McCallister, from Ski and Racquet Club Condominiums; John Springer, Springer Development; Mr. Wayne Bishop (for Royce Tolley) the applicant and Tim Gerken, of BHH Partners. Mr. Bishop thanked the staff and commission and discussed the recent meeting with the Ski and Racquet Club, noting that through the meeting the discussions substantially improved the access issue together. Mr. Bishop discussed his company's dedication to affordable housing in Summit County to provide 21 units at this site, and potentially a total of 69 affordable homes in the county by the end of this year. Mr. Hogan presented the site plan with changes, including the new access point from the Ski and Racquet Club drive, which had been an issue at the previous worksession meetings. Mr. Hogan presented an image board for the project, discussing the architectural concept, and a live computer 3D model of the site plan, topography and buildings. He noted the locations of the adjacent subdivisions while looking at the model and Mr. Mosher provided an aerial map showing the adjacent property, Wood Manor. Mr. Hogan discussed the building materials, roof forms, building base, windows, details and accent colors.

Mr. Allen opened the hearing to public comment.

Jay Rust, president of Woods Manor Condo Association. We would like to thank Mr. Mosher for meeting with their association today to discuss this project this afternoon on such short notice. Thanked the commission and the Town of Breckenridge for their commitment to the overall vision of the Town. The main concern that we have for the project is the elevation gain from the Maggie Placer property to ours and the lack of adequate buffering:

- Will there be retaining walls? There is only a five-foot setback at some parts of that property boundary and how will the elevation gain be dealt with?
- Screening of the walls if they are used with landscaping?
- Request a meeting with the developer, staff and architect to go on site to talk about this issue.

The second issue that we have is the color scheme. It may look interesting with one or two buildings, but we are talking about 10 buildings. More like an amusement park. How will all of that look with yellow and blue? Could the colors be more blended in and muted? We would request that the applicant consider the color scheme. (Mr. Pringle asked if Mr. Rust knew the grade change adjacent to Woods Manor.) (Mr. Mosher noted that the grading on the 3D model is accurate.)

Chuck Sebald, also on the board of Woods Manor Condo Association, noted that the grade change looks how it looks on the 3D model and that the trees in the plan are shown on the Woods Manor property and do not currently exist. They are proposed on the social trail boarding the Maggie Placer property.

(Mr. Mosher asked if the social trail is used.) Mr. Rust noted that the trail isn't used as often because there is now a sidewalk along Highway 9. The best case scenario for us would be to move buildings 8, 9, 10, and 11 back and plant some trees in the increased setback to mitigate the impact to Woods Manor. The other thing we would like to ask consideration on, is that the best place for the playground? (Mr. Mosher noted it was the located the furthest from

the state highway.) Does this development really need a playground – will families live here? (Mr. Allen asked if the playground would be visible, and also if the concern was the noise?) Mr. Rust said that their buildings are tall enough that the upper story units will be able to see this area.

Jon McCallister, from Ski and Racquet Club Condos, was present to note that the group was involved in the access meeting and supported the new access.

Denalda Sebald, from Woods Manor, was wondering why all of the trees are being cut down on site? They are all healthy and have been protected in the last few years by spraying. Try to save some of the trees.

Kathleen Rust, from Woods Manor, was also concerned about the trees and the five foot setback. Can new trees really fit in that tight of a setback area?

Karen Schilling, from Woods Manor, concerned with families and that there is a small playground and not very much yard or play area. Concerned that children will cross the property line and play on the Woods Manor property and that is a liability. (Mr. Allen noted that the deed restriction only allows the residents to be full time Breckenridge residents.) (Ms. Katz noted that no one is planning that the social trail will be part of the playground or this development and your private property rights will be protected.)

Mr. Bishop, the developer, said that he would work with the Woods Manor group to address their concerns. He welcomed an on-site meeting soon.

Commissioner Questions/Comments:

Mr. Lamb: Final Comments: It is always a concern with someone is building something near your property, but having said that when the staff and architect says they will work with the group I believe that they will. Part of the vision of Breckenridge is to provide affordable housing, and that is why this project is important. The five foot setback is small, but meets the Development Code. Its purpose is to provide grading area, landscape, etc. and I trust that the group will work it out together. I like the color scheme as it is a lot more modern and contemporary. Negative points will probably be assigned. The colors on the computer screen aren't as accurate as on the actual materials boards. The color is much nicer. I like the architecture.

Ms. Katz: Final Comments: Thanks to Ski and Racquet Club and the developer for working together to resolve the access concerns. It is a much better plan as a result. The proposed colors are fantastic and with the fall colors found in Breckenridge will look better. Really believe they meet the intent of the code as they do not “unduly contrast with the background”. The architecture is different but has roots found in our community and will give a pride of ownership to each owner. The property will have residents that will keep that development strong and love where they live, which is great for the neighbors adjacent to this property. I don't think that the color scheme should get negative points. Breckenridge needs the affordable housing and it will be a great addition to the community. The property will likely cut down trees, but it is their basic property right. More detail on the landscaping progress should be shown the next hearing. I agree that it is tight in the corner, but I'm not sure how you fix that. Work with staff. They do well. Ultimately the setbacks and site disturbance points will be determined. We need to encourage families to live in Breckenridge, and it is great to have a playground on this site for those families. We need to keep the playground away from the highway. Think the location is fine. Work with neighbors in the spirit of the Ski and Racquet Club, I used to live there. I encourage you to work with the developer and architect for this project. I think there can be a positive outcome if everyone works together and is a part of the process. Maybe a place for the parties to get together would be that the developer could provide landscaping on the social trail on the Woods Manor property to discourage use of the social trail. (A Ski and Racquet Club owner noted that they also own part of the trail.) This could benefit both parties.

Mr. Schroder: What type of landscaping will there be? Will there be aspens used? (Mr. Hogan noted that aspen, spruce and cottonwoods would be used.)

Final Comments: I am glad that the neighbors are here to share comments and concerns and to work with the developer and the staff on this project. I think that the architecture structure is good and elevations create different spaces. I like the color scheme, and that they are primarily used as accents on each building. Overall, the brown tones are the more predominant colors on the project; the

bright colors are fresh and vital. I asked about aspens earlier because of the color complementing the organic nature in the fall. I applaud that the circulation is improved because of the work with the Ski and Racquet Club. I think it is great that there is a playground and that this property will not encourage kids to play off property. If kids do play off property it is an issue between the parents and the HOA group, not the town and not this application. They will likely be playing more in the front yards in the private drive. I live in the Wellington Neighborhood and this is the case there too. I know that this project meets the code and the guidelines in terms of setbacks, but if possible please address the concerns of the residents at the corner.

Mr. Bertaux: Asked about the window trim material. (Mr. Gerken noted that wood trim is provided along the wood siding elevations and metal is along the color panels.) Asked about the garages. (Mr. Hogan showed the parking spaces including 2 tandem spaces and an additional 3rd space or “gear space” on some units. Cementitious siding will be utilized for durability and ease of maintenance for the panels, but not the siding.)

Final Comments: The agreement with the Ski and Racquet Club overcomes a big issue for me and I agree with Mr. Pringle. Employee housing is really needed in this area of town and it is really important that housing is located throughout town. The architecture is a bit new for us, but I think it will fit in. What will help it to fit in is a very good landscaping plan. I recommend the landscaping and snow stacking should not be shared space. Make it functional. I think that the grading/retaining wall is a big issue and not sure how you can do it without disturbing the neighbors property. There may be a problem with site disturbance in this area, and the revegetation in this area will be most important. I think the playground is in a great place and I want families to be able to live here. This project is a good concept and it is good that it is different than Wellington. I like the color and architecture.

Mr. Pringle: The materials introduced here are new types of materials – have you used these in other applications? (Mr. Hogan said yes, they have used these materials. He also noted that Wellington uses cementitious or hardi-plank siding.) I am nervous about using a new material in the town. Is it hardi-plank or plywood? (Mr. Mosher noted that negative points were given for the materials and that the points would be mitigated with the positive points for the workforce housing.) (Mr. Hogan noted that the siding is hardi-plank, not plywood.) What are the garage doors? (Mr. Gerken noted that the garage doors would also be cementitious for durability.) (Mr. Mosher noted that the panels are usually pre-finished.) What color are the garage doors? (Mr. Hogan noted it varies.)

Final Comments: I have some issues with the amount of the colors being used. I am not opposed to it, just the amount of un-natural material being introduced. Will it be a look that wears well over time? – we don’t know. I like the architecture. I have concern with the placement of building 10 and 11 and how close it is to the west setback line near Woods Manor. Is there any ability to move them around a little bit to provide larger setbacks from the property line, which is a steep area? I also look at the architecture of that corner and the deck and how it looks suspended in the model and it concerns me as well. It seems like there are few problems with this project except for that corner area. I want to thank the Ski and Racquet Club for working with the group to create the new access point. I look forward to seeing the landscape plan which will help to show landscaping, revegetation and buffering.

Mr. Allen: In the report it notes that the Ski and Racquet Club would be paying 1/3 of the Highway 9 improvement island fee; do they know about it and how does it get reviewed? (Mr. Mosher noted that it would be a separate application. They didn’t know about the proposal until last week, and there will be a lot more answers at the next hearing. May include all the properties accessing this point.)

Final Comments: I really applaud the applicant for doing affordable housing. I thank Mr. Rust for being a part of the process and hope that the parties can work together because I agree with the residents on many issues. I like the colors as presented on the color board and their use as accents. I also think that there shouldn’t be negative points; agree with Ms. Katz. Thank you for putting in garages instead of car port on center units. I too am concerned with building 10, 11 and possibly 8 and 9 for not meeting hillside/ridgeline development code. Please take a look at this. I think screening will be very important. The site needs a landscape buffer around it and there needs to be room to do that on the property, especially buildings 8-11. Regarding removing all trees from the site; if there are any specimen trees it would be great if they could be saved. If it is all Lodgepole I

don't have an issue with clear-cutting. I would like to see if you could explore adding a fence around the playground area for safety. I like the architecture and hope you can overcome the issues.

WORKSESSIONS:

1. Landscaping Ordinance (JC)

Ms. Cram presented a memo refreshing the Commission on the updates to the MPB Ordinance and an update on what is happening with the Defensible Space Ordinance, along with proposed updates to the Landscaping Policy/22 .

MPB Ordinance Update:

- Requires that all dead and infected trees be removed by June 1, 2012.
- Town will be treating all town owned property and open space parcels by June 1, 2012.
- No permit needed to remove dead and infested if working with approved contractor.
- Contractor training to get on list.

Defensible Space Ordinance:

- Adopted on June 9, 2009.
- Ordinance suspended per referendum petition.
- Town Council will determine whether to repeal or submit to vote by electors.
- An emergency voluntary ordinance has been created by the town attorney for the interim that will be reviewed by the council on July 28th.

Landscaping Ordinance Update:

- Make it consistent with MPB and noxious weeds ordinance.
- Absolute policies.

Ms. Cram asked what the commission's concerns with water features were. (Mr. Neubecker noted that the concern in the previous commission was the site disturbance, glycol use that harms wildlife and energy use of the water feature.) Glycol is only used to keep pumps from freezing, so possibly the town should look at only using water features seasonally. Do we still agree that they shouldn't be allowed outside the disturbance envelope? What is excessive? Should it be subjective, based on a site ratio? Would we be okay outside of the disturbance envelopes? Size to site ratios will be explored. Maybe we can take some elements from site disturbance and apply it to this. Technically, right now water features have a moratorium on them.

Mr. Pringle: Issue with the water features was that they were consistently not coming in for permits and the Planning Commission wasn't able to review them. Does site disturbance come into play when these are excavated? And how much artificial manipulation are we doing? A little waterfall and creek is one thing, but if it becomes a huge pool and river, its another issue. It is the site disturbance and the unnatural application seen on some of these lots. That ordinance was written to protect existing trees, so we need to get away from that and go towards setbacks. Some water features are too outrageous now with the large ponds, etc. Anything that is built that is not permitted can be an issue. (Ms. Cram noted all site work requires a permit.) Recommended that we get input from people that install ponds so that the group is informed, like we are about energy.

Mr. Allen: It is okay outside the envelope if it doesn't impact the site too much. If it is a beetle kill site then the entire site is already disturbed. We agree that energy isn't the issue. Landscaping is allowed outside disturbance envelopes; aren't water features part of landscaping? It sounds like we are all okay with water features as long as they aren't big and ugly. Use the driveway / site disturbance example as a guideline. So it sounds like our issue is site disturbance. What are staff's recommendations for policy about site disturbance? (Mr. Neubecker: What are the issues with size?)

Ms. Katz: How do you apply a ratio to that? Maybe we look at the tap fee surcharge to determine where the line should be drawn. Those types of water features are excessive. Is it excessive in the abstract, or do you get to have it compared to the size of your house? I don't think that is what we want. (Mr. Neubecker: What is the issue? Energy, site disturbance?) It has to be site disturbance because people will use alternative energy to power things. You shouldn't be outside of it. Can we count on precedent and staff to let us know comparisons? (Mr. Neubecker: They are usually on grade and aren't seen from the road.) Agree with Mr. Allen on using driveway / site disturbance example as a

guideline. (Mr. Neubecker: There is language in the code regarding site disturbance that is covered by this.)

Mr. Lamb: If you have a large enough pond and are losing it to evaporation, I understand needing a tap fee. Also the energy use in pumps is so small.

Mr. Schroeder: I agree with not being outside of setbacks. Can't we establish a percentage of the site?

Mr. Bertaux: If it is a platted building envelope then the water feature should be within it. If there is no envelope provided then you should apply for a permit C or D. I think that the energy resolution is to not allow it to run in the winter. I am also anti-glycol unless it is absolutely necessary. (Mr. Neubecker noted that the building envelope applies to buildings, not landscaping or something at or below grade and if the language on the plat applies to "buildings" then it will be hard to apply it to landscaping.)

Ms. Cram summarized things the Commission agreed on:

- It is about site disturbance.
- Water features shouldn't be running year round.
- Concerns with the un-natural nature of some water feature amenities.
- How big of a pool do you have before you have to get a fence?
- Explore the concept of extra cost (metering?) for water.
- Water features should meet site setbacks

Ms. Cram asked the Commission if people should be improving forest health above and beyond the MPB ordinance? For thinning and pruning rather than just cutting down dead or infested? Also, should there be incremental points or a different multiplier in the point system? Town Council recommended keeping the potential to receive positive 8 points (+8). (Mr. Neubecker: The section in the code "how to assign points" can assist in understanding this area.) The landscape guidelines are also being updated, and we can add a plant list and understanding of the growth habits of plant material. It would be easy for staff to be able to look at projects with those types of guidelines in place.

Mr. Pringle: Recommended that there be no positive points for landscaping, rather only negative.

Mr. Bertaux: That is why we would like to have the +2, 4, 6, 8 points because of how people are using landscape points to make up for other site issues. If people don't add landscaping but just improve forest health, you get no points, you've met the ordinance. Defensible space should be absolute; negative points if you don't do it.

Ms Katz: We ought to be able to say that there is a limit on the number of trees that can actually grow because the trees do or do not fit based on their mature growing size. Can't we discourage the planting of grass instead of more native plantings? (Ms. Cram: you could encourage through positive points native grasses, shrubs, etc.) (Mr. Neubecker: in some neighborhoods that don't have a wooded character more grass fits the neighborhood, like Wellington and historic district.) What if people don't add any landscaping but just improve the forest health?

Mr. Lamb: Agreed that no added landscaping met the ordinance.

Mr. Allen: Forest health is absolute.

Ms. Cram summarized things the Commission agreed on:

- Liked the point structure change to +2, 4, 6, 8.
- Encourage with positive points for xeriscape, native grass, etc.
- Encourage staff to look at mature growing size for plant material.
- Encourage healthy forests.
- Absolute policy for forest health, MPB and defensible space (not in development code).
- Landscape code will include the absolute policies for MPB, forest health, and defensible space so that applicants will see all the information in one place.

Mr. Rossi, Town Council Rep: Many people in the community have confusing overlaps between defensible space, MPB, and new landscaping.

TOWN COUNCIL REPORT:

Mr. Rossi had no topics to present. Did the Commission have any questions for Council? (Mr. Allen noted that Mr. Bertaux had a question last week about when the next commission/council lunch should be.)

Mr. Pringle asked about the Neighborhood Preservation Policy. (Mr. Truckey: There is a neighborhood meeting here tomorrow night, July 22, at 5:30. Anyone that comes to the meeting will get feedback about their property.) (Mr. Allen: Should we attend?) (Mr. Truckey: You are welcome to attend. It will come to you sometime after it goes to Council.)

Mr. Allen: Did Council hear the McAdoo Corner application? (Mr. Rossi: Last week the McAdoo Corner was approved by Council. There was no call-up. There was concern that there was no definition for solar panels.) (Mr. Bertaux: That is a topic that the Commission and council could talk about.)

Mr. Rossi: Another thing Mr. Allen brought up is improving communication to people for work sessions. (Mr. Pringle: Concern with the legal requirements of noticing, and that agendas are available regarding work sessions for people to know about a topic.) (Mr. Neubecker: The Town Attorney is concerned if we get into the habit of providing public notice when its not legally required, since people will then complain if we don't send them notice.) (Mr. Bertaux: Could developers notice the neighboring properties for work sessions rather than a legal requirement for the town?) (Ms. Katz: There should be a certain amount of responsibility for people.)

ADJOURNMENT

The meeting was adjourned at 10:45 p.m.

Rodney Allen, Chair

Memorandum

TO: Town Council
FROM: Tom Daugherty, Town Engineer
DATE: July 23, 2009
RE: Public Projects Update

CDOT SH 9 Update (Coyne Valley Road to Valley Brook Street)

Ongoing daytime activities by CDOT consist mostly of earthwork operations on the west shoulder of SH 9 and placement of concrete abutments needed for the new pedestrian bridge across the Blue River.

The congestion that was experienced recently due to the contractor operations has been addressed with CDOT. They underestimated the impacts that a one lane closure would have on the traffic. Staff has been communicating the importance of keeping traffic flowing.

As a result, CDOT and the contractor will minimize future impacts to traffic flow on SH 9, CDOT has rescheduled some planned daytime work items. CDOT will now conduct more construction activities during the night including placement of underground storm pipe, utilities and associated pavement patches across SH 9. Detour of SH 9 to Airport Road can be expected 7:00 p.m. until 6:00 a.m. Sundays through Thursdays until mid August.

Main Street Improvements (Ski Hill Road intersection)

Town staff is moving forward with the scheduling and planning of the curb-ramp reconstruction at the Main Street and Ski Hill intersection. The project is expected to be completed during the Fall of this year. Staff will provide final scheduling and traffic control information to Town Council in August.

➤ MEMO

TO: Mayor & Town Council

FROM: Tim Gagen

DATE: June 9, 2009

RE: Committee Reports

LLA

MJ Loufek

July 21, 2009

Sgt. George Hughes provided an update on the Safe Bar campaign. Following are the key points that were presented:

- Safe Bar Campaign was created to address the increasing amount of violent assaults, disorderly conducts and binge drinking in and around the bars.
- It is a joint venture with the Breckenridge Police Department, local bar owners and municipal court system to address problematic patrons.
- Agreements were made between the bar owners/staff, the Breckenridge Police Department and Municipal Courts.
- Goals were identified by the key stake holders of:
 - Early identification of problematic patrons within the establishment and proper response by bar staff.
 - Timely notification of problems to the police
 - Appropriate level of alcohol service to patrons
 - Consistent and reliable response by police personnel
 - More accountability for problematic patrons, i.e. arrest or summons when probable cause exists
 - Improved communication and relations between police and the liquor establishment
 - Reduction of crime and fear of crime in and around the bars
 - Harsh fines and penalties to defendants by municipal judge
- The program was rolled out for the 08/09 ski season.
- Two training sessions were held for both bar staff and police officers.
- Support by the bar owners was overwhelming.
- At the conclusion of the first year of the program some goals were met and some will continue to be a work in progress.
 - As anticipated calls for service and incidents in and around the bars increased this first year. This was due to the fact that we asked the bars to contact us more often when problems occur. We expect for these numbers to level off this year and then begin to decrease each following year.
 - There was more accountability and consequences for problematic patrons as promised. The number of arrests/summons for assaults and disorderly conducts doubled from the previous year.
 - Improved communications and relationships with bar staff were reported by both the police officers and bar staff.
 - The judge levied some very harsh fines this past year for problematic patrons.
 - Appropriate level of alcohol service will be a key component for the upcoming year. It is still evident by the number of disorderly patrons we encountered this year that over service is still an issue. We plan to address this by continued education and training to bar staff and earlier detection and intervention by the police.

- The next step in the program is an upcoming shoulder season meeting with the bar staff to review the past year in detail. As a team we will examine what has worked well and what we need to focus on for the upcoming year.

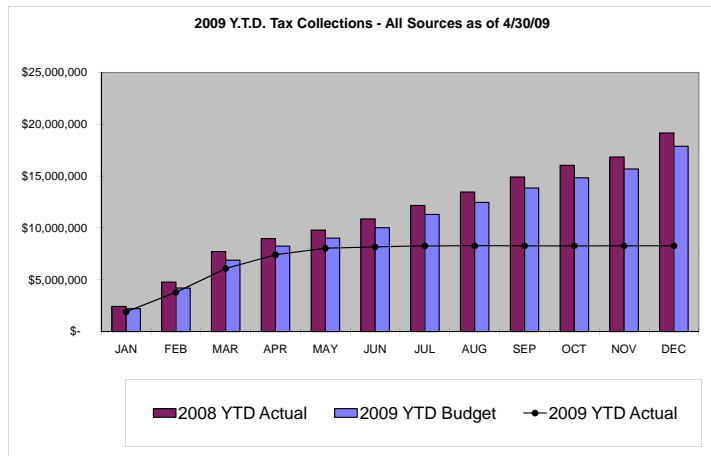
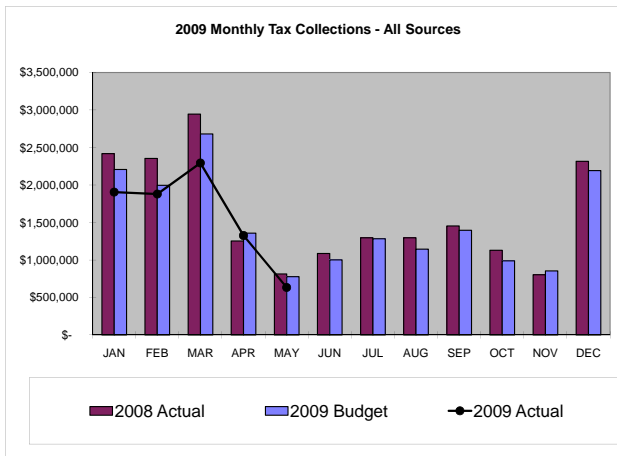
Three Liquor Licensing Authority members' terms expire at the end of August. Those members include: J.B. Katz, Turk Montepare and Bill Tatro. LLA interviews are tentatively set to occur at the August 25 Town Council meeting.

Other Meetings

Police Advisory Committee	Rick Holman	No Meeting
CML	Tim Gagen	No Meeting
Summit Leadership Forum	Tim Gagen	No Meeting
SCHA	Laurie Best	No Meeting
CAST	Tim Gagen	No Meeting
I-70 Coalition	Tim Gagen	No Meeting
Public Art Commission	Jen Cram	No Meeting
Wildfire Council	Peter Grosshuesch	No Meeting
Public Arts Commission	Jennifer Cram	No Meeting
Summit Stage	James Phelps	No Meeting
CDOT	Tim Gagen	No Meeting

TOWN OF BRECKENRIDGE
CASH TAX COLLECTIONS - ALL SOURCES - SALES, LODGING, RETT, ACCOMMODATIONS
REPORTED IN THE PERIOD EARNED

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 2,418,737	\$ 2,418,737	12.6%	\$ 2,206,630	\$ 2,206,630	12.3%	\$ 1,905,072	-21.2%	86.3%	\$ 1,905,072	-21.2%	10.7%
FEB	\$ 2,354,775	\$ 4,773,512	24.9%	\$ 1,996,244	\$ 4,202,874	23.5%	\$ 1,879,483	-20.2%	94.2%	\$ 3,784,555	-20.7%	21.2%
MAR	\$ 2,943,976	\$ 7,717,488	40.3%	\$ 2,680,714	\$ 6,883,589	38.5%	\$ 2,292,474	-22.1%	85.5%	\$ 6,077,029	-21.3%	34.0%
APR	\$ 1,253,479	\$ 8,970,968	46.8%	\$ 1,357,940	\$ 8,241,529	46.1%	\$ 1,325,404	5.7%	97.6%	\$ 7,402,433	-17.5%	41.4%
MAY	\$ 813,163	\$ 9,784,131	51.1%	\$ 777,466	\$ 9,018,994	50.4%	\$ 633,153	-22.1%	81.4%	\$ 8,035,586	-17.9%	44.9%
JUN	\$ 1,086,064	\$ 10,870,194	56.7%	\$ 1,002,387	\$ 10,021,381	56.0%	\$ 124,822	-88.5%	12.5%	\$ 8,160,408	-24.9%	45.6%
JUL	\$ 1,294,864	\$ 12,165,059	63.5%	\$ 1,283,829	\$ 11,305,210	63.2%	\$ 107,870	-91.7%	8.4%	\$ 8,268,278	-32.0%	46.2%
AUG	\$ 1,295,684	\$ 13,460,743	70.3%	\$ 1,144,904	\$ 12,450,114	69.6%	\$ -	n/a	0.0%	\$ 8,268,278	-38.6%	46.2%
SEP	\$ 1,453,616	\$ 14,914,359	77.8%	\$ 1,396,497	\$ 13,846,611	77.4%	\$ -	n/a	0.0%	\$ 8,268,278	-44.6%	46.2%
OCT	\$ 1,128,981	\$ 16,043,340	83.7%	\$ 988,792	\$ 14,835,403	83.0%	\$ -	n/a	0.0%	\$ 8,268,278	-48.5%	46.2%
NOV	\$ 802,593	\$ 16,845,933	87.9%	\$ 854,627	\$ 15,690,030	87.7%	\$ -	n/a	0.0%	\$ 8,268,278	-50.9%	46.2%
DEC	\$ 2,314,976	\$ 19,160,909	100.0%	\$ 2,192,063	\$ 17,882,093	100.0%	\$ -	n/a	0.0%	\$ 8,268,278	-56.8%	46.2%

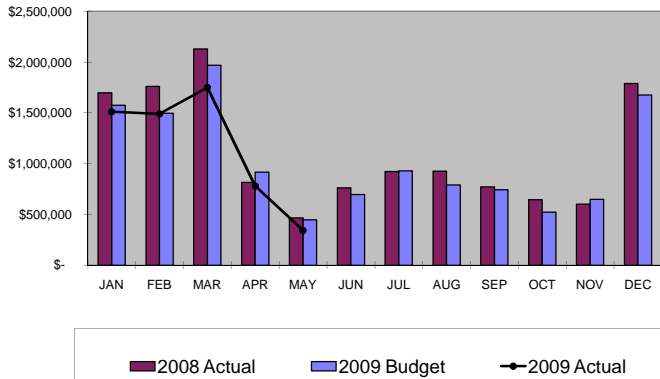


Prior Year Actual and Current Year Budget Variances					
	TOTAL	Sales	Accommodations	RETT	Housing
vs. May 08 Actual	(180,010)	(123,391)	(7,313)	(44,101)	(5,205)
vs. May 09 Budget	(144,312)	(104,223)	(5,297)	(33,230)	(1,562)
vs. YTD 08 Actual	(1,748,545)	(998,207)	(285,520)	(431,946)	(32,872)
vs. YTD 09 Budget	(983,408)	(528,368)	(86,210)	(378,547)	9,716

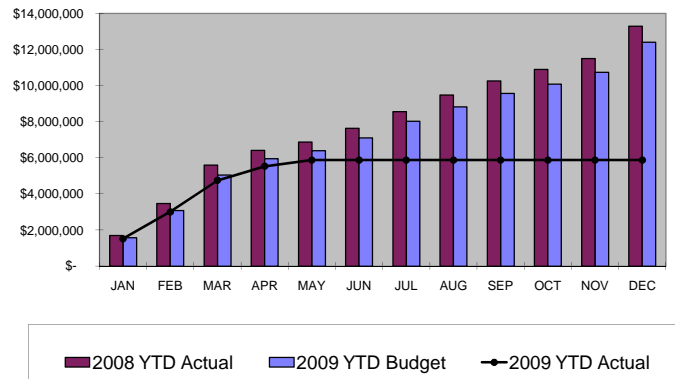
**TOWN OF BRECKENRIDGE
SALES TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 1,699,052	\$ 1,699,052	12.8%	\$ 1,574,195	\$ 1,574,195	12.7%	\$ 1,511,000	-11.1%	96.0%	\$ 1,511,000	-11.1%	12.2%
FEB	1,759,932	3,458,985	26.0%	1,496,091	3,070,286	24.8%	1,488,258	-15.4%	99.5%	2,999,259	-13.3%	24.2%
MAR	2,129,985	5,588,969	42.1%	1,967,425	5,037,711	40.6%	1,748,787	-17.9%	88.9%	4,748,046	-15.0%	38.3%
APR	814,209	6,403,179	48.2%	914,797	5,952,508	48.0%	780,318	-4.2%	85.3%	5,528,363	-13.7%	44.6%
MAY	464,918	6,868,097	51.7%	445,750	6,398,258	51.6%	341,527	-26.5%	76.6%	5,869,890	-14.5%	47.3%
JUN	761,897	7,629,994	57.4%	695,674	7,093,932	57.2%	n/a	0.0%		5,869,890	-23.1%	47.3%
JUL	922,613	8,552,607	64.4%	929,455	8,023,387	64.7%	n/a	0.0%		5,869,890	-31.4%	47.3%
AUG	924,291	9,476,897	71.3%	788,750	8,812,137	71.1%	n/a	0.0%		5,869,890	-38.1%	47.3%
SEP	770,561	10,247,459	77.1%	741,531	9,553,668	77.0%	n/a	0.0%		5,869,890	-42.7%	47.3%
OCT	644,680	10,892,138	82.0%	522,493	10,076,161	81.2%	n/a	0.0%		5,869,890	-46.1%	47.3%
NOV	601,530	11,493,668	86.5%	649,337	10,725,498	86.5%	n/a	0.0%		5,869,890	-48.9%	47.3%
DEC	\$ 1,789,075	\$ 13,282,743	100.0%	\$ 1,676,204	12,401,702	100.0%	n/a	0.0%		\$ 5,869,890	-55.8%	47.3%

2009 Monthly Sales Tax Collections



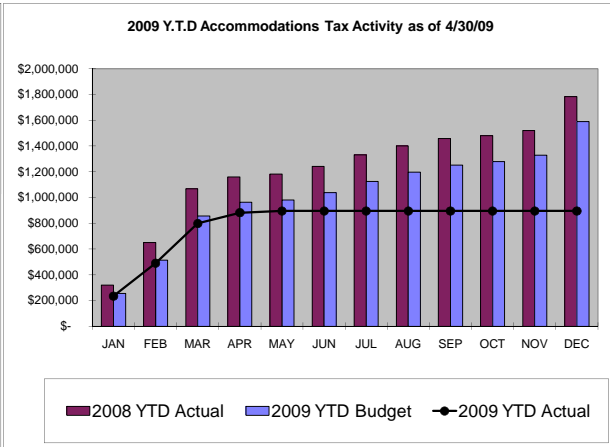
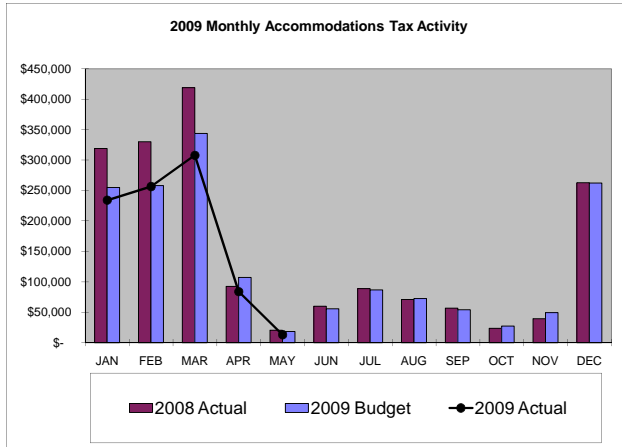
2009 Y.T.D. Sales Tax Collections as of 4/30/09



**TOWN OF BRECKENRIDGE
ACCOMMODATION TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 319,027	\$ 319,027	17.9%	\$ 254,720	\$ 254,720	16.0%	\$ 234,107	-26.6%	91.9%	\$ 234,107	-26.6%	14.7%
FEB	330,262	649,289	36.4%	257,892	512,612	32.2%	256,470	-22.3%	99.4%	490,577	-24.4%	30.9%
MAR	418,622	1,067,911	59.9%	343,506	856,117	53.9%	307,773	-26.5%	89.6%	798,350	-25.2%	50.2%
APR	92,660	1,160,571	65.1%	107,159	963,276	60.6%	84,014	-9.3%	78.4%	882,363	-24.0%	55.5%
MAY	20,413	1,180,984	66.2%	18,397	981,674	61.8%	13,100	-35.8%	71.2%	895,464	-24.2%	56.3%
JUN	60,094	1,241,078	69.6%	55,869	1,037,543	65.3%	n/a	0.0%		895,464	-27.8%	56.3%
JUL	88,754	1,329,831	74.6%	86,546	1,124,089	70.7%	n/a	0.0%		895,464	-32.7%	56.3%
AUG	70,749	1,400,580	78.6%	72,430	1,196,519	75.3%	n/a	0.0%		895,464	-36.1%	56.3%
SEP	57,015	1,457,595	81.7%	54,323	1,250,842	78.7%	n/a	0.0%		895,464	-38.6%	56.3%
OCT	23,615	1,481,210	83.1%	27,148	1,277,990	80.4%	n/a	0.0%		895,464	-39.5%	56.3%
NOV	39,286	1,520,496	85.3%	49,398	1,327,389	83.5%	n/a	0.0%		895,464	-41.1%	56.3%
DEC	\$ 262,520	\$ 1,783,016	100.0%	\$ 262,274	1,589,663	100.0%	n/a	0.0%		\$ 895,464	-49.8%	56.3%

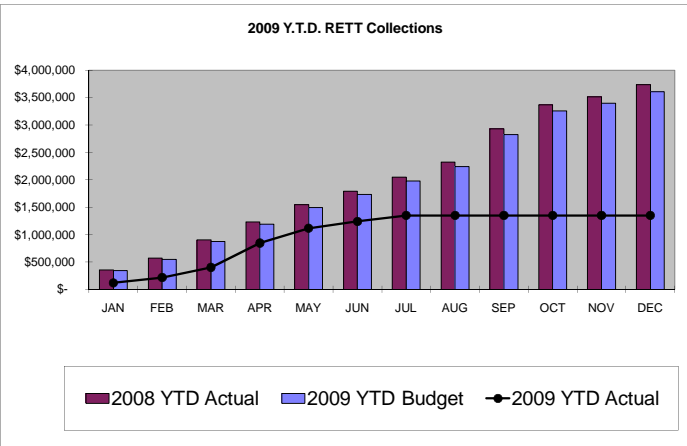
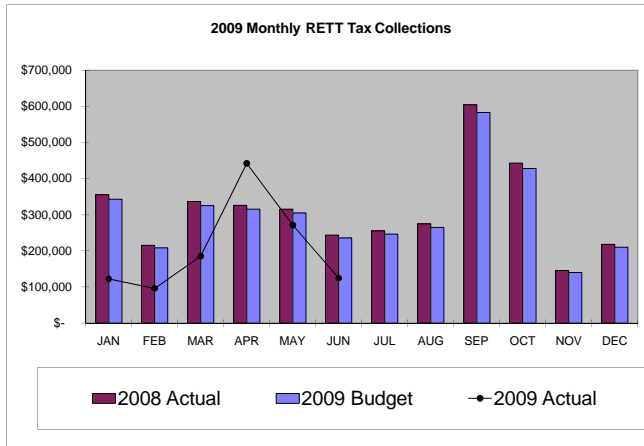
Accommodation tax amounts reflect collections at the 2% rate.



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

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 355,179	\$ 355,179	9.5%	\$ 342,940	\$ 342,940	9.51%	\$ 122,245	-65.6%	35.6%	\$ 122,245	-65.6%	3.4%
FEB	215,566	570,745	15.3%	208,138	551,078	15.29%	96,379	-55.3%	46.3%	218,623	-61.7%	6.1%
MAR	336,956	907,701	24.3%	325,345	876,423	24.31%	185,714	-44.9%	57.1%	404,337	-55.5%	11.2%
APR	326,521	1,234,222	33.1%	315,270	1,191,693	33.06%	442,039	35.4%	140.2%	846,376	-31.4%	23.5%
MAY	315,494	1,549,716	41.5%	304,623	1,496,317	41.51%	271,393	-14.0%	89.1%	1,117,770	-27.9%	31.0%
JUN	243,969	1,793,685	48.0%	235,562	1,731,879	48.04%	124,822	-48.8%	53.0%	1,242,591	-30.7%	34.5%
JUL	255,305	2,048,990	54.9%	246,508	1,978,387	54.88%	107,870	-57.7%	43.8%	1,350,462	-34.1%	37.5%
AUG	274,442	2,323,432	62.2%	264,985	2,243,372	62.23%	-	n/a	0.0%	1,350,462	-41.9%	37.5%
SEP	604,037	2,927,469	78.4%	583,223	2,826,596	78.40%	-	n/a	0.0%	1,350,462	-53.9%	37.5%
OCT	442,830	3,370,299	90.3%	427,571	3,254,167	90.26%	-	n/a	0.0%	1,350,462	-59.9%	37.5%
NOV	145,549	3,515,848	94.2%	140,534	3,394,701	94.16%	-	n/a	0.0%	1,350,462	-61.6%	37.5%
DEC	\$ 217,937	\$ 3,733,785	100.0%	\$ 210,427	\$ 3,605,128	100.00%	\$ -	n/a	0.0%	\$ 1,350,462	-63.8%	37.5%

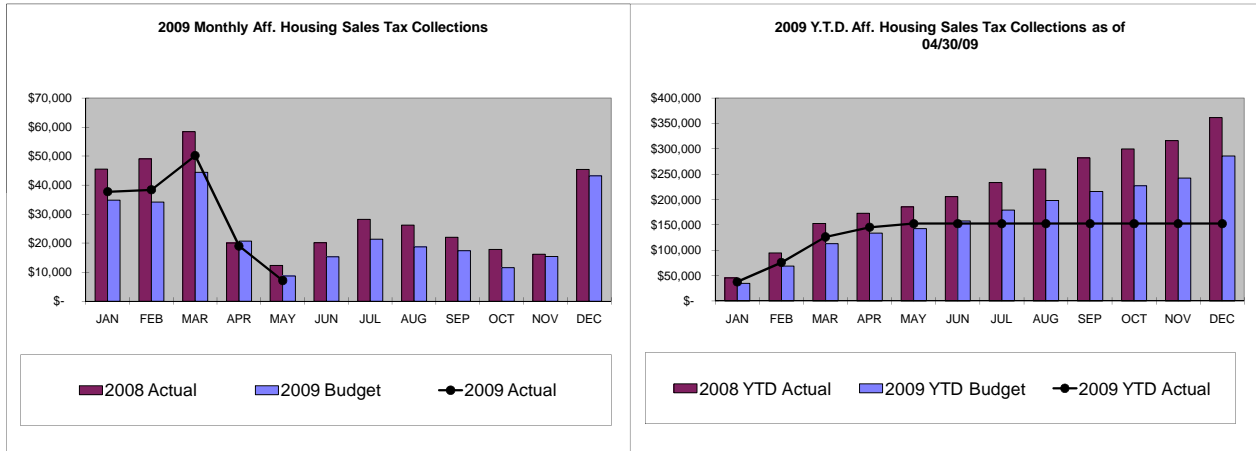
July #s are as of 7/21/09



**TOWN OF BRECKENRIDGE
AFFORDABLE HOUSING SALES TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 45,479	\$ 45,479	12.6%	\$ 34,776	\$ 34,776	12.2%	\$ 37,720	-17.1%	108.5%	\$ 37,720	-17.1%	13.2%
FEB	49,015	94,494	13.6%	34,123	68,899	11.9%	38,376	-21.7%	112.5%	76,096	-19.5%	26.6%
MAR	58,414	152,907	16.2%	44,438	113,337	15.6%	50,200	-14.1%	113.0%	126,296	-17.4%	44.2%
APR	20,089	172,997	5.6%	20,714	134,051	7.3%	19,034	-5.3%	91.9%	145,330	-16.0%	50.9%
MAY	12,337	185,334	3.4%	8,695	142,746	3.0%	7,133	-42.2%	82.0%	152,462	-17.7%	53.4%
JUN	20,104	205,438	5.6%	15,281	158,027	5.4%	-	n/a	0.0%	152,462	-25.8%	53.4%
JUL	28,193	233,631	7.8%	21,320	179,347	7.5%	-	n/a	0.0%	152,462	-34.7%	53.4%
AUG	26,202	259,833	7.3%	18,738	198,085	6.6%	-	n/a	0.0%	152,462	-41.3%	53.4%
SEP	22,003	281,836	6.1%	17,420	215,505	6.1%	-	n/a	0.0%	152,462	-45.9%	53.4%
OCT	17,856	299,692	4.9%	11,580	227,085	4.1%	-	n/a	0.0%	152,462	-49.1%	53.4%
NOV	16,228	315,921	4.5%	15,358	242,443	5.4%	-	n/a	0.0%	152,462	-51.7%	53.4%
DEC	\$ 45,445	\$ 361,365	12.6%	\$ 43,157	285,600	15.1%	\$ -	n/a	0.0%	\$ 152,462	-57.8%	53.4%

Affordable Housing Sales Tax reflects money distributed to the Town net of the Housing Authority share and is deposited directly into the Affordable Housing Fund



Memo

To: Town Council

From: Julia Puester, AICP

Date: July 22 for meeting of July 28, 2009

Re: Neighborhood Preservation Policy (NPP) Public Open House Update

Based on our last discussions with the Town Council, staff has held a public open house to receive public input on the Neighborhood Preservation Policy Task Force on limitations to home sizes in subdivisions without platted building envelopes.

Staff has attempted to spread the message of the public open house to affected property owners to participate in this process. Staff advertised in the Summit Daily three times, and had a press release as well as an article in the Summit Daily the day of the meeting. We also emailed notice to a large distribution list we have developed for the project from those who attended the February open houses and that staff has heard from previously.

As of the date of this memo, staff will hold the public open house July 22nd. Staff will ask for attendees to fill out a short questionnaire which staff will present results to at the Council meeting.

Staff will have more details on the results of the public open house at the Council worksession.



MEMORANDUM

To: Mayor and Town Council
From: Rick Holman, Chief of Police
Date: July 28, 2009
Subject: Regulations Governing Medical Marijuana Dispensaries

On June 23, 2009 the Town Council passed an emergency ordinance enacting a 90-day moratorium on the issuance of any permit for a business that sells medical marijuana. The Council asked staff to research what other communities are doing with regards to regulations governing these types of businesses.

Attached to this memorandum is a list of proposed regulations governing a Medical Marijuana Dispensary in the Town of Breckenridge. These recommendations are being made by staff based on our best judgment of public health and safety for the Town.

What we have learned is that little has been done in the State regarding how communities regulate this type of business. There appears to be a heightened concern based on what appears to be a recent trend to increase the amount of dispensaries in the State. This trend is apparently fueled by the President stating he has no desire to utilize federal resources to go after those people selling medical marijuana in the 12 states that it is allowed. Obviously that philosophy could change with a new administration as it is still a federal violation to distribute marijuana. Some cities in California have chosen not to allow dispensaries in their community and have enacted ordinances that state "no business will be allowed that violates local, state, or federal law".

Colorado Municipal League has been fielding some questions from their membership and referenced a publication that was compiled by Cannabis Therapeutics, who described themselves as "the largest medical marijuana resources facility to serve patients of the State of Colorado". Many of the proposed regulations developed by staff were taken from this publication. Commerce City, Colorado introduced an ordinance this month that regulated medical marijuana dispensaries. Their ordinance only allows a dispensary in an industrial zone and dealt with advertisements, indoor use, and security.

At the present time, we have one local family who desires to open a dispensary in the Town. This family is represented by an attorney who expressed to the Council on June 23, 2009 that his client is trying to be responsible and wants to work with the Town to make this work. The regulations being proposed may seem strict to some. While the one interested party may be responsible, the next one may not, nor the one after that. In the short time dispensaries have been operating, there is evidence to show, abuse can easily occur. Many communities have also seen an increase in criminal activity occurring in and around dispensaries. It is for those reasons we have proposed strict regulations. The Town of Frisco has been working with our staff and they will be proposing similar regulations.

During the work session staff would like to go over these proposed regulations with the Council and get your feedback and direction.

Regulations Governing Medical Marijuana Dispensaries Town of Breckenridge

Medical Marijuana Dispensary (defined)

The term “medical marijuana dispensary” will mean and include the use of any property or structure to distribute, transmit, give, dispense, or otherwise provide marijuana in any manner, in accordance with Section 14 of Article XVIII of the Colorado Constitution.

Application Procedure:

Application procedures will be established via Town Code that requires any Medical Marijuana Business application that is submitted be reviewed by the Planning Department and the Police Department to ensure business plan is in compliance with established guidelines.

Rationale: The unique nature of this type of business requires adherence to strict regulations to ensure public health and safety.

Compliance with State Regulations on Medical Marijuana

Any Medical Marijuana Dispensary (MMD) will be required to comply with the regulations established by the State as well as the Town of Breckenridge.

Rationale: Medical Marijuana regulations established by the State Department of Public Health may change from time to time.

Taxation

A MMD will be required to pay all local and state taxes.

Rationale: This provides the MMD with the distinction between a regulated medical service provider and a street level drug dealer.

Location of Medical Marijuana Dispensaries

A MMD will not be located in the core business district of the Town of Breckenridge, this includes the area of 300 Block of North Main Street to the 600 Block of South Main Street (including alleyways) and 100 Block of North Ridge Street to the 500 Block of South Ridge Street (including alleyways).

No MMD shall be located within 500 feet of the following:

1. Any licensed child care facility
2. Any educational institution or school, either public or private
3. Any public community center, park, recreational pathway, recreation center, or any publically owned or maintained building open for use to the general public

4. Any other MMD
5. Any church
6. Any halfway house or correctional facility
7. The exterior boundary of any lot on which there is located a single family or multifamily residence, whether located within or outside of the Town

(see attached map illustrating 500 foot buffer)

Rationale: It is highly recommended that MMD not be located in those areas that children are likely to congregate. The core business district in Breckenridge promotes and markets a family atmosphere with over 2 million guests annually who visit our shops and restaurants located in the core of Town. A MMD (primary caregiver) can only do business with those patients who possess a state registry card and not the general public. Therefore, the business should not be open to the general public and there is no reason for the MMD to be located in an area that promotes high tourist volumes. Cannabis Therapeutics, LLC recommends a dispensary should not allow "walk-in" traffic and they should do business by appointment only.

Hours of Operation

A MMD shall only be open for business during the daytime hours of one-half hour before sunrise and one-half hour after sunset.

Rationale: A MMD by the very nature of its inventory provides an opportunity for increased loitering, theft, robbery, and other criminal activity. The threat to public safety is lessened during the daylight hours and criminals often feel less prone to apprehension under the cover of darkness.

Signage, Advertising

All signage will meet the standards established in the Town Code. No MMD shall display or utilize any signage or advertisement for their company that suggests marijuana may be in the store.

Rationale: Because of the nature of inventory in the business, it becomes a target for criminal activity.

On-site Usage, Cultivation, and Display of Marijuana

No on-site consumption of marijuana is allowed on the licensed premises with the exception of small edible samples. Cultivation is only allowed when premises are equipped with a proper ventilation system that filters out the odor of marijuana so it is not detected from the exterior of the business or to any adjoining business.

Marijuana should not be displayed in the open without being secured in some type of display cabinet. No marijuana shall be visible to anyone standing at the outside perimeter of the business through glass, windows, or doors.

Rationale: A MMD should ultimately be designed similar fashion to a pharmacy. Pharmacies are not designed for on-site consumption of controlled substances. In addition, it becomes a public safety issue if a patient is allowed to consume marijuana and then drive a motor vehicle as they leave the premises. It is not reasonable to assume the primary caregiver will take responsibility for the transportation of patients who enter the business.

As stated before, the marijuana inventory is highly abused and sought after by criminals. All precaution should be exercised to limit exposure to theft and robberies by not having marijuana visible to the outside and kept secured inside the business.

Security

MMD shall provide adequate security on the premises. At a minimum, such security shall include:

1. Security surveillance cameras installed to monitor the main entrance along with the interior and exterior of the premises to discourage and to facilitate the reporting of criminal acts as well as nuisance activities. Security video shall be preserved for at least 72 hours by the business.
2. Robbery and burglary alarm systems which are professionally monitored and maintained in good working conditions.
3. Exterior lighting that illuminates the exterior walls of the business and is compliant with existing Town Code relevant to outdoor lighting.

Rationale: During this research it was learned that a MMD tends to attract a criminal element that may not otherwise be present. For this reason, it is important there are adequate security measures taken to deter this potential criminal activity and aid in the apprehension of the criminal should an illegal act occur.

Alcohol Prohibited

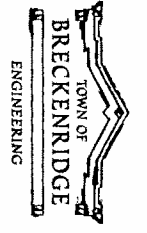
The sale or consumption of alcohol on the premises of a MMD is prohibited.

Rationale: Again, it is recommended that MMD are fashioned after pharmacies who distribute medicine to patients. There is no reason to allow for the sale or consumption of alcohol.

Liability

Recommend a liability clause that states the sale of marijuana is a violation of federal law and the license holder assumes all risk and responsibility for those actions. Removes any liability from the Town of Breckenridge or its employees.

Rationale: The current President has stated he is not interested in prosecuting those individuals using medical marijuana in the 12 states who currently have medical marijuana provisions. That philosophy could change under a new administration.



Town of Breckenridge and Summit County governments assume no responsibility for the accuracy of the data, and use of the product for any purpose is at user's sole risk.

500 foot Buffer

- churches
- schools_public
- town_parks
- public



printed 7/15/2009



TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA
Tuesday, July 28, 2009 (Regular Meeting); 7:30 p.m.

- I CALL TO ORDER and ROLL CALL**
- II APPROVAL OF MINUTES – July 14, 2009** **Page 28**
- III APPROVAL OF AGENDA**
- IV COMMUNICATIONS TO COUNCIL**
- A. Citizen’s Comment - (Non-Agenda Items ONLY; 3 minute limit please)
- V CONTINUED BUSINESS**
- A. SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS****
- 1. Council Bill No.20, Series 2009-** AN ORDINANCE APPROVING A MUTUAL EASEMENT AGREEMENT WITH BLUE FRONT OFFICE SUITES, INC., GHW ASSOCIATES, AND THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO **Page 32**
- 2. Council Bill No.21, Series 2009-** AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE (Silverthorne House and Carriage Barn– South 60 Feet of Lots 22 and 22½, Snider Addition, and the North 15 Feet of Lot 60 and 61 Bartlett and Shock Addition) **Page 59**
- 3. Council Bill No.22, Series 2009-** AN ORDINANCE AMENDING THE INTERNATIONAL BUILDING CODE, 2006 EDITION, ADOPTED BY REFERENCE IN CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE, BY ADOPTING BY REFERENCE CERTAIN NEW AND UPDATED STANDARDS PROMULGATED BY THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS CONCERNING ELEVATORS, ESCALATORS, AND SIMILAR FORMS OF CONVEYANCE **Page 63**
- VI NEW BUSINESS**
- A. FIRST READING OF COUNCIL BILL, SERIES 2009 –**
- 1. Council Bill No. 23, Series 2009-** AN ORDINANCE ANNEXING TO A PARCEL OF LAND THE TOWN OF BRECKENRIDGE (Entrada – 3.98 acres, more or less) **Page 66**
- 2. Council Bill No. 24, Series 2009-** AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 5 (Entrada— 3.98 acres, more or less) **Page 90**
- 3. Council Bill No. 25, Series 2009-** AN ORDINANCE AMENDING THE TOWN OF BRECKENRIDGE LAND USE GUIDELINES CONCERNING ACCEPTABLE LAND USES AND INTENSITIES IN LAND USE DISTRICT 5 **Page 92**
- 4. Council Bill No.26, Series 2009-**
AN EMERGENCY ORDINANCE REPEALING ORDINANCE NO. 15, SERIES 2009, KNOWN AS THE “TOWN OF BRECKENRIDGE DEFENSIBLE SPACE ORDINANCE” **Page 97**
- OR**
- AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF BRECKENRIDGE AT A SPECIAL TOWN ELECTION TO BE HELD ON _____, 2009 THE QUESTION OF WHETHER ORDINANCE NO. 15, SERIES 2009, KNOWN AS THE “TOWN OF BRECKENRIDGE DEFENSIBLE SPACE ORDINANCE”, SHOULD BE APPROVED OR REJECTED; SETTING FORTH THE BALLOT TITLE; AND PROVIDING FOR THE CONDUCT OF THE ELECTION **Page 107**
- B. EMERGENCY ORDINANCE, SERIES 2009-**
- 1. Council Bill No.26, Series 2009-** AN EMERGENCY ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY ADOPTING PROVISIONS ALLOWING FOR THE VOLUNTARY CREATION OF DEFENSIBLE SPACE AROUND BUILDINGS AND STRUCTURES WITHIN THE TOWN OF BRECKENRIDGE **Page 111**
- C. RESOLUTIONS, SERIES 2009-**
- 1. A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF COLORADO CONCERNING COMMERCIAL DRIVER’S LICENSE TESTING** **Page 115**
- D. OTHER –**
- 1. Grand Celebration Fire Permit** **Page 118**
- VII PLANNING MATTERS**
- A. Planning Commission Decisions of July 21, 2009 **Page 2**
- B. Town Council Representative Report (Mr. Rossi)
- VIII REPORT OF TOWN MANAGER AND STAFF***

IX REPORT OF MAYOR AND COUNCILMEMBERS*

- A. CAST/MMC (Mayor Warner)
- B. Breckenridge Open Space Advisory Commission (Mr. Joyce)
- C. BRC (Ms. McAtamney)
- D. Summit Combined Housing Authority (Mr. Millisor)
- E. Breckenridge Heritage Alliance (Mr. Bergeron)
- F. Sustainability Committee (Mr. Millisor)

X OTHER MATTERS

XI SCHEDULED MEETINGS

Page 119

XII ADJOURNMENT

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

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JULY 14, 2009
PAGE 1**

CALL TO ORDER and ROLL CALL

Mayor Warner called the July 14, 2009 Town Council Meeting to order at 7:35 p.m. The following members answered roll call: Ms. McAtamney, Mr. Joyce, Mr. Millisor, Mr. Bergeron, Mr. Rossi, Mr. Mamula and Mayor Warner.

APPROVAL OF MINUTES – June 23, 2009 Regular Meeting

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

APPROVAL OF AGENDA

Town Manager commented that there was a new agenda handed out with changes to the numbering of the ordinances. There was also a new Council Bill No. 18 handed out.

COMMUNICATIONS TO COUNCIL

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

Mayor Warner commented that the petition for the defensible space was accepted. It will be on the agenda for July 28, 2009. The most effective time to comment would be during public comment on July 28.

Ron Chopin discovered that he only needed to remove 7 trees and wants to defend his property but now is told that he can't remove those trees. Tim Berry commented on where the ordinance was at and what he has directed staff to do, which was to conduct business as they did before the Defensible Space Ordinance existed. Can't approve anything that they couldn't approve before the ordinance was approved. Mr. Mamula and Mr. Millisor commented that staff was approving the removal of these trees through Class D permits before the ordinance was approved. Tim Berry commented that they need to document it and make it legal. As long as that is what they were doing before then he has no problem with continuing to do it. Tim Berry will give a few options to Council to consider in regard to this ordinance. 1 will be an ordinance to repeal, 1 will be to send it to an election and the last will be an emergency ordinance for voluntary removal of trees.

B. Bill Wishowski- July 4th weekend reservations were up. Occupancy for July is down 1% from a year ago. June down 12 %. August is down right now about 15%. Revenue per available room is down 20%. Breckenridge is fairing better than other mountain areas. Bill gave more details on the Occupancy Forecast.

More activities are being booked through CenRes. Getting referrals through SC Chamber. Direct interfaces with Management companies. Looking at a pilot program with a restaurant in Town. Welcome Center volume is very strong. Contacted Restaurant Association about Value Added program.

July reservations are up 11% but revenue down 7%. Marketing- Banner ads on travel sites. Radio ads, etc.

Carly thanked Council for attending media event.

Samantha Brown feature on Breckenridge- July 18th- 8pm.

St Louis Dispatch had a great article.

U tube video from Fourth of July Weekend on website.

Budweiser was pleased with the number of people they were able to fit in such a short distance.

CONTINUED BUSINESS

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

1. Council Bill No. 18, Series 2009 - AN ORDINANCE AMENDING THE BRECKENRIDGE TOWN CODE CONCERNING THE REQUIRED REMOVAL OF WASTE MATERIALS FROM CONSTRUCTION SITES

Tim Berry commented that he made the changes requested from the work session. The ordinance started out as a way to get rid of a duplicative code section but changes have been made since first reading and since the work session. The definition of construction site was added.

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

Mr. Bergeron moved to approve Council Bill No. 18, Series 2009. Ms. McAtamney seconded the motion. The motion passed 7-0.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILL, SERIES 2009

1. Council Bill No.20, Series 2009- AN ORDINANCE APPROVING A MUTUAL EASEMENT AGREEMENT WITH BLUE FRONT OFFICE SUITES, INC., GHW ASSOCIATES, AND THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO

Tim Berry commented that the ordinance will approve the mutual easement agreement. He provided an executive summary. It is a four way agreement between two developers and the Town and the County. It provides the Town the first right to interest in that parcel.

Mr. Bergeron moved to approve Council Bill No. 20, Series 2009. Mr. Mamula seconded the motion. The motion passed 7-0.

2. Council Bill No.21, Series 2009- AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE (Silverthorne House and Carriage Barn–South 60 Feet of Lots 22 and 22½, Snider Addition, and the North 15 Feet of Lot 60 and 61 Bartlett and Shock Addition)

Tim Berry commented that the ordinance designate the two structures as local landmarks.

Mr. Mamula moved to approve Council Bill No. 18, Series 2009. Mr. Bergeron seconded the motion. The motion passed 7-0.

3. Council Bill No.22, Series 2009- AN ORDINANCE AMENDING THE INTERNATIONAL BUILDING CODE, 2006 EDITION, ADOPTED BY REFERENCE IN CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE, BY ADOPTING BY REFERENCE CERTAIN NEW AND UPDATED STANDARDS PROMULGATED BY THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS CONCERNING ELEVATORS, ESCALATORS, AND SIMILAR FORMS OF CONVEYANCE

Tim Berry commented that the Colorado Legislature passed a bill that requires that this be adopted by the Town.

Mr. Bergeron moved to approve Council Bill No. 18, Series 2009. Mr. Mamula seconded the motion. The motion passed 7-0.

B. RESOLUTIONS, SERIES 2009 –

1. A RESOLUTION APPROVING THE “AMENDMENT TO VIC’S LANDING EMPLOYEE HOUSING RESTRICTIVE COVENANT AND AGREEMENT”

Tim Berry commented that the developer of Vic’s landing requested that the Town amend the covenant so that FHA loans can be made available for purchase of Vic’s landing.

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

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JULY 14, 2009
PAGE 3**

Mr. Millisor moved to approve the resolution, Series 2009. Mr. Joyce seconded the motion. The motion passed 6-1 with Mr. Mamula objecting.

C. OTHER - None

PLANNING MATTERS

A. Planning Commission Decisions of July 7, 2009

With no requests for call up, Mayor Warner stated the Planning Commission decisions of the July 7, 2009 meeting would stand as presented.

B. Report of Planning Commission Liaison

Mayor Warner had nothing to report.

REPORT OF TOWN MANAGER AND STAFF

Mr. Gagen commented that the Neighborhood Preservation is now on July 22nd at 5:30pm. Water discussion between County and Clinton Board has resurfaced.

REPORT OF MAYOR AND COUNCILMEMBERS

A. CAST/MMC (Mayor Warner) – Mr. Gagen commented that there was a lot of budget discussion. Some areas they talked about were 2010 and they suggested that groups that they are all members of should not increase. They all agreed. They also discussed other memberships and they all agreed that NWCCOG could be suspended for a few years. County updated them on a letter that they sent to proponents of the Wilderness Issue (GEMS). Mr. Rossi commented that no letter was sent. There was a letter sent to EPA about leveraging grant funds. Senior Housing Task Force was discussed. Not a high priority and study does not show much of a need.

B. Breckenridge Open Space Advisory Commission (Mr. Joyce) – Had a joint meeting with OSAC. 3 main topics: (1) Swan River Restoration- conceptual at this point, (2) Proposed Backcountry hut on Open Space (Black Gulch Area), no consensus. County does not view huts on Open Space as a good idea. They will talk about it individually and report back. (3) Golden Horseshoe Management Plan.

C. Breckenridge Resort Chamber (Ms. McAtamney) – Elections are coming up. Talked about recap on Dew Tour. They are in communications with them right now. They may be looking for extra money to sweeten the pot. Mayor Warner commented that the parade, firecracker 50 and Breck Epic were great. Mr. Mamula commented that the coverage on the Breck Epic was unbelievable.

D. Summit Combined Housing Authority (Mr. Millisor) – Next meeting is in September.

E. Breckenridge Heritage Alliance (Mr. Bergeron) – They had a 5 hour retreat. They decided to Larissa Ens is going to take over Linda Kay's job. Saving money on labor fees, abbreviated schedules, fundraising options, need to set up bus tours, will ho back to a fee for premier sites.

F. Sustainability (Mr. Millisor) – There was no report.

OTHER MATTERS

Mr. Bergeron thanked staff for the stop signs at Wellington & Reiling Rd. Mr. Rossi commented that David O'Neil said they are confident that they will have the path at Wellington done by the end of the month. Mr. Mamula commented that there is still a big piece of dangerous art in the river. Mr. Mamula asked Tim Gagen about the guard rail on Wellington. Tim commented that those types of projects were cut from the budget. Tim will check with Terry about another alternative. Mr. Mamula feels it is a life/safety issue.

SCHEDULED MEETINGS

ADJOURNMENT

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JULY 14, 2009
PAGE 4**

At 8:40 pm, Mr. Rossi moved that the Town Council go into executive session pursuant to Paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for the purposes of receiving legal advice on specific legal questions; and Paragraph 4(f) of Section 24-6-402, C.R.S., relating to personnel matters; and Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations; and instructing negotiators. Mr. Bergeron made the second. All were in favor.

The conference with the Town Attorney primarily involves a discussion of the recent court ruling in the case of Town of Breckenridge and Mary Jean Loufek, Town Clerk v. Colorado Mountain News Media, Co. d/b/a Summit Daily News, but may also include conferences with the Town Attorney on other matters covered by the attorney-client privilege that exists between the Town and the Town Attorney.

The personnel matters to be discussed in the executive session involve issues related to the current and future Town budgets.

At 10:05 pm, Mr. Mamula moved to adjourn the executive session. Mr. Millisor. Seconded the motion. All were in favor.

With no further business to discuss, the meeting adjourned at 10:05 p.m.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 20 (Blue Front/GHW Easement Ordinance)

DATE: July 20, 2009 (for July 28th meeting)

The second reading of the ordinance to approve the easement agreement with Blue Front Office Suites, Inc., GHW Associates and the County is scheduled for your meeting on July 28th. There are no changes proposed to either the ordinance or the easement agreement from first reading.

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

1 ***FOR WORKSESSION/SECOND READING – JULY 28***

2
3 ***NO CHANGES FROM FIRST READING***

4
5 COUNCIL BILL NO. 20

6
7 Series 2009

8
9 AN ORDINANCE APPROVING A MUTUAL EASEMENT AGREEMENT WITH BLUE
10 FRONT OFFICE SUITES, INC., GHW ASSOCIATES, AND THE BOARD OF COUNTY
11 COMMISSIONERS OF SUMMIT COUNTY, COLORADO
12 (Lots 37, 38, 39, 40 and 41, Bartlett and Shock Addition)

13
14 WHEREAS, a proposed “Mutual Easement Agreement” between the Town of
15 Breckenridge, Blue Front Office Suites, Inc., GHW Associates, and the Board of County
16 Commissioners has been prepared, a copy of which is marked Exhibit “A”, attached hereto and
17 incorporated herein by reference; and

18
19 WHEREAS, the Town Council has reviewed the proposed agreement and finds and
20 determines that it should be approved; and

21
22 WHEREAS, the proposed Mutual Easement Agreement involves, in part, the granting of
23 an easement across certain Town-owned real property described therein, and the Town Attorney
24 has informed the Town Council that, in his opinion, Section 15.3 of the Breckenridge Town
25 Charter requires that granting of such easement be authorized by ordinance.

26
27 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
28 BRECKENRIDGE, COLORADO:

29
30 Section 1. The proposed “Mutual Easement Agreement” between the Town, Blue Front
31 Office Suites, Inc., GHW Associates, and the Board of County is approved in substantially the
32 form attached as Exhibit “A” to this ordinance. The Town Manager is hereby authorized,
33 empowered, and directed to execute such agreement on behalf of the Town of Breckenridge the

34
35 Section 2. The Town Council hereby finds, determines and declares that it has the power
36 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
37 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

38
39 Section 3. This ordinance shall be published and become effective as provided by
40 Section 5.9 of the Breckenridge Town Charter.

41
42 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
43 PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be
44 held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the

1 ____ day of _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the
2 Municipal Building of the Town.

3
4 TOWN OF BRECKENRIDGE, a Colorado
5 municipal corporation
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9 By _____
10 John G. Warner, Mayor

11
12 ATTEST:

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16 _____
17 Mary Jean Loufek, CMC,
18 Town Clerk
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- 1 F. Blue Front, GHW, Town, and County each wish to grant and to receive certain
2 easements and rights over, under, and across those portions of Parcel 1, Parcel 2,
3 Parcel 3, and Parcel 4 as described in this Agreement. The easements that are
4 granted to the parties by this Agreement are depicted on the attached **Exhibits**
5 **“A”, “B” and “C,”** which are incorporated herein by reference.
- 6 G. Blue Front intends to construct a mixed use commercial and residential structure
7 on Parcel 1 consisting of five commercial units and one residential unit with two
8 residential apartments (**“Blue Front Building”**), and desires to obtain pedestrian
9 and vehicular access to the Blue Front Building through Parcels 3 and 4, and
10 through the Parking Structure (as defined herein) if it is constructed. Pursuant to
11 the Town’s development permit, the required parking for the Blue Front Building
12 is 6.15 parking spaces. Prior to the construction of the Parking Structure, the Blue
13 Front Building will have 5.25 parking spaces which will be provided within the
14 Parking Easement Premises (as hereafter defined); and .9 (nine-tenth) of a parking
15 space will be provided by paying into the Town’s Parking District. If the Parking
16 Structure is constructed by the Town and County, then:
- 17 i. two of the 5.25 parking spaces initially located on the Parking Easement
18 Premises will be moved into the Parking Structure, located within the
19 Parking Structure as close as possible to their location when they were
20 within the Parking Easement Premises and, if possible, directly to the
21 north of the entrance to the garage door into the lower level of the Blue
22 Front Building, and designated as parking for the Blue Front Building; and
- 23 ii. two of the required parking spaces will be provided underneath the Blue
24 Front Building; and the balance of the required parking will be provided in
25 undesignated parking spaces within the Parking Structure that are
26 available for use by the general public.
- 27 H. GHW intends to construct a mixed use commercial and residential structure with
28 one residential unit, on Parcel 2 (**“GHW Building”**), and desires to obtain
29 pedestrian and vehicular access to the GHW Building through Parcels 3 and 4,
30 and through the Parking Structure if it is constructed. Prior to the construction of
31 the Parking Structure the GHW Building will have 3.0 parking spaces which will
32 be provided within the Parking Easement Premises. If the Parking Structure is
33 constructed by the Town and County, then the 3.0 parking spaces initially located
34 on the Parking Easement Premises will be moved into the Parking Structure at the
35 same approximate location. However, if it is feasible to locate one parking space
36 underneath the GHW Building, then one parking space shall be provided
37 underneath the GHW Building, and the remaining parking spaces necessary to
38 meet the on-site required parking for the residential unit, up to a maximum of two
39 additional parking spaces, shall be provided in the Parking Structure. If possible
40 one of the additional parking spaces shall be located directly to the north of the
41 entrance to the garage door into the lower level of the GHW Building. All
42 parking spaces necessary to meet the on-site required parking for the residential

1 unit at the GHW Building shall be designated as parking for the GHW Building;
2 and the balance, if any, of the required parking will be provided in undesignated
3 parking spaces within the Parking Structure that are available for use by the
4 general public. If the GHW Building cannot accommodate an underground
5 parking space, then the parking spaces necessary to meet the on-site required
6 parking for the residential unit for the GHW Building will, up to a maximum of
7 three parking spaces, continue to be provided in the Parking Easement Premises
8 and then in the Parking Structure, and designated as parking for the GHW
9 Building, if the Parking Structure is constructed.

10 I. Blue Front and GHW intend to grant to the Town and County a pedestrian access
11 and utility easement over contiguous portions of Parcel 1 and Parcel 2, providing
12 for pedestrian access from Parcels 3 and 4 to Lincoln Avenue, and shall construct
13 and maintain certain improvements within said easement.

14 **I. PARKING EASEMENT**

15
16 2. Grant Of Parking Easement. Blue Front and GHW hereby grant and convey to the Town
17 and County, their successors and assigns, as an easement appurtenant to Parcel 3 and
18 Parcel 4, a perpetual, non-exclusive easement for the purposes stated in Section 3, below,
19 over, under, upon, in, across and through the following portions of Parcel 1 and Parcel 2,
20 to wit:

21 The northerly 18.0 feet of Lot 40 and the northerly 18.0 feet of Lot
22 41, Bartlett and Shock Addition to the Town of Breckenridge,
23 County of Summit and State of Colorado, as depicted on **Exhibit**
24 **“A” (“Parking Easement Premises”)**.
25

26 3. Use Of Parking Easement Premises. The Parking Easement Premises may only be used
27 for the following purposes:

- 28 A. to provide an area for the surface parking of vehicles (both motorized and non-
29 motorized) by the Town and County, their licensees, lessees, contractors,
30 employees, agents and the general public;

- 31 B. to construct a parking structure of not more than two levels at or above grade (and
32 such levels below grade as the Town or County may determine) and of such size,
33 design, and materials as the Town and County may determine (“**Parking**
34 **Structure**”) for use as a temporary storage facility for parked vehicles (both
35 motorized and non-motorized) including, but not limited to, the right to survey,
36 construct, repair, remove, replace, reconstruct, control, inspect, improve, enlarge
37 and maintain the Parking Structure. Nothing in this Agreement, however,
38 obligates either the Town or the County to construct the Parking Structure, and
39 such determination may be made by the Town and County in their sole and
40 absolute discretion;

- 1 C. to provide temporary construction access in connection with the construction of a
2 Parking Structure;
- 3 D. to provide public pedestrian and vehicular (both motorized and non-motorized)
4 ingress and egress for the Town and County, their licensees, lessees, contractors,
5 employees, agents, and the general public to and from Parcels 3 and 4; and
- 6 E. for the location, operation, and maintenance of underground utility transmission
7 lines, street lights, and appurtenances, over, under, upon, across, in and through
8 the Parking Easement Premises.

9 No other use of the Parking Easement Premises will be made or permitted by the
10 Town and County without Blue Front's and GHW's prior permission.

11
12 4. Maintenance Of Parking Easement Premises. The Town and County will, at their sole
13 cost, provide such maintenance, upkeep, repair, and replacement as may be required with
14 respect to any improvements made by it to the Parking Easement Premises. The Town
15 and County will provide at their sole cost any required snow and ice removal from any
16 parking spaces within the Parking Easement Premises used by the Town and County, and
17 Blue Front and GHW will provide at their sole cost any required snow and ice removal
18 for any parking spaces within the Parking Easement Premises not used by the Town and
19 County. The Town and County may in their discretion, but are not required to, provide
20 snow and ice removal from all of the parking spaces within the Parking Easement
21 Premises, whether used by the Town and County or not.

22 5. Blue Front's and GHW's Reserved Rights Regarding the Parking Easement Premises.
23 Until such time as the Town or County elects to construct the Parking Structure, Blue
24 Front, and GHW, their successors and assigns, reserves the right to the exclusive use of
25 the Parking Easement Premises, including the right to exclude access by a chain or
26 barricade; to tow or remove other vehicles from the Parking Easement Premises; and to
27 post appropriate signs notifying the public that the area is reserved for Blue Front's and
28 GHW's exclusive use. Provided, however, if Blue Front or GHW, their successors and
29 assigns, elect to reserve less than the entire Parking Easement Premises for their
30 exclusive use, the Town and County may use the non-reserved portion for the purposes
31 described in Section 3 of this Agreement. Blue Front shall be entitled to a total credit of
32 5.25 parking spaces against the parking requirement for the Blue Front Building as
33 provided in the Town's development permit approving such project. GHW shall be
34 entitled to a total credit of 3.0 parking spaces against the parking requirement for the
35 GHW Building as provided in the Town's development permit approving such project.
36 Blue Front and GHW shall be obligated to pay for any parking spaces in excess of the
37 credits provided in their development permits through the Town's Parking District. In
38 addition to the foregoing, Blue Front and GHW reserve the right to locate, operate, and
39 maintain underground utility transmission lines over, under, upon, across, in and through
40 the Parking Easement Premises, provided, however, that Blue Front and GHW shall use
41 their best efforts, in installing such lines, to allow for the future construction of the
42 Parking Structure in such a manner as will not require the relocation of such lines, and,

1 further, Blue Front and GHW acknowledge and agree that a temporary disruption of
2 service provided by such lines shall be allowed during the construction of the Parking
3 Structure.

4 6. Conveyance of Fee Title. If either the Town, the County or both the Town and County
5 construct a Parking Structure on the Parking Easement Premises Blue Front and GHW
6 will, upon the request of whichever governmental entity constructed the Parking
7 Structure ("**Constructing Governmental Entity**"), convey the Parking Easement Premises
8 to the Constructing Governmental Entity by special warranty deed free and clear of all
9 liens and encumbrances, except for the lien of the general property taxes for the year in
10 which the conveyance is made. Upon the conveyance of the Parking Easement Premises
11 to the Constructing Government Entity pursuant to this Section, the Parking Easement
12 conveyed to the Town and County pursuant to Section 2 of this Agreement will be
13 extinguished and merged with the Constructing Governmental Entity's ownership of the
14 fee simple absolute title to the land.

15 7. No Previous Adverse Use By Town or County. The parties acknowledge and agree that
16 any use of the Parking Easement Premises by the Town, the County or the general public
17 prior to the execution of this Agreement was consensual and not adverse to the owners of
18 Parcel 1 and Parcel 2.

19 II. PEDESTRIAN EASEMENT

20
21 8. Grant of Pedestrian Easement. Blue Front and GHW hereby grant and convey to the
22 Town and County, their successors and assigns, as an easement appurtenant to Parcel 3
23 and Parcel 4, a perpetual, non-exclusive easement for the purposes stated in Section 9
24 below, over, under, upon, in, across and through the following real property situate in the
25 County of Summit and State of Colorado, to wit:

26 See the attached **Exhibit "B"**

27
28 ("**Pedestrian Easement Premises**").

29
30 9. Use of Pedestrian Easement. The Pedestrian Easement Premises may only be used to
31 provide public pedestrian ingress and egress for the Town and County, their licensees,
32 lessees, contractors, employees, agents, and the general public to and from the Parking
33 Easement Premises (and the Parking Structure, if constructed) and Lincoln Avenue. No
34 other use of the Pedestrian Easement Premises will be made or permitted by the Town
35 and County without Blue Front and GHW's prior permission. The Pedestrian Easement
36 Premises may be used by any party to this Agreement to install and maintain
37 underground utilities lines and facilities. The Pedestrian Easement Premises shall also be
38 an easement appurtenant to all other parcels described herein for the location, operation,
39 and maintenance of underground utility transmission lines and appurtenances over, under,
40 upon, across, in and through said Pedestrian Easement Premises, provided, however, that
41 the owner of the parcel benefiting from such utility lines shall replace and/or repair the

1 surface of said Pedestrian Easement Premises whenever such surface is disturbed as the
2 result of such location, operation and/or maintenance.

3 10. Construction of Pedestrian Easement Premises. Blue Front will, at its cost and expense,
4 construct the improvements to the Pedestrian Easement Premises in a manner that
5 accommodates pedestrian access from the existing parking lot located on Parcel 3 and
6 Parcel 4 and in a manner permitting the direct connection of the Parking Easement
7 Premises with the Parking Structure. Blue Front will also design and improve the
8 Pedestrian Easement Premises so that it will have a hard surface of a material approved
9 by the Town and slope to Lincoln Avenue to accommodate handicapped persons. Such
10 improvements may also include a snowmelt system. The construction of the
11 improvements to the Pedestrian Easement Premises will be completed by Blue Front
12 prior to the issuance of a certificate of occupancy for the Blue Front Building.

13 11. Maintenance Of Pedestrian Easement Premises. Blue Front and GHW will, at their sole
14 cost, provide such maintenance, upkeep, repair, and replacement as may be required with
15 respect to the improvements to the Pedestrian Easement Premises, as well as any required
16 snow and ice removal from the Pedestrian Easement Premises.

17 12. Right of GHW to Temporarily Encroach. GHW shall have the right to temporarily
18 encroach on and remove a portion of the improvements constructed on the Pedestrian
19 Easement, if necessary in order to construct a foundation for the GHW building.
20 Provided, that the period of the encroachment and blockage shall be limited to the extent
21 feasible, and GHW shall submit a proposed closure schedule for review and approval by
22 the Town and County prior to exercising any rights under this Section. Further provided,
23 that GHW shall promptly restore all improvements to their former condition at its sole
24 cost

25 III. ACCESS EASEMENT AND LICENSE FOR DEVELOPMENT

26
27 13. Grant of Access Easement For Development. The Town and County hereby grant and
28 convey to Blue Front and GHW, their successors and assigns, as an easement appurtenant
29 to Parcel 1 and Parcel 2 (including the Parking Easement Premises), a perpetual, non-
30 exclusive easement for ingress and egress, by vehicles and pedestrians, over, in, across
31 and through those portions of Parcel 3 and Parcel 4 which are labeled as the
32 “Development Access Easement” on **Exhibit “C”** (“*Development Access Easement*
33 *Premises*”).

34 14. Development Access Easement If Parking Structure Constructed. If a Parking Structure is
35 constructed on the Parking Easement Premises, the Development Access Easement will
36 continue across the lower level of the Parking Structure, and accommodate vehicular
37 access to parking spaces to be located on the bottom floor of the Blue Front Building,
38 and, if appropriate, the GHW Building. Further, in such event, vehicular access to the
39 Blue Front and GHW Buildings and the Parking Easement Premises across the Parking
40 Structure will be obtained from the existing alley north-south alley adjacent to and
41 westerly of Lot 39 ½, Abbett Addition to the Town of Breckenridge (“**Alley**”). Except as

1 specifically provided in this Agreement, the Town and County will take no action to
2 vacate the Alley or otherwise unreasonably restrict vehicular access from the Alley to the
3 Parking Easement Premises without the prior written consent of Blue Front and GHW.

4 15. Maintenance Of Development Access Easement Premises. Any improvements proposed
5 to be made by Blue Front or GHW to the Development Access Easement Premises must
6 be reviewed and approved by the Town and the County prior to commencement. Blue
7 Front and GHW will, at their sole cost, provide such maintenance, upkeep, repair, and
8 replacement as may be required with respect to any approved improvements made by
9 them to the Development Access Easement Premises. The Town and County will further
10 provide at their sole cost any required snow and ice removal from the Development
11 Access Easement Premises consistent with the snow and ice removal provided for the
12 remainder of the parking lot constructed upon Parcels 3 and 4.

13 16. License For Drainage. Town and County hereby grant to Blue Front and GHW a
14 revocable license for drainage from the roofs of the Blue Front Building and the GHW
15 Building to the adjacent storm sewer located in Lincoln Avenue. Any connection
16 proposed to be made to the Town's storm sewer system by Blue Front or GHW must be
17 reviewed and approved by the Town and the County prior to such connection being
18 made.

19 **IV. MUTUAL EASEMENT GRANTS BETWEEN TOWN AND COUNTY**

20
21 17. Mutual Grants To and From Town and County Property. The Town grants and conveys
22 to the County, its successors and assigns, as an easement appurtenant to Parcel 4, a
23 perpetual, non-exclusive easement for ingress and egress, by vehicles and pedestrians,
24 and vehicular parking, over, in, across and through Parcel 3. The County grants and
25 conveys to the Town, its successors and assigns, as an easement appurtenant to Parcel 3,
26 a perpetual, non-exclusive easement for ingress and egress, by vehicles and pedestrians,
27 and vehicular parking, over, in, across and through Parcel 4.

28 18. No Restriction. Neither the Town nor the County will take any action to unreasonably
29 restrict the rights granted to the other party pursuant to Section 17 of this Agreement

30 **V. SPECIAL PROVISIONS IF PARKING STRUCTURE CONSTRUCTED**

31
32 19. Special Provisions If Parking Structure Constructed. If the Town and County elect to
33 construct a Parking Structure on Parcel 3, Parcel 4 and the Parking Easement Premises,
34 the following provisions shall apply:

35 A. The Town and County shall have a temporary construction easement over, under,
36 upon, across, in and through such portion of Parcels 1 and 2 as is reasonably
37 necessary in order to facilitate the construction of such Parking Structure,
38 provided, however, such easement shall be limited to that portion of Parcels 1 and
39 2 that are to the north of the northerly foundation wall of any improvements
40 constructed upon Parcels 1 and 2, and provided further that the Town and County

1 shall, at all times during and following the construction of the Parking Structure,
2 insure proper and appropriate support for all improvements located upon Parcels 1
3 and 2, and further shall restore all improvements disturbed as the result of such
4 construction activities to the same or better condition as existed prior to the onset
5 of such construction activities.

6 B. Blue Front and GHW, their successors and assigns, will be permitted to reserve
7 that portion of the lower level of the Parking Structure which conforms to the
8 Parking Easement Premises under the same terms and conditions as are provided
9 in Section 5 of this Agreement.

10 C. The Development Access Easement Premises will be modified to coincide with
11 the drive aisles of the lower level of the Parking Structure and to accommodate
12 vehicular access to the parking spaces to be located on the bottom floor of the
13 Blue Front Building and, if applicable, to the GHW Building, and reserved spaces
14 directly to the north of the Blue Front and GHW Buildings. Once the relocated
15 Development Access Easement Premises are identified, the parties shall execute
16 and record an appropriate amendment to this Agreement describing and depicting
17 the relocated Development Access Easement Premises, and any other agreed
18 changes to this Agreement pertaining to the use and maintenance of the
19 Development Access Easement Premises.

20 D. During the construction of the Parking Structure the Town and the County shall
21 reserve five parking spaces on Ridge Street adjacent to Parcel 1 for the exclusive
22 use of the occupants of the residential units in the Blue Front Building and three
23 spaces for use of the occupants of the residential unit in the GHW Building. Such
24 use shall be without time restrictions. The special right described in this
25 Subsection shall terminate when the Parking Structure is complete and parking for
26 the occupants of the residential units in the Blue Front and GHW Buildings are
27 available within the Parking Structure.

28 **V. RIGHT TO RELOCATE EASEMENT**

29
30 20. Relocation Of An Easement. Any party may propose to relocate any easement that it has
31 granted pursuant to this Agreement in accordance with the following procedures:

32 A. The party proposing the relocation must first notify all of the other parties of the
33 proposed relocation by mailing notice to such parties in accordance with Section
34 33. Such notice must be mailed not less than 90 days prior to the commencement
35 of the proposed relocation. The notice must include a description of the proposed
36 relocation, including a legal description and a survey or map showing the
37 proposed relocated easement premises ("**Relocated Easement Premises**"), and the
38 probable commencement and completion dates of the relocation.

39 B. Within 60 days of receipt of the notice of proposed relocation as provided above,
40 any party to this Agreement adversely affected by the relocation may approve or

1 reject the proposed relocation. No party will unreasonably withhold its consent to
2 a proposed relocation of an easement. A party's failure to reject the proposed
3 relocation within such 60 day period will be deemed to be an approval of the
4 proposed relocation. No easement may be relocated if any party timely objects to
5 such relocation.

6 C. If an easement is relocated as provided in this Section 20, the party proposing the
7 relocation shall, at its sole cost, improve the Relocated Easement Premises so that
8 the Relocated Easement Premises are fully comparable to the easement that
9 existed immediately prior to the relocation.

10 D. At the completion of the relocation, the parties shall execute and record an
11 appropriate amendment to this Agreement describing and depicting the Relocated
12 Easement Premises in form and substance reasonably acceptable each of them.

13 **VI. RIGHT TO TERMINATE AGREEMENT**

14
15 21. Town and County Right To Terminate Agreement.

16 A. This Agreement may be terminated by the Town or the County, in their sole and
17 absolute discretion, at any time without liability for breach of this Agreement at
18 any time before either:

- 19 i. the Parking Structure has been constructed; or
- 20 ii. the parties, or their successors or assigns, have entered into an enforceable
21 agreement concerning the construction of the Parking Structure.

22 To cause termination pursuant to this Section 21 the Town or the County (whichever
23 entity desires to terminate this Agreement) shall provide all other parties with written
24 notice of termination in the manner provided in Section 33. The notice of termination
25 shall specify the effective date of termination, which shall be the longer of the following
26 time periods: (i) 180 days after the notice has been given; or (ii) the next September 30th
27 following the giving of the notice of termination (it being the intent of the parties that at
28 least one building season shall pass before the effective date of termination of this
29 Agreement). Upon the effective date of termination, this Agreement shall terminate and
30 each party shall be released from any further duties or obligations under this Agreement
31 except for the indemnity obligations of this Agreement; provided, however, that in the
32 event either the Town or County has elected to terminate this Agreement as provided
33 above, the following provisions of the Agreement shall survive such termination:

- 34 i. The provisions of Section 8 which permit the use of the
35 Pedestrian Easement Premises to install and maintain underground
36 utility lines and services and the obligation to repair and restore the
37 surface whenever it is disturbed as a result thereof;

1 within the 15 business day period. The failure of the Town to give notice
2 of acceptance of the County's offer within the 15 business day period will
3 conclusively be deemed to be an election by the Town not to accept the
4 County's offer.

5 iii. If the Town elects not to accept the County's offer, or is deemed not to
6 have accepted the County's offer through inaction as described in
7 Subsection 22(B)(ii), above, Blue Front shall have the next right to accept
8 the County's offer. If Blue Front desires to accept the County's offer, Blue
9 Front shall notify the County and GHW in writing within 5 business days
10 of Blue Front's receipt of the Town's notice that the Town is not going to
11 accept the County's offer, or 5 business days from the date the Town is
12 deemed not to have elected the purchase the property, whichever is
13 applicable. The failure of Blue Front to give notice of acceptance of the
14 County's offer within the applicable 5 business day period will
15 conclusively be deemed to be an election by Blue Front not to accept the
16 County's offer.

17 iv. If neither the Town nor Blue Front elect to accept the County's offer, or is
18 deemed not to have accepted the County's offer through inaction as
19 described in Subsections 22(B)(ii) and 21(B)(iii), above, GHW shall have
20 the final right to accept the County's offer. If GHW desires to accept the
21 County's offer, GHW shall notify the County in writing within 5 business
22 days of GHW's receipt of Blue Front's notice that Blue Front is not going
23 to accept the County's offer, or 5 business days from the date Blue Front
24 is deemed not to have elected the purchase the property, whichever is
25 applicable. The failure of GHW to give notice of acceptance of the
26 County's offer within the applicable 5 business day period will
27 conclusively be deemed to be an election by GHW not to accept the
28 County's offer.

29 v. If neither the Town, Blue Front nor GHW elect to accept the County's
30 offer, the County may sell the property (or the portion offered to the
31 Town, Blue Front and GHW) to any party whomever upon terms and
32 conditions that are substantially similar to those in the County's offer, but
33 not for a price that is less than 90 percent of the County's offer. .

34 vi. If either the Town, Blue Front or GHW elect to accept the County's offer
35 (the "**Accepting Party**"), the County and the Accepting Party shall in good
36 faith negotiate and attempt to reach a commercially reasonable contract for
37 the purchase and sale of the property that was the subject of the County's
38 offer. If the County and the Accepting Party have not signed a bona fide
39 contract for the sale and purchase of the property within 20 business days
40 after notice of acceptance of the County's offer has been given, the
41 County may sell the property (or the portion offered to the Town, Blue
42 Front and GHW) to any party whomever, upon terms and conditions that

1 are substantially similar to those in the County's offer, but not for a price
2 that is less than 90 percent of the County's offer.

3 **VII. GENERALLY APPLICABLE PROVISIONS**
4

5 23. Title Insurance. Should the recipient of an easement granted by this Agreement so desire,
6 it may, at its cost, apply forthwith for a title insurance policy insuring the easement
7 hereby granted, and the party granting such easement will make available for inspection
8 by the title company any and all evidence of title in its possession.

9 24. Landowner's Use Of Easement Premises. Each party granting an easement pursuant to
10 this Agreement has the right to use and occupy the granted Easement Premises for any
11 purpose not inconsistent with the easement recipient's (or the general public's, as
12 applicable) full and complete enjoyment of the rights hereby granted.

13 25. Improvements. Each recipient of an easement granted by this Agreement may construct
14 upon the granted Easement Premises, at its sole cost, any and all improvements necessary
15 or desirable in order to make the granted Easement Premises useable for the allowed
16 purposes. Each easement recipient will indemnify and defend the party granting the
17 easement from all costs (including reasonable attorney's fees, expert witness fees and
18 court costs) arising out of the construction by it of improvements to the granted Easement
19 Premises.

20 26. Non-Waiver Of Governmental Immunity. The parties hereto understand and agree that
21 the Town and County are relying on, and do not waive or intend to waive by any
22 provision of this Agreement, the monetary limitations (presently \$150,000 per person and
23 \$600,000 per occurrence) or any other rights, immunities, and protections provided by
24 the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from
25 time to time amended ("Act"), or any other law or limitation otherwise available to the
26 Town and County, their officers, or their employees.

27 27. Duty Of Care. Each recipient of an easement granted by this Agreement will exercise the
28 rights herein granted to it with due care.

29 28. Indemnification.

30 A. Indemnification By Town. To the extent of the limits of liability established from
31 time to time by the Act, or other applicable law, the Town will indemnify and
32 defend Blue Front and GHW from all claims, demands, judgments, and causes of
33 action (including reasonable attorney's fees, expert witness fees and court costs)
34 arising from the use of the Parking Easement Premises and the Pedestrian
35 Easement Premises by the Town, its successors, licensees, lessees, contractors and
36 assigns, as well as the general public; provided, however, the Town has no
37 obligation under this Section to the extent any claim, demand, judgment, or cause
38 of action is caused by the negligence or wrongful act of Blue Front, GHW, and
39 their respective agents, employees, officers, contractors, licensees, lessees,

1 successors or assigns, or Blue Front or GHW's breach of this Agreement; and,
2 provided further, that the Town's obligation under this Subsection will in no event
3 exceed the monetary limitations established from time to time by the Act.

4 B. Indemnification By County. To the extent of the limits of liability established
5 from time to time by the Act, or other applicable law, the County will indemnify
6 and defend Blue Front and GHW from all claims, demands, judgments, and
7 causes of action (including reasonable attorney's fees, expert witness fees and
8 court costs) arising from the use of the Parking Easement Premises and the
9 Pedestrian Easement Premises by the County, its successors, licensees, lessees,
10 contractors and assigns, as well as the general public; provided, however, the
11 County has no obligation under this Section to the extent any claim, demand,
12 judgment, or cause of action is caused by the negligence or wrongful act of Blue
13 Front, GHW, and their respective agents, employees, officers, contractors,
14 licensees, lessees, successors or assigns, or Blue Front or GHW's breach of this
15 Agreement; and, provided further, that the County's obligation under this
16 Subsection will in no event exceed the monetary limitations established from time
17 to time by the Act.

18 C. Indemnification By Blue Front. Blue Front will indemnify and defend Town and
19 County from all claims, demands, judgments and causes of action (including
20 reasonable attorney's fees, expert witness fees and court costs) arising from the
21 use of either the Development Access Easement Premises, the Pedestrian
22 Easement Premises, or both the Development Access Easement Premises and the
23 Pedestrian Easement Premises by Blue Front, its successors, licensees, lessees,
24 contractors and assigns; provided, however, Blue Front has no obligation under
25 this Section to the extent any claim, demand, judgment, or cause of action is
26 caused by the negligence or wrongful act of either Town, County, or their
27 respective agents, employees, officers, contractors, licensees, lessees, successors
28 or assigns, or the Town or County's breach of this Agreement.

29 D. Indemnification By GHW. GHW will indemnify and defend Town and County
30 from all claims, demands, judgments and causes of action (including reasonable
31 attorney's fees, expert witness fees and court costs) arising from the use of either
32 the Development Access Easement Premises, the Pedestrian Easement Premises
33 or , or both the Development Access Easement Premises and the Pedestrian
34 Easement Premises by GHW, its successors, licensees, lessees, contractors and
35 assigns; ,provided, however, GHW has no obligation under this Section to the
36 extent any claim, demand, judgment, or cause of action is caused by the
37 negligence or wrongful act of either Town, County, or their respective agents,
38 employees, officers, contractors, licensees, lessees, successors or assigns, or the
39 Town or County's breach of this Agreement.

40 29. Attorney's Fees. If any action is brought in a court of law by any party to this Agreement
41 concerning the enforcement, interpretation or construction of this Agreement, the
42 prevailing party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as

1 well as costs, including expert witness' fees, incurred in the prosecution or defense of
2 such action.

3 30. No Effect on Density. Neither the execution of this Agreement nor the future conveyance
4 of fee title to the Parking Easement Premises as contemplated by Section 6 of this
5 Agreement shall affect the amount of buildable density which may lawfully be
6 constructed on either Parcel 1, Parcel 2 or Parcel 4 under the Town's land use regulations
7 as in effect as of the date of this Agreement, or as subsequently amended. Nothing in this
8 Agreement: (i) is a site-specific approval of the development of Parcel 1, Parcel 2 or
9 Parcel 4; (ii) modifies or limits the requirements of the Town's land use regulations in
10 effect at the time of the execution of this Agreement; or (iii) obligates the Town to
11 approve the development of Parcel 1, Parcel 2 or Parcel 4. The development of Parcel 1
12 and Parcel 2 requires development permits issued by the Town pursuant to its land use
13 regulations in effect at the time development of such parcels is approved.

14 31. Insurance.

15 A. Town and County Insurance. Town and County will at all times maintain
16 comprehensive general liability insurance with limits of liability not less than the
17 limits of liability for local governmental entities established from time to time by
18 the Act. Copies of such insurance be available for inspection by Agreement or at
19 the Town and County's business offices in Breckenridge, Colorado during normal
20 business hours.

21 B. Blue Front and GHW Insurance. Blue Front and GHW will at all times maintain
22 comprehensive general liability insurance with limits of not less than One Million
23 Dollars (\$1,000,000) combined single limits. The policy will be applicable to all
24 premises and operations. The policy will include coverage for bodily injury, broad
25 form property damage (including completed operations), personal injury
26 (including coverage for contractual and employee's acts), blanket contractual,
27 products, and completed operations. In the case of any claims-made policy, the
28 necessary retroactive dates and extended reporting periods will be procured to
29 maintain such continuous coverages. The policies required by this Subsection will
30 be endorsed to include the Town and County as additional insureds. Blue Front
31 and GHW are solely responsible for any deductible losses under any policy
32 required above. An ACORD Form 27, or other certificate of insurance acceptable
33 to Town and County, will be completed by Blue Front and GHW's insurance
34 agents and provided to the Town and County as evidence that policies providing
35 the required coverages, conditions, and minimum limits are in full force and effect
36 and must be reviewed and approved by the Town and County prior to
37 commencement of this Agreement, and on each renewal or replacement of such
38 insurance policies. The certificate will identify this Agreement and provide that
39 the coverages afforded under the policies will not be cancelled or terminated until
40 at least 30 days' prior written notice has been given to the Town and County. The
41 completed certificate of insurance be sent to:

1 Town Clerk
2 Town of Breckenridge
3 P.O. Box 168
4 Breckenridge, Colorado 80424
5

6 AND
7

8 Clerk and Recorder
9 Summit County Government
10 P.O. Box 68
11 Breckenridge, Colorado 80424
12

- 13 32. Default; Right To Cure. The obligations of the parties under this Agreement are
14 specifically enforceable. If any party materially defaults in the performance of the
15 material covenants or agreements to be kept, done, or performed by it under the terms of
16 this Agreement, the non-defaulting parties may notify the defaulting party in writing of
17 the nature of such default. Within 20 days following receipt of such notice the defaulting
18 party will correct such default or, in the event of a default not capable of being corrected
19 within 20 days, the defaulting party will commence correcting the default within 20 days
20 of receipt of notification thereof and thereafter correct the default with due diligence. If
21 the defaulting party fails to correct the default as provided above, the non-defaulting
22 party, without further notice, has the right to obtain from any court of competent
23 jurisdiction a temporary restraining order, preliminary injunction, and permanent
24 injunction to obtain such performance. Any equitable relief provided for in this Section
25 may be sought singly or in combination with such legal remedies as the non-defaulting
26 party may be entitled to under the laws of the State of Colorado.
- 27 33. Notice. Each party's initial address is set forth in the introductory paragraph of this
28 Agreement. Any party may lodge written notice of change of address with the other
29 parties. All notices must be sent by U.S. mail, certified, return receipt requested, to the
30 addresses provided in the introductory paragraph of this Agreement or, if any party no
31 longer owns its respective parcel, then a notice intended for the subsequent owner(s) of
32 such parcel may be sent to the address to which tax bills for such parcel are sent by the
33 Summit County, Colorado Treasurer. Any notice will be deemed given and received
34 when placed in the mail. The affidavit of the person depositing the notice in the U.S. Post
35 Office receptacle is evidence of such mailing.
- 36 34. Non-Use Of Easement Premises. Non-use or limited use of any easement herein granted
37 does not prevent the recipient of such easement from thereafter making use of such
38 easement to the full extent herein authorized.
- 39 35. Construction. The rule of strict construction does not apply to this Agreement. This
40 Agreement is to be given a reasonable construction so that the intentions of the parties to
41 confer to the parties the several easements described in this Agreement are carried out.
42 No extrinsic evidence may be admitted in any action to interpret or construe this
43 Agreement.

- 1 36. Applicable Law. This Agreement is to be interpreted in all respects in accordance with
2 the laws of the State of Colorado.
- 3 37. Termination Of Covenant Liability. Whenever a transfer of ownership of any parcel of
4 land that is subject to this Agreement takes place, the liability of the transferor for breach
5 of covenant occurring thereafter automatically terminates.
- 6 38. Release Of Easement. The recipient of an easement granted and conveyed by this
7 Agreement may terminate and reconvey such easement by recording a release in
8 recordable form with directions for delivery of the release to the owner of the parcel
9 burdened by such easement at such party's last address given pursuant hereto, whereupon
10 all rights, duties, and liabilities hereby created with respect to such easement will
11 terminate. For convenience, such instrument may run to "the owner or owners and parties
12 interested" in the parcel burdened by the released easement. The release of one easement
13 granted and conveyed by this Agreement will not affect the other granted easements
14 granted and conveyed by this Agreement without the express written consent of the
15 recipient(s) of the easement to be released.
- 16 39. No Adverse Construction. All parties acknowledge having had the opportunity to
17 participate in the drafting of this Agreement. This Agreement is not to be construed
18 against any party based upon authorship.
- 19 40. Modification. This Agreement may be modified or amended only by a duly authorized
20 written instrument executed by all of the parties hereto or, if less than all parcels are
21 affected by the modification or amendment, by a duly authorized written instrument
22 executed by those parties affected by such modification or amendment. Oral amendments
23 to this Agreement are not permitted.
- 24 41. Waiver. The failure of any party to exercise any of its rights under this Agreement is not
25 a waiver of those rights. A party waives only those rights specified in writing and signed
26 by the party waiving such rights.
- 27 42. Terminology. Wherever applicable, the pronouns in this Agreement designating the
28 masculine or neuter apply equally to the feminine, neuter and masculine genders.
29 Furthermore, wherever applicable within this Agreement, the singular include the plural,
30 and the plural includes the singular. "Shall" and "will" each indicate a mandatory
31 obligation to do or perform the described act or action.
- 32 43. Entire Agreement. This Agreement constitutes the entire agreement and understanding
33 between the parties and supersedes any prior agreement or understanding, written or oral,
34 relating to the subject matter of this Agreement.
- 35 44. Recording. A copy of this Agreement SHALL BE RECORDED with the Clerk and
36 Recorder of Summit County, Colorado.

1 45. Running Of Benefits And Burdens. All provisions of this instrument, including the
2 benefits and burdens, run with the land and are binding upon and inure to the successors,
3 assigns, and tenants of the parties hereto.

4 BLUE FRONT OFFICE SUITES, INC., a Colorado
5 corporation

6
7
8
9 By: _____

10 Title: _____

11
12
13 GHW ASSOCIATES, a Colorado general
14 partnership

15
16
17
18 By: _____

19 Title: _____

20
21
22 TOWN OF BRECKENRIDGE, a Colorado
23 municipal corporation

24
25
26 By _____
27 Timothy J. Gagen, Town Manager

28 ATTEST:

29
30
31 _____
32 Mary Jean Loufek, CMC,
33 Town Clerk
34
35

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STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day
of _____, 2009, by _____, as
_____ of GHW Associates, a Colorado general
partnership.

WITNESS my hand and official seal.
My commission expires: _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day
of _____, 2009, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek,
CMC, 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 instrument was acknowledged before me this ____ day
6 of _____, 2009, by _____, as Chair of the
7 Board of County Commissioners of Summit County, Colorado and _____,
8 as Clerk and Recorder and ex-officio clerk to the Board of County Commissioners of Summit
9 County, Colorado.

10
11 WITNESS my hand and official seal.

12
13 My commission expires: _____.

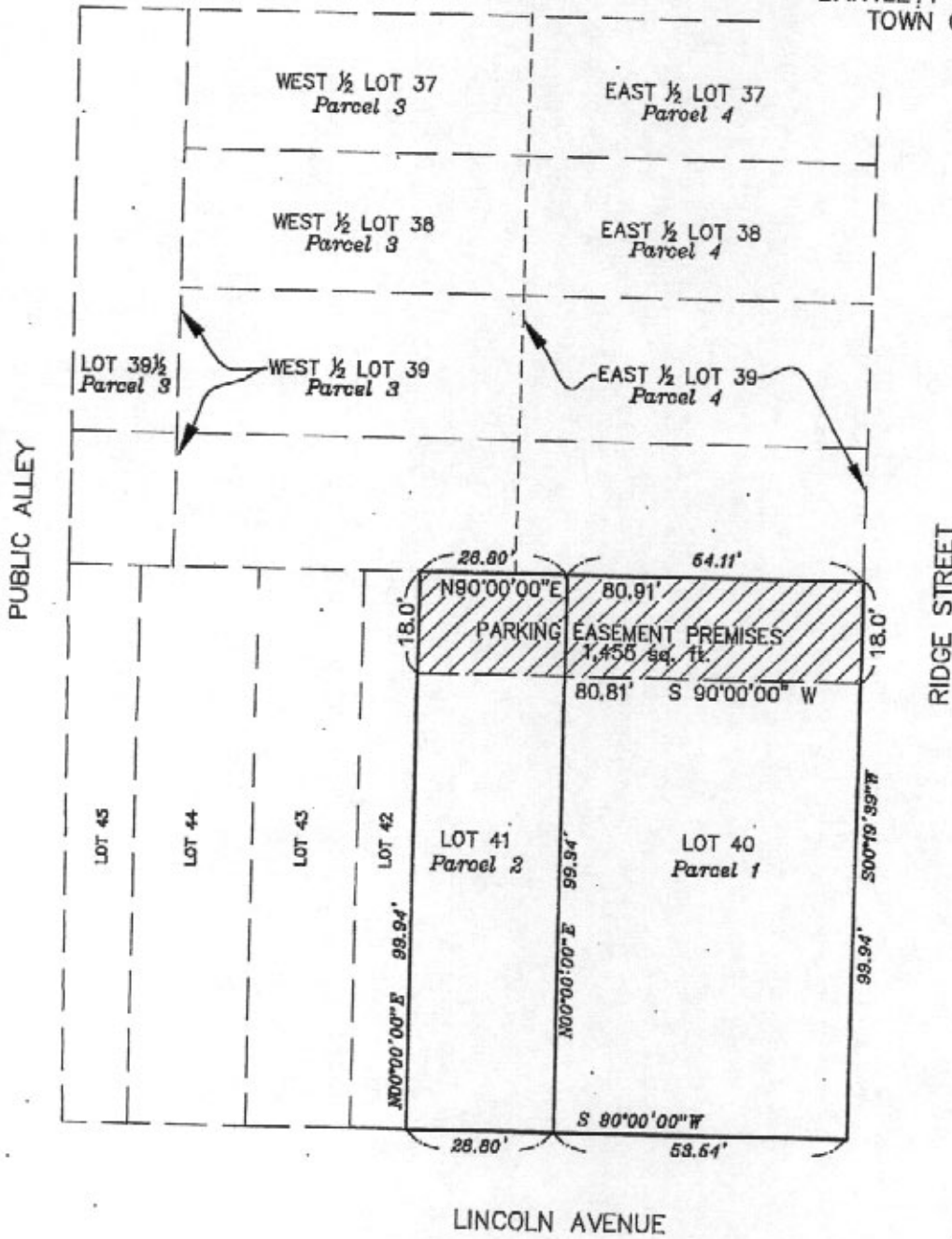
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17 _____
18 Notary Public
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53 2000-74\Mutual Easement Agreement_12 (07-03-09)(Clean)
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EXHIBIT "A"

PARKING EASEMENT
PREMISES

LOTS 40 AND 41
BARTLETT AND SHOCK ADDITION
TOWN OF BRECKENRIDGE



GRAPHIC SCALE
1 inch = 30 ft.



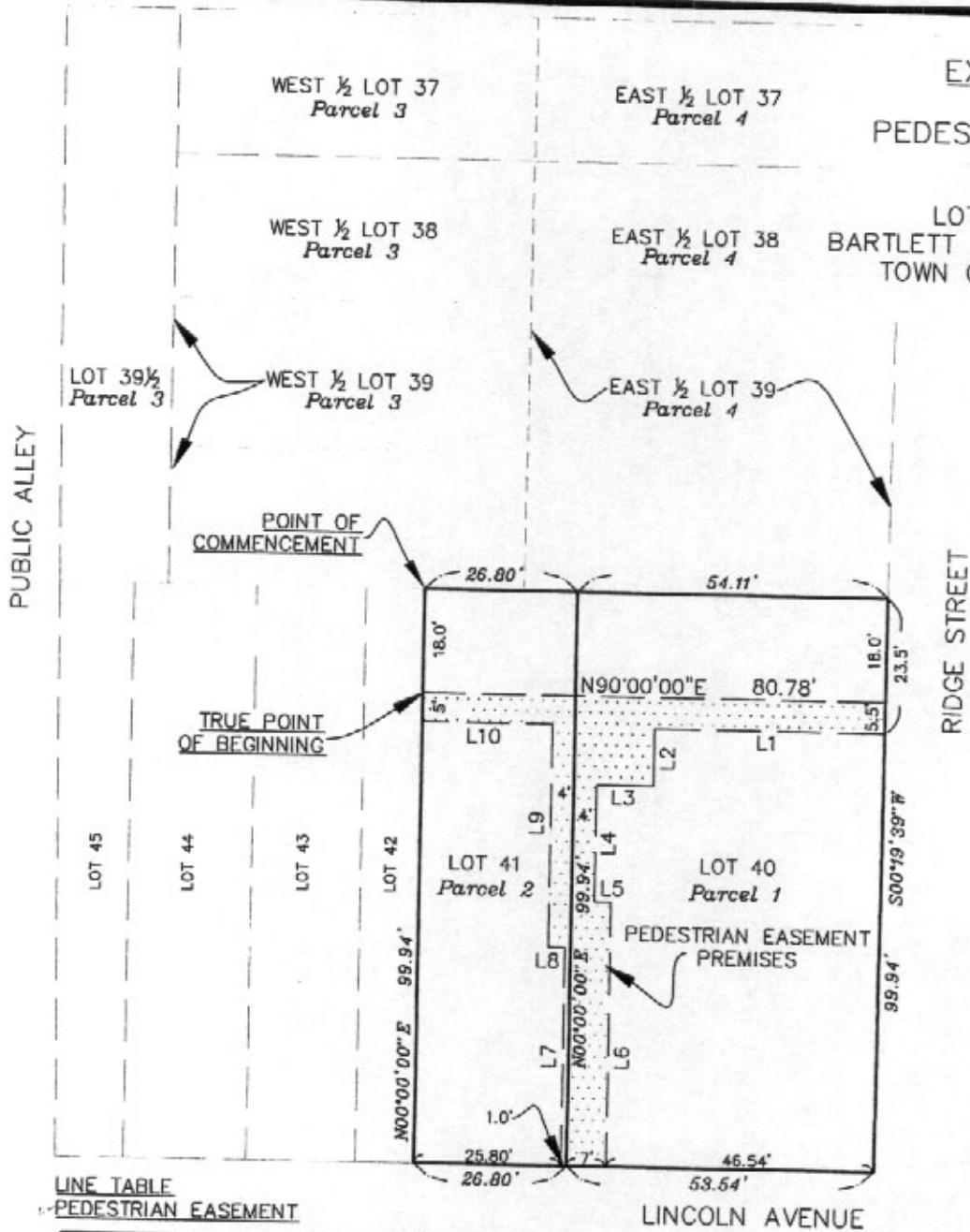
SCHMIDT
LAND SURVEYING, INC.

P.O. Box 5761
FRISCO, CO 80443 970-409-9963

EXHIBIT "B"

PEDESTRIAN EASEMENT PREMISES

LOTS 40 AND 41
BARTLETT AND SHOCK ADDITION
TOWN OF BRECKENRIDGE



LINE TABLE
PEDESTRIAN EASEMENT

LINE	BEARING	LENGTH
L1	N90°00'00"W	39.98'
L2	S00°00'00"W	10.00'
L3	N90°00'00"W	10.00'
L4	S00°00'00"W	20.44'
L5	N90°00'00"E	3.00'
L6	S00°00'00"W	46.00'
L7	N00°00'00"E	38.00'
L8	N90°00'00"W	3.00'
L9	N00°00'00"E	38.94'
L10	N90°00'00"W	22.80'



GRAPHIC SCALE
1 inch = 30 ft.

SCHMIDT
LAND SURVEYING, INC.
P.O. Box 309
FRISCO, CO 80443 970-409-9963

Page 56 of 120

EXHIBIT "B"
PEDESTRIAN EASEMENT PREMISES DESCRIPTION

A PEDESTRIAN EASEMENT LOCATED OVER AND ACROSS LOTS 40 AND 41, BARTLETT AND SHOCK ADDITION TO THE TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO, (PARCELS 1 AND 2), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 41, BARTLETT AND SHOCK ADDITION TO THE TOWN OF BRECKENRIDGE; THENCE CONTINUING ALONG THE WESTERLY BOUNDARY LINE OF SAID LOT 41 S00°00'00"W A DISTANCE OF 18.00 FEET TO THE TRUE POINT OF BEGINNING,

THENCE DEPARTING SAID WESTERLY BOUNDARY LINE OF SAID LOT 41 N90°00'00"E A DISTANCE OF 80.78 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID LOT 40; THENCE CONTINUING S00°19'39" W ALONG SAID EASTERLY BOUNDARY LINE OF SAID LOT 40 A DISTANCE OF 5.5 FEET; THENCE DEPARTING SAID EASTERLY BOUNDARY LINE OF SAID LOT 40 THE FOLLOWING SIX (6) COURSES:

- 1) N90°00'00"W A DISTANCE OF 39.98 FEET;
- 2) S00°00'00"W A DISTANCE OF 10.00 FEET;
- 3) N90°00'00"W A DISTANCE OF 10.00 FEET;
- 4) S00°00'00"W A DISTANCE OF 20.44 FEET;
- 5) N90°00'00" E A DISTANCE OF 3.00 FEET
- 6) S00°00'00" W A DISTANCE OF 46.00 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF SAID LOT 40;

THENCE CONTINUING ALONG THE SOUTHERLY BOUNDARY LINE OF SAID LOT 40 AND SAID LOT 41 N00°00'00"W A DISTANCE OF 8.00 FEET; THENCE DEPARTING SAID SOUTHERLY BOUNDARY LINE OF SAID LOT 41 THE FOLLOWING FOUR (4) COURSES:

- 1) N00°00'00"E A DISTANCE OF 38.00 FEET;
- 2) N90°00'00"W A DISTANCE OF 3.00 FEET;
- 3) N00°00'00"E A DISTANCE OF 38.94 FEET;
- 4) N90°00'00" W A DISTANCE OF 22.80 FEET TO A POINT ON THE WESTERLY BOUNDARY LINE OF SAID LOT 41;

THENCE CONTINUING ALONG SAID WESTERLY BOUNDARY LINE OF SAID LOT 41 N00°00'00"E A DISTANCE OF 5.00 FEET TO THE TRUE POINT OF BEGINNING,

SAID EASEMENT CONTAINING 1,168 SQUARE FEET MORE OR LESS.

JJC
2/21/24
JHD

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 21 (Silverthorne House Landmarking Ordinance)

DATE: July 20, 2009 (for July 28th meeting)

The second reading of the ordinance to landmark the Silverthorne House and Carriage Barn (located at 300 North Main Street) is scheduled for your meeting on July 28th. 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 28**

2
3 **NO CHANGES FROM FIRST READING**

4
5 COUNCIL BILL NO. 21

6
7 Series 2009

8
9 AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK
10 UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE
11 (Silverthorne House and Carriage Barn–South 60 Feet of Lots 22 and 22½, Snider Addition, and
12 the North 15 Feet of Lot 60 and 61 Bartlett and Shock Addition)

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 hereby finds and
18 determines as follows:

19
20 A. Dave Hartman and Liz Hartman own the hereinafter described real property.
21 Such real property is located within the corporate limits of the Town of Breckenridge,
22 County of Summit and State of Colorado.

23
24 B. Dave Hartman and Liz Hartman filed an application with the Town pursuant
25 to Chapter 11 of Title 9 of the Breckenridge Town Code seeking to have the Town
26 designate the hereinafter described real property as a landmark (“Application”).

27
28 C. The Town followed all of procedural requirements of Chapter 11 of Title 9 of
29 the Breckenridge Town Code in connection with the processing of the Application.

30
31 D. The hereinafter described real property is more than fifty (50) years old.

32
33 E. The hereinafter described real property meets the “architectural” designation
34 criteria for a landmark as set forth in Section 9-11-4(A)(1)(a) of the Breckenridge Town
35 Code because the property:

- 36
37 (i) exemplifies specific elements of architectural style or period;
38 (ii) is of a style particularly associated with the Breckenridge area; and
39 (iii) represents a built environment of a group of people in an era of history.

40
41 F. The hereinafter described real property meets the “social” designation criteria
42 for a landmark as set forth in Section 9-11-4(A)(1)(b) of the Breckenridge Town Code
43 because the area is associated with a notable person or the work of a notable person.
44

1 G. The hereinafter described real property meets the “physical integrity” criteria
2 for a landmark as set forth in Section 9-11-4(A)(3)(a) of the Breckenridge Town Code
3 because the property the property shows character, interest or value as part of the
4 development, heritage or cultural characteristics of the community, region, state or
5 nation.
6

7 H. In accordance with the requirements of Section 9-11-3(B)(3) of the
8 Breckenridge Town Code, on June 2, 2009 the Application was reviewed by the
9 Breckenridge Planning Commission. On such date the Planning Commission
10 recommended to the Town Council that the Application be granted.
11

12 I. The Application meets the applicable requirements of Chapter 11 of Title 9 of
13 the Breckenridge Town Code, and should be granted without conditions.
14

15 J. Section 9-11-3(B)(4) of the Breckenridge Town Code requires that final
16 approval of an application for landmark designation under Chapter 11 of Title 9 of the
17 Breckenridge Town Code be made by ordinance duly adopted by the Town Council.
18

19 Section 2. Designation of Property as Landmark. The following described real
20 property situate in the Town of Breckenridge, County of Summit, and State of Colorado,
21 to wit:
22

23 The South 60 feet of Lot or M.C. #22 and the South 60 feet of Lot No. 22½ ,
24 Snider’s Addition, and the North 15 feet of Lot 60 and 61, Bartlett and Shock
25 Addition to the Town of Breckenridge, as shown the plats thereof filed in the
26 office of the Clerk and Recorder of Summit County, Colorado; commonly known
27 and described as 300 North Main Street, Breckenridge, Colorado 80424
28

29 is hereby designated as a landmark pursuant to Chapter 11 of Title 9 of the Breckenridge
30 Town Code.
31

32 Section 3. Police Power Finding. The Town Council hereby finds, determines and
33 declares that this ordinance is necessary and proper to provide for the safety, preserve the health,
34 promote the prosperity, and improve the order, comfort and convenience of the Town of
35 Breckenridge and the inhabitants thereof.
36

37 Section 4. Town Authority. The Town Council hereby finds, determines and declares
38 that it has the power to adopt this ordinance pursuant to the authority granted to home rule
39 municipalities by Article XX of the Colorado Constitution and the powers contained in the
40 Breckenridge Town Charter.
41

42 Section 5. Effective Date. This ordinance shall be published and become effective as
43 provided by Section 5.9 of the Breckenridge Town Charter.
44

45 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
46 PUBLISHED IN FULL this ____ day of _____, 2009. 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 ____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
3 Town.

4 TOWN OF BRECKENRIDGE, a Colorado
5 municipal corporation
6

7
8
9 By _____
10 John G. Warner, Mayor

11
12 ATTEST:
13

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16 _____
17 Mary Jean Loufek, CMC,
18 Town Clerk
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MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 22 (Elevator Standards Ordinance)

DATE: July 20, 2009 (for July 28th meeting)

The second reading of the ordinance to adopt the required new elevator standards is scheduled for your meeting on July 28th. 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 28**

2
3 **NO CHANGES FROM FIRST READING**

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

7
8 COUNCIL BILL NO. 22

9
10 Series 2009

11
12 AN ORDINANCE AMENDING THE INTERNATIONAL BUILDING CODE, 2006 EDITION,
13 ADOPTED BY REFERENCE IN CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE
14 TOWN CODE, BY ADOPTING BY REFERENCE CERTAIN NEW AND UPDATED
15 STANDARDS PROMULGATED BY THE AMERICAN SOCIETY OF MECHANICAL
16 ENGINEERS CONCERNING ELEVATORS, ESCALATORS, AND SIMILAR FORMS OF
17 CONVEYANCE

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

21
22 Section 1. Section 8-1-4 of the Breckenridge Town Code, entitled “Amendments to the
23 International Building Code”, is hereby amended by the addition of the following additional
24 amendments to be placed at the end of Section 8-1-4:

25
26 The following amendments are made to the list of the “Referenced
27 Standards” of the American Society of Mechanical Engineers (ASME)
28 contained in Chapter 35 of this code:

- 29
30 1. The reference to standard A17.1–04, entitled “Safety Code For
31 Elevators and Escalators with A17.1a-2005 addenda and A17.1S
32 Supplement 2005” is deleted, and replaced with a reference to
33 standard A17.1–2007/CSA B44-07, entitled “Safety Code For
34 Elevators and Escalators.” ASME Standard A17.1–2007/CSA B44-
35 07, entitled “Safety Code For Elevators and Escalators”, is hereby
36 adopted by reference and made a part of this code.
37
38 2. The reference to standard A18.1–03, entitled “Safety Standard for
39 Platform Lifts and Stairway Chairlifts” is deleted, and replaced with
40 a reference to standard A18.1–2005, entitled “Safety Standard For
41 Platform Lifts and Stairway Chairlifts.” ASME Standard A18.1–2005,
42 entitled “Safety Standard For Platform Lifts and Stairway
43 Chairlifts”, is hereby adopted by reference and made a part of this
44 code.
45

MEMO

TO: Town Council

FROM: Town Attorney

RE: Entrada Annexation

DATE: July 22, 2009 (for July 28th meeting)

I understand that the Planning Commission approved the development permit for Entrada last night. As such, the Entrada permit will appear on your Planning Commission consent calendar next Tuesday. Because Council seemed to be pretty comfortable with the version of the Annexation Agreement that was reviewed at the May 12th worksession, the Annexation Ordinance and New Zoning Ordinance for Entrada have been prepared and both have been scheduled for first reading at the meeting next Tuesday. This will allow you to consider the Planning Commission decision on the Entrada development, and the two ordinances related to the annexation of the Entrada property, at the same time next Tuesday.

Accordingly, enclosed with this memo are the following documents concerning the proposed annexation of the Entrada parcel:

1. Annexation Ordinance;
2. Ordinance placing Entrada property in Land Use District 5; and
3. Latest draft of Entrada Annexation Agreement.

There have been several revisions to the Annexation Agreement since you reviewed the document in May. Here is a brief summary of the proposed changes to the Agreement:

1. Entrada has waived the provision that provided that final approval of the annexation would not occur until the 61st day following the effective date of the Annexation Ordinance (Sections 3.1(c) and 3.2). This will make the annexation effective when the Annexation Ordinance becomes effective. From the Town's perspective I see no problem with this proposed change to the agreement.
2. In the previous draft the densities for the two lots on the Commercial Tract as described in Section 4.7(a) were transposed. This error has been corrected. There is no change in the project density; simply a correction of the transposition of the allowed density for the two lots on the Commercial Tract.
3. The requirement for the creation of a mutual access easement with Summit Ridge Center has been deleted in Section 4.7(b). This was done because CDOT is not allowing shared access with Summit Ridge, and the shared access has been eliminated from the project plans.
4. Section 4.8(b) concerning the security fence has been clarified as requested by the Council.

5. Section 4.12(b) concerning the duration of the Town's fee waiver has also been clarified as requested by the Council.

I believe that the changes to the Annexation Agreement address those few comments that were provided by the Council on May 12th. If the agreement is now in final form, I will present a resolution approving the agreement at the time of second reading of the Annexation and Zoning Ordinances on August 11th.

I look forward to discussing these matters with you on Tuesday.

1 **FOR WORKSESSION/FIRST READING – JULY 28**

2
3 COUNCIL BILL NO. ____

4
5 Series 2009

6
7 AN ORDINANCE ANNEXING TO A PARCEL OF LAND THE TOWN OF
8 BRECKENRIDGE
9 (Entrada – 3.98 acres, more or less)

10
11 WHEREAS, the Town Council of the Town of Breckenridge has found a Petition For
12 Annexation of the hereinafter described parcel of land to be in substantial compliance with the
13 requirements of Section 31-12-107(1), C.R.S.; and

14
15 WHEREAS, after notice as required by Section 31-12-108, C.R.S., the Town Council
16 held a public hearing on the proposed annexation on February 24, 2009; and

17
18 WHEREAS, the Town Council has by resolution determined that the requirements of
19 Sections 31-12-104 and 105, C.R.S., have been met; that an election is not required; and that no
20 additional terms or conditions are to be imposed on the annexed area.

21
22 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
23 BRECKENRIDGE, COLORADO:

24
25 Section 1. The following described parcel of land, to wit:

26
27 Tracts A & B, A Subdivision Exemption Plat of Entrada at Breckenridge, as
28 recorded May 29, 2007 under Reception No. 856500 of the records of the Clerk
29 and Recorder of Summit County, Colorado, such two tracts consisting of 3.98
30 acres

31
32 is hereby annexed to and made a part of the Town of Breckenridge, Colorado.

33
34 Section 2. The annexation of the abovedescribed property shall be complete and
35 effective on the effective date of this ordinance, except for the purpose of general property taxes,
36 and shall be effective as to general property taxes on and after January 1, 2010.

37
38 Section 3. Within thirty (30) days after the effective date of this ordinance, the Town
39 Clerk is hereby authorized and directed to:

- 40
41 A. File one copy of the annexation map with the original of
42 the annexation ordinance in the office of the Town Clerk of
43 the Town of Breckenridge, Colorado; and
44
45 B. File for recording three certified copies of the annexation
46 ordinance and map of the area annexed containing a legal

1 description of such area with Summit County Clerk and
2 Recorder.

3
4 Section 4. This ordinance shall be published and become effective as provided by law.

5
6 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
7 PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be
8 held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the
9 ____ day of _____, 2009 at 7:30 P.M. or as soon thereafter as possible in the Municipal
10 Building of the Town.

11
12 TOWN OF BRECKENRIDGE, a Colorado
13 municipal corporation

14
15
16
17 By: _____
18 John G. Warner, Mayor

19
20 ATTEST:

21
22
23
24 _____
25 Mary Jean Loufek, CMC,
26 Town Clerk

1 DRAFT July 20, 2009 DRAFT

2
3 Additions To The Prior Draft Dated May 6, 2009 Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 ANNEXATION AND DEVELOPMENT AGREEMENT
7 (Entrada)
8

9 THIS ANNEXATION AGREEMENT ("*Agreement*") is dated _____, 2009
10 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("*Town*")
11 and ENTRADA AT BRECKENRIDGE, INC., a Colorado Corporation ("*Owner*").
12

13 WHEREAS, Owner owns the real property defined as the "Property" in Section 1 of this
14 Agreement; and
15

16 WHEREAS, Owner proposes the annexation of its property to the Town; and
17

18 WHEREAS, the Town has determined that it would be in the best interest of the public
19 health, safety, and welfare of its citizens to impose certain terms and conditions on the Owner in
20 connection with the annexation of Owner's property to the Town; and
21

22 WHEREAS, Owner and Town have come to an Agreement with respect to the terms and
23 conditions of the annexation of the Owner's property to the Town, all as more fully set forth in
24 this Agreement.
25

26 NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained
27 herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby
28 acknowledged, the parties agree as follows:
29

- 30 1. **DEFINITIONS.** As used in this Agreement, unless the context clearly requires
31 otherwise:

32 "*Act*" means Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S.,
33 as from time to time amended.
34

35 "*Annexation Ordinance*" means the ordinance adopted by the Town Council of the
36 Town of Breckenridge pursuant to the Municipal Annexation Act of 1965 (Section 31-
37 12-101, *et seq.*, C.R.S.) officially annexing the Property to the Town of Breckenridge.
38

39 "*Annexation Petition*" means the petition filed by Owner seeking annexation of the
40 Property to the Town.
41

1 “**Annexation Surcharge**” means a general annexation fee normally paid to the Town as
2 part of an annexation in lieu of the transfer of raw water to the Town by the annexing
3 party.

4 “**Applicable Town Ordinances**” means all ordinances of the Town regulating the
5 development, subdivision and use of the Property, as in effect from time to time. Such
6 ordinances include, but are not limited to, the Town's: (i) Development Code, (ii) Street
7 Standards, (iii) Drainage Ordinance, (iv) Flood Prevention Ordinance, (v) Water Quality
8 Ordinance, (vi) Subdivision Ordinance, (vii) Building, Technical and Construction
9 Codes, (viii) ordinances concerning annexation/water surcharges, (ix) ordinances and
10 resolutions concerning payment of fees, (x) ordinances concerning public dedications;
11 and (xi) all other applicable Town ordinances, resolutions, regulations and policies.
12

13 “**Commercial Tract**” means the portion of the Property to be developed by Owner as
14 provided in Section 4.7.
15

16 “**Development Code**” means the Town of Breckenridge “Development Code” codified as
17 Chapter 1 of Title 9 of the Breckenridge Town Code.
18

19 “**Effective Date**” means the date that this Agreement becomes effective as provided in
20 Section 3.1
21

22 “**Final Approval**” means the 61st day after the effective date of the Annexation Ordinance
23 as more fully defined in § 3.2 hereof.
24

25 “**General Plan of Development**” means the general conceptual plan for the development
26 of the Property as shown on Exhibit "A".
27

28 “**Initial Subdivision of the Property**” means: (i) the division of the Property into the
29 Commercial Tract, the Mini-Storage Tract, and the Town Tract as shown on the General
30 Plan of Development; and (ii) the division of the Commercial Tract into two lots of equal
31 size; and (iii) the initial condominiumization of the Commercial Tract of each building
32 located on the Commercial Tract at Owner’s election.
33

34 “**Legal Challenge**” means that either: (i) a third party commences a legal proceeding
35 request for reconsideration pursuant to Section 31-12-116, C.R.S., or other action that
36 directly or indirectly challenges the Annexation Ordinance; or (ii) a third party submits a
37 petition for a referendum seeking to reverse or nullify the Annexation Ordinance.
38

39 “**Master Plan**” means a plan for the development of the Commercial Tract and the Mini-
40 Storage Tract approved by the Town as described in Section 4.5.
41

42 “**Mini-Storage Tract**” means the portion of the Property to be developed by Owner as
43 provided in Section 4.8.
44

1 "Owner" means Entrada at Breckenridge, Inc., a Colorado Corporation, its successors
2 and assigns, and all other subsequent owners of the Property.
3

4 "Property" means Tracts A & B, A Subdivision Exemption Plat of Entrada at
5 Breckenridge, as recorded May 29, 2007 under Reception No. 856500 of the records of
6 the Clerk and Recorder of Summit County, Colorado, such two tracts consisting of 3.98
7 acres.
8

9 "Town Tract" means the middle lot following the Initial Subdivision of the Property
10 (consisting of at least 1.326 acres, unless otherwise agreed to by the Town) that is to be
11 conveyed by Owner to Town pursuant to Section 4.11.
12

13 "Transferable Development Right" has the meaning provided in that
14 "Intergovernmental Agreement Between the Town of Breckenridge and the Board of
15 County Commissioners of Summit County, Colorado Concerning Transferred
16 Development Rights", dated July 11, 2000, and any amendment or replacement
17 agreement (hereinafter referred to as "TDR").
18

19 2. **ANNEXATION.** The Property will be annexed to the Town. Annexation of the Property
20 will be in accordance with the terms and conditions of the Annexation Petition; this
21 Agreement; the Colorado Municipal Annexation Act of 1965, as amended (Section 31-
22 12-101, *et seq.*, C.R.S.); and the Applicable Town Ordinances.

23 3. **EFFECTIVE DATE.**

24 3.1 **Effective Date Defined.** The Effective Date of this Agreement is the date on
25 which the last of the following conditions precedent has been satisfied:

- 26 (a) this Agreement has been signed by both the Town and the Owner;
- 27 (b) the Town has approved the Master Plan; the Initial Subdivision of the
28 Property; and the initial site specific development plan(s) for the
29 development of the Commercial Tract and Mini-Storage Tract all as
30 described in Section 4, and no action of any type challenging such
31 approvals has been filed within the time allowed by law;
- 32 ~~(e) Final Approval has occurred;~~
- 33 (c) ~~(d)~~ The Town ordinance amending the Land Use District 5 Guidelines to
34 make mini-storage and bank uses "acceptable" service commercial uses in
35 Land Use District 5 has become effective. Such action is necessary in
36 order to cause the development of the Commercial Tract and the Mini-
37 Storage Tract pursuant to this Agreement to: (i) meet Policy 2/Absolute
38 (Land Use Guidelines) of the Development Code; and (ii) justify an
39 assessment of zero negative points under Policy 2/Relative (Land Use
40 Guidelines) of the Development Code; and

1 **(d)** ~~(e)~~-The Town ordinance amending the Land Use District 5 Guidelines to
2 eliminate required parking for the mini-storage facility on the Mini-
3 Storage Tract (but not to eliminate required parking for any office located
4 the Mini-Storage Tract) has become effective.

5 ~~3.2~~ **Final Approval.** ~~Final Approval will not occur if a Legal Challenge occurs~~
6 ~~before the 61st day following the effective date of the Annexation Ordinance. If a~~
7 ~~Legal Challenge occurs, Final Approval will only occur if the Owner elects to~~
8 ~~waive this requirement and such Legal Challenge is concluded or resolved~~
9 ~~affirming the Annexation Ordinance within a period of time acceptable to the~~
10 ~~Owner in its sole discretion. At any time while the Legal Challenge is pending~~
11 ~~Owner may void this Agreement and the annexation of the Property to the Town~~
12 ~~by providing written notice to the Town, and upon Town's receipt of Owner's~~
13 ~~notice the Town agrees to take all necessary steps to void, rescind or repeal the~~
14 ~~Annexation Ordinance.~~

15 **3.2** ~~3.3~~ **No Recording Prior to Satisfaction of Conditions.** Until all of the
16 conditions precedent set forth in Section 3.1 have been satisfied, none of the
17 items described in Section 31-12-113(2)(a)(II)A, C.R.S., will be recorded.

18 **4. INITIAL ZONING; DEVELOPMENT OF THE PROPERTY.**

19 4.1 **Initial Land Use District Designation.** Upon annexation the Property will be
20 placed in Land Use District 5.

21 4.2 **Density.**

22 (a) Density for the buildings proposed on the Commercial Tract and Mini-
23 Storage Tract pursuant to Exhibit A will be calculated using the total
24 square footage of the Property as a whole, which is 173,272 square feet,
25 and not based on the buildings as they relate to the individual tracts and
26 the subdivided lots on which each respective building is situated.

27 (b) Density on the Commercial Tract and the Mini-Storage Tract will not
28 exceed a combined total of 41,280.4 square feet. No increase in density
29 above 41,280.4 square feet is allowed without the Town's express consent.

30 (c) A maximum of 15,030.4 square feet of office/commercial density may be
31 developed on the Commercial Tract; and a maximum of 26,250 square
32 feet of mini-storage density may be developed on the Mini-Storage Tract.

33 (d) Owner's use of density is subject to the Town's right to review and
34 approve such use as part of the Town's land use review process for the
35 Commercial Tract and Mini-Storage Tract.

- (e) Pursuant to Section D of Policy 3 (Absolute) of the Development Code, because the Property is located outside of the Town’s Conservation District a maximum of ten percent (10%) of the total combined density for the Commercial Tract and the Mini-Storage Tract shall be excluded from the calculated density if such excluded density is used to construct “employee housing” as defined in the Development Code.
- (f) The affordable housing development which the Town intends (but is not required) to construct on the Town Tract does not require any density.

4.3 **General Plan of Development.** The Property will be developed generally in accordance with the General Plan of Development attached hereto as Exhibit A, unless otherwise agreed to by both parties. However, both parties acknowledge that additional planning, evaluation, and design will be necessary before a final plan for improvements, roads, utilities, and other public improvements can be prepared and a subdivision plat filed. Such additional planning, evaluation, and design will be done as part of the Town’s land use review process described in this Section 4.

4.4 **Land Use Review Process Pending Annexation.** In accordance with the authority provided by Section 31-12-116, C.R.S., the Owner’s proposed subdivision of the Property and development of the Commercial Tract and the Mini-Storage Tract will be processed by the Town during the annexation process. However, as provided by law, Owner and Town acknowledge that final approval of the Initial Subdivision of the Property and the development of the Commercial Tract and Mini-Storage Tract cannot become effective prior to the date when the Annexation Ordinance is passed on final reading.

4.5 **Master Plan; Site Specific Development Plans.** The initial development of the Property will be subject to a Master Plan to be approved pursuant to Policy 39 of the Development Code, as well as the site specific development permits for the Initial Subdivision of the Property and the initial development of the Commercial Tract and the Mini-Storage Tract. The Master Plan will include all provisions required by law to be included in a master plan, and in addition will provide that the density for the Mini-Storage Tract may not be converted to use for any purpose other than mini-storage without the Town’s discretionary (non-governmental) approval. Such restriction will survive the termination or expiration of the Master Plan and will be fully enforceable thereafter.

4.6 **Initial Subdivision of the Property.**

- (a) Prior to any development the Property will initially be subdivided into three tracts of approximately equal size as generally depicted on the General Plan of Development. The Commercial Tract will simultaneously be re-subdivided into two lots of equal size, each containing one site for

1 each of the two buildings that are to be constructed on the Commercial
2 Tract as generally depicted on the General Plan of Development.

- 3 (b) The Town is responsible for processing the application for Initial
4 Subdivision of the Property. The Town will pay all expenses incurred in
5 connection with such process; provided, however, that Owner will pay the
6 cost of the required survey and the subdivision plat for the Initial
7 Subdivision of the Property. Owner will provide any reasonable assistance
8 required in processing the Initial Subdivision of the Property.

9 **4.7 Development of Commercial Tract.**

- 10 (a) The Commercial Tract is the western lot abutting Highway 9 as shown on
11 the General Plan of Development. It will consist of two buildings zoned
12 for commercial/office use. The Commercial Tract will be resubdivided
13 into two lots of equal size. One building will be located on each
14 resubdivided lot. Subject to the purchase of additional density as described
15 in Section 4.10, Owner may develop a maximum of ~~7,766.47,264~~ gross
16 square feet of density on lot 1 of the Commercial Tract and a maximum of
17 ~~7,264~~7,764.4 gross square feet of density on lot 2 of the Commercial
18 Tract. The development of the Commercial Tract is subject to the Town's
19 right to review and approve the proposed development as part of the
20 Town's land use review process.

- 21 ~~(b) As part of the initial subdivision of the Commercial Lot Owner will create~~
22 ~~a mutual access easement with the Summit Ridge Center that is acceptable~~
23 ~~to Town.~~

- 24 (b) ~~(c)~~ As part of the Town's land use review of the proposed development of
25 the Commercial Lot, Owner will provide, at its sole expense, a study
26 conducted by a qualified consultant acceptable to the Town of the traffic
27 impacts associated with its proposed development of the Commercial Lot
28 and the Mini-Storage Lot. Owner will comply with the recommendations
29 of the traffic study if required by the Town.

30 **4.8 Development of Mini-Storage Tract.**

- 31 (a) The Mini-Storage Tract is the eastern lot as shown on the General Plan of
32 Development. It will contain three mini-storage buildings and a small
33 office. Subject to the purchase of additional density as described in
34 Section 4.10, Owner may develop a maximum of 26,250 gross square feet
35 of density on the Mini-Storage Tract. The development of the Mini-
36 Storage Tract is subject to the Town's right to review and approve the
37 proposed development as part of the Town's land use review process.

1 (b) The Master Plan may include a proposal for the construction of a ~~chain-~~
2 ~~link~~security fence along 3 sides of the Mini-Storage Tract, the height of
3 which shall not exceed 68 feet, and barbed wire may be placed on top of
4 the ~~fence not to exceed 18 inches above the top of the fence line. The~~
5 ~~proposed chain-link fence and barbed wire shall be painted or made to~~
6 ~~appear black in color.~~ north and east fences only.

7 4.9 **Shared Curb Cut.** There will be a shared curb cut access for the Mini-Storage
8 Tract and the Town Tract along the southerly side of the Property in a location to
9 be determined as part of the Town’s formal land use review process. In
10 connection with the shared curb cut, each party will provide appropriate
11 easements to the other party to allow use of the shared curb cut.

12 4.10 **Transferable Development Rights.** Town will provide to Owner at Town
13 expense 6.626 TDRs for Owner’s use in developing the Commercial and Mini-
14 Storage Tract. The transferable development rights will be provided by the Town
15 when required for the proposed development.- Owner shall be responsible for the
16 purchase of any TDRs required to construct more than 41,280.4 square feet on the
17 Commercial and Mini-storage Tracts, subject to Section 4.2(b).-

18 4.11 **Conveyance and Development of Town Tract.**

19 (a) The Owner will convey the Town Tract to the Town contemporaneously
20 with the recording of the initial subdivision plat of the Property as
21 described in Section 4.6 with the Summit County Clerk and Recorder’s
22 Office. The Owner will transfer the Town Tract to the Town without
23 payment of monetary consideration to the Owner by the Town. Such
24 conveyance will be made by general warranty deed in a form acceptable to
25 the Town Attorney, and, unless otherwise agreed by the Town, will be
26 made free and clear of all liens and encumbrances, except for the lien of
27 the general property taxes for 2008 and subsequent years.

28 (b) The Town may (but is not required to) use the Town Tract for the
29 development of affordable housing or for such other use as the Town in its
30 discretion may determine.

31 (c) The Town will provide the Owner with a copy of the Town’s proposed
32 plan for the initial development and use of the Town Tract; provided,
33 however, that Owner will have no right to approve the Town’s plan for the
34 initial development and use of the Town Tract, and the Town may proceed
35 with its plan for the initial development and use of the Town Tract without
36 obtaining the approval or consent of Owner.

37 4.12 **Development Review, Building, Impact, and Permitting Fees.**

1 (a) The Town waives all building, development, impact and permitting fees of
2 any type associated with:

3 (i) the Master Plan as described in Section 4.5;

4 (ii) Initial Subdivision of the Property as described in Section 4.6;

5 (iii) the initial development of both the Commercial Tract and the
6 Mini-Storage Tract and the construction of any buildings thereon
7 as described in Sections 4.7 and 4.8 and depicted in Exhibit A
8 hereof; and

9 (iv) the initial condominium conversion of the Commercial Tract or
10 each building located on the Commercial Tract individually,
11 provided the condominium conversion is initiated within two
12 years of the date of the issuance by the Town of the first certificate
13 of occupancy for either of the buildings to be located on the
14 Commercial Tract.

15 (b) The waiver described in subsection (a) **applies only to the development**
16 **of the Commercial Tract and Mini-Storage Tracts as described in this**
17 **Agreement, and** does not apply to any other resubdivision of the
18 Commercial Tract or the Mini-Storage Tract, or to any subsequent
19 development of either the Commercial Tract or the Mini-Storage Tract
20 occurring after certificates of occupancy have been issued by the Town for
21 both of the buildings to be located on the Commercial Tract and the three
22 (3) buildings to be located on the Mini-Storage Tract pursuant to Exhibit
23 A. **If either :**

24 **(i) Owner or Owner's successor in interest proposes a substantial**
25 **modification to the Town- approved development permit for**
26 **the initial subdivision and development of the Property; or**

27 **(ii) the vested property rights for the Town-approved development**
28 **permit for the initial subdivision and development of the**
29 **Property expire without the Property being subdivided and**
30 **fully developed in accordance with such permit, or the vested**
31 **property rights for the initial subdivision and development of**
32 **the Property pursuant to the Town-approved development**
33 **permit are proposed to be extended by the Owner or the**
34 **Owner's successor in interest,**

35 **then the Town may require a modification of the waiver(s) provided**
36 **for in subsection (a) of this Section.**

- 1 (c) The Town will pay for all personnel and professional fees it incurs in
- 2 reviewing the land use applications for:
- 3 (i) the initial Master Plan as described in Section 4.5;
- 4 (ii) the Initial Subdivision of the Property as described in Section 4.6;
- 5 (iii) the initial site specific development permits for the Commercial
- 6 Tract and the Mini-Storage Tract as described in Sections 4.8 and
- 7 4.8; and
- 8 (iv) the initial condominium conversion of the buildings to be located
- 9 on the Commercial Tract.

10 This section is to be liberally construed so as to ensure that Owner pays no
 11 Town fees of any kind for the initial entitlement and permitting process
 12 involved in the initial development of the Commercial Tract and the Mini-
 13 Storage Tract as described in this Agreement other than:

- 14 (i) all fees associated with Owner’s TDRs as described in Section
- 15 4.10;
- 16 (ii) the cost of Owner’s own consultants; and
- 17 (iii) the cost of preparing the survey and subdivision plat required for
- 18 the Initial Subdivision of the Property, and the cost of the
- 19 preparation of any survey and subdivision plat required in
- 20 connection with the initial condominium conversion of the
- 21 Commercial Tract, or the buildings to be located on the
- 22 Commercial Tract, as determined by Owner.

23 4.13 **Compliance with Town Ordinances.** Upon annexation of the Property to the
 24 Town, subdivision and development of the Commercial Tract and the Mini-
 25 Storage Tract will conform in all respects with the Applicable Town Ordinances.

26 4.14 **No Obligation to Develop.** Owner has no obligation to develop all or any
 27 portion of the Commercial Tract and Mini-Storage Tract, and will have no
 28 liability to the Town or any other party for its failure to develop all or any part of
 29 such properties. Owner and the Town contemplate that the Commercial and
 30 Mini-Storage Properties will be developed as market conditions dictate and
 31 allow.

32 **5. OWNER’S RIGHT TO PREVENT ANNEXATION.**

33 5.1 If Owner is not satisfied with the results of the Town’s land use approval for
 34 either the Commercial Tract or the Mini-Storage Tract (or both), Owner may
 35 withdraw the entire Annexation Petition up to the time of the final adoption of the

1 Annexation Ordinance. To cause withdrawal of the Annexation Petition Owner
2 must provide written notice of withdrawal to Town in the manner provided in
3 Section 18.8.

4 5.2 Upon Town’s receipt of Owner’s timely notice of withdrawal of the Annexation
5 Petition, Town will terminate all proceedings to annex the Property to the Town.

6 5.3 If Town does not receive written notice of withdrawal of the Annexation Petition
7 prior to the time of the final adoption of the Annexation Ordinance, Owner will
8 have irrevocably waived the right to withdraw the Annexation Petition.

9 **6. UTILITY SERVICE AND PUBLIC IMPROVEMENTS.**

10 **6.1 Extensions of Utility Services and Public Improvements.**

11 (a) Except as provided in Section 10 concerning the fees for connecting to the
12 Town’s public water system, Owner will pay all costs of acquiring,
13 designing, constructing and connecting all public improvements and utility
14 services necessary to serve the Commercial Tract and the Mini-Storage
15 Tract, which may include some of the following: parking, curbs, gutters,
16 sanitary and drainage sewers (including, but not limited to, sewer tap
17 fees), water, lighting, electricity, telephone, gas, and fiber optics, all in
18 accordance with applicable Town or utility provider standards and
19 specifications.

20 (b) Owner will dedicate to the Town and applicable utility providers, without
21 charge, and free and clear of all liens and encumbrances, those easements
22 and rights-of-way necessary for installation and maintenance of all utility
23 lines and other public improvements required for the development of the
24 Commercial Tract and the Mini-Storage Tract. Upon request Owner will
25 also convey the Owner’s utility improvements to the appropriate utility
26 provider upon completion and acceptance of the improvements.

27 (c) Owner and the Town will work together on installing utility infrastructure
28 to the greatest extent possible to efficiently install the utilities in the most
29 cost effective manner.

30 **6.2 Reimbursement For Improvements.** Pursuant to Section 9-2-3-7 of the
31 Breckenridge Town Code, Owner may be eligible for reimbursement from future
32 connector(s) to the public improvements and utility services described in Section
33 6.1 which are extended by Owner to the Commercial Tract and the Mini-Storage
34 Tract. Any claim for reimbursement will be subject to the provisions and
35 requirements of Section 9-2-3-7 of the Breckenridge Town Code. Nothing in this
36 Section limits the legislative authority of the Town to amend or repeal Section 9-
37 2-3-7 after the Effective Date.

- 1 7. **PUBLIC DEDICATIONS.**
- 2 7.1 Owner will make those utility dedications described in Section 6.1.
- 3 7.2 Owner will dedicate to the Town an 8 foot easement along the southern-most
4 boundary of the Property adjacent to and paralleling CR 450 along the entire
5 length of the Property for purposes of constructing a pathway as depicted on the
6 General Plan of Development.
- 7 7.3 The Town agrees that no further exactions or dedications, except as expressly
8 stated in this Agreement, shall be required as part of the development of the
9 Commercial and Mini-storage Tracts. The Town further agrees to waive any
10 open space requirements or any fees in lieu thereof in association with the
11 subdivision and/or development of the Commercial and Mini-Storage Tracts.
- 12 7.4 The Town is responsible for the design, construction, and maintenance of all
13 improvements of any kind, including the costs associated therewith, to or situated
14 on dedicated land, including, but not limited to, the pathway, affordable housing
15 or other improvements, parking lots, curbs, gutters, sanitary and drainage sewers,
16 lighting, and utility extensions necessary to serve the Town Tract.
- 17 7.5 Owner agrees to convey to the Town by appropriate conveyance document
18 acceptable in form and substance to the Town Attorney any and all rights it has in
19 the Dowdy Well.
- 20 8. **ANNEXATION SURCHARGE.** No annexation surcharge is required to be paid to the
21 Town in connection with the annexation of the Property.
- 22 9. **NO COST BENEFIT ANALYSIS.** The Town agrees that Entrada shall not have to
23 complete a cost benefit analysis as part of its application for annexation to the Town.
- 24 10. **WATER CHARGES.** The Town waives all water tap fees (called water “Plant
25 Investment Fees” under the Town ordinances) for the Commercial Tract and Mini-
26 storage Tract. As required by Section 12-4-9(A) of the Breckenridge Town Code the
27 Town finds that Owner’s development of the Property (including the conveyance of the
28 Town Tract to the Town) will provide a substantial public benefit justifying the waiver of
29 the Plant Investment Fees. Owner, its successors and assigns, will pay for water service
30 delivered by the Town to the Commercial Tract and the Mini-Storage Tracts as the then-
31 current in-Town water rates. Water users on the Commercial Tract and Mini-Storage
32 Tract are subject to all rules, regulations and ordinances pertaining to the Town's water
33 utility system, including all future amendments.

1 11. **VESTED PROPERTY RIGHTS.** Upon Final Approval, Owner waives all vested
2 property rights existing on the Property prior to its annexation to the Town. Further,
3 nothing contained in this Agreement constitutes a vested property right for the Property.
4 Owner will be entitled to vested property rights as provided in Section 9-1-17-11 of the
5 Breckenridge Town Code, or such other vested rights as may be provided by law.

6 12. **REPRESENTATIONS AND WARRANTIES.**

7 12.1 **Representations and Warranties by the Town.** The Town represents and
8 warrants to Owner as follows:

- 9 (a) The Town is a Colorado home-rule municipality and has the power to
10 enter into, and has taken all actions to date required to authorize, this
11 Agreement and to carry out its obligations under this Agreement;
- 12 (b) The Town knows of no litigation, proceeding, initiative, referendum,
13 investigation or threat of any of the same contesting the powers of the
14 Town or its officials with respect to this Agreement that has not been
15 disclosed in writing to the Owner;
- 16 (c) The execution and delivery of this Agreement and the documents
17 required hereunder and the consummation of the transactions
18 contemplated by this Agreement will not conflict with or contravene
19 any law, order, rule or regulation applicable to the Town or to the
20 Applicable Town Ordinances or any other Town ordinances;
- 21 (d) This Agreement constitutes a valid and binding obligation of the Town,
22 enforceable according to its terms. In accordance with Section 13, the
23 Town will defend the validity of this Agreement in the event of any
24 litigation arising under this Agreement naming the Town as a party or
25 challenging the authority of the Town to enter into or perform its
26 obligations under this Agreement. Should the foregoing representation and
27 warranty of the Town prove to be inaccurate, in whole or in part, such
28 inaccuracy will constitute a material default or breach by the Town
29 under this Agreement. The Town recognizes that the Owner intends to
30 commence construction and expend substantial monies in reliance
31 upon the accuracy of the representation and warranty of the Town as set
32 forth in this Subsection 12.1(d), but Owner acknowledges that it proceeds
33 at its own risk until such time as the Annexation Ordinance is approved.

34 12.2 **Representations and Warranties by the Owner.** The Owner represents and
35 warrants to the Town as follows:

- 36 (a) The Owner is duly organized, validly existing corporation and in good
37 standing under the laws of the State of Colorado; is qualified to do

1 business in the State of Colorado; and has the legal capacity and the
2 authority to enter into and perform its obligations under this Agreement;

3 (b) The Owner knows of no litigation, proceeding or investigation, or threat of
4 any of the same, contesting the powers of the Town, the Owner or any of
5 its principals or officials with respect to this Agreement that has not been
6 disclosed in writing to the Town; and

7 (c) This Agreement constitutes a valid and binding obligation of the
8 Owner, enforceable according to its terms, except to the extent
9 limited by bankruptcy, insolvency and other laws of general
10 application affecting creditors' rights.

11 **13. COOPERATION IN DEFENDING LEGAL CHALLENGES.**

12 13.1 If any legal or equitable action or other proceeding is commenced by a third party
13 challenging the validity of the annexation of the Property, the initial zoning of
14 the Property, the Master Plan, the Initial Subdivision of the Property, or the
15 initial site specific development plans for the Commercial and Mini-Storage
16 Tracts, all as described in Section 4, the Owner and the Town will cooperate in
17 defending such action or proceeding. The Town will take the lead role in
18 defending any such action, including, but not limited to, preparing all pleadings
19 and other required documents, accomplishing any necessary service of
20 process, generating necessary correspondence among the parties and paying one
21 hundred percent (100%) of both court filing fees and the costs of any expert
22 witnesses, depositions, interrogatories, transcripts or other similar costs. Each
23 party will pay its own attorney fees.

24 13.2 Although it is the intent of this Section that the Town will cooperate with the
25 Owner in defending any legal proceeding so long as the Owner determines to
26 continue such defense, if there is a controlling decision of the Supreme Court of
27 the United States, Tenth Circuit Court of Appeals, Supreme Court of the State of
28 Colorado, or Colorado Court of Appeals governing one or more of the issues
29 raised in the legal proceeding which is adverse to the Town's position, the
30 Town will not be obligated to contest or continue the defense of such issue.

31 **14. REMEDIES.**

32 14.1 **Breach by Owner.** If the Town gives notice to the Owner that Owner is in
33 default under this Agreement and Owner does not cure that default within 30 days
34 following written notice from the Town, the Town has the following remedies
35 which will be cumulative:

36 (a) injunctive relief;

37 (b) specific performance; and

1 (c) any other remedy available at law or in equity, except damages.

2 The Town will extend the cure period if the nature of the default is such that it
3 cannot reasonably be remedied within 30 days, provided Owner commences the
4 corrective action within 30 days and diligently pursues such correction thereafter.
5 The Town may, in addition to other remedies, withhold approval of any or all
6 building or other permits applied for by the Owner on the Commercial Tract or
7 Mini-Storage Tract, or withhold issuance of certificates of occupancy, until the
8 default or defaults has or have been cured.

9 14.2 **Breach by Town.** If Owner alleges the Town is in default under this Agreement
10 and the Town does not cure this default within 30 days following written notice
11 from Owner, Owner has the following remedies which will be cumulative:

12 (a) injunctive relief;

13 (b) specific performance; and

14 (c) any other remedy available at law or in equity, except damages.

15 Any remedy available to Owner is limited by the Act. Owner will extend the cure
16 period if the nature of the default is such that it cannot reasonably be remedied
17 within 30 days, provided the Town commences corrective action within 30 days
18 and diligently pursues such correction thereafter.

19 14.3 **No Remedy For Delay.** The Town is not responsible for and the Owner has no
20 remedy against the Town if development of the Commercial Tract and the Mini-
21 Storage Tract is prevented or delayed for reasons beyond the control of the Town.

22 14.4 **Mediation.** If a dispute between the Town and the Owner related to the
23 interpretation or enforcement of this Agreement occurs, the parties will endeavor
24 to settle the dispute by mediation with a neutral third party before commencing
25 litigation; provided, however, that either party may seek a preliminary injunction
26 or other provisional judicial relief if, in its judgment, such action is necessary to
27 avoid irreparable damage or to preserve the status quo. Despite such action, the
28 parties will continue to participate in good faith in mediation. If the parties
29 encounter difficulty in agreeing on a neutral third party, they may each appoint a
30 neutral third party, such third parties to appoint a neutral third party to mediate.
31 Each party will pay its own attorneys' fees incurred in connection with a
32 mediation.

33 15. **DISCONNECTION:**

34 15.1 **Disconnection Governed By Statute.** Following the Effective Date Owner's
35 right to seek disconnection of the Commercial Tract and the Mini-Storage Tract
36 is limited to those circumstances described in Section 31-12-119, C.R.S.

- 1 15.2 **Dedications and Conveyances Made Before Disconnection.** In the event of
2 disconnection of the Property from the Town for any reason, the Town's
3 infrastructure and service obligations required by this Agreement will be void
4 and of no further force and effect, but all dedications and conveyances made
5 under this Agreement will continue in full force and effect unless vacated in the
6 manner provided by law.
- 7 16. **GOVERNMENTAL IMMUNITY.** In entering into this Agreement the Town is relying
8 on, and does not waive or intend to waive by any provision of this Agreement, the
9 monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any
10 other rights, immunities, and protections provided by the Act, or any other limitation,
11 right, immunity, defense or protection otherwise available to Town, its officers, or its
12 employees.
- 13 17. **ANNUAL APPROPRIATION.** Financial obligations of the Town under this Agreement
14 payable after the current fiscal year are contingent upon funds for that purpose being
15 appropriated, budgeted and otherwise made available by the Town Council of the Town
16 of Breckenridge, Colorado. The Town's obligations under this Agreement do not
17 constitute a general obligation indebtedness or multiple year direct or indirect debt or
18 other financial obligation whatsoever within the meaning of the Constitution or laws of
19 the State of Colorado.
- 20 18. **MISCELLANEOUS.**
- 21 18.1 **Recording.** This Agreement will be recorded in the Summit County Clerk and
22 Recorder's Office in order to put prospective purchasers of the Property or other
23 interested parties on notice as to the terms and conditions contained herein.
- 24 18.2 **Entire Agreement.** This Agreement sets forth the entire understanding between
25 the parties concerning the annexation of the Property to the Town, and no other
26 agreement, oral or written, made prior to the date of this Agreement which
27 conflicts with the terms of this Agreement is valid as between the parties.
- 28 18.3 **Modification.** This Agreement may not be modified except in writing executed
29 by all parties hereto. Oral amendments to this Agreement are not permitted.
- 30 18.4 **Agreement Runs With The Land.** This Agreement runs with the land and is
31 binding upon the Town and the Owner, its successors and assigns, and all persons
32 who may hereafter acquire any interest in the Property, or any part thereof.
- 33 18.5 **Assignment.** The Owner will have the right, without the consent of the Town, to
34 assign or transfer all or any portion of its interests, rights or obligations under
35 this Agreement to any affiliate of the Owner or to any third party acquiring an
36 interest or estate in the Property, including, but not limited to, purchasers or long-
37 term ground lessees of individual lots, parcels or of any improvements now or
38 hereafter located within the Property. The express assumption of any of the

1 Owner's obligations under this Agreement by its assignee or transferee will
2 relieve the Owner of any further obligations under this Agreement with
3 respect to the matter so assumed if such release is approved in writing by the
4 Town, which approval will not be unreasonably withheld or delayed. The
5 Owner will give the Town written notice of any such assignment or
6 assumption.

7 18.6 **Severability.** If any provision of this Agreement is found to be invalid, illegal, or
8 unenforceable in any respect in a final, non-appealable decision of a court of
9 competent jurisdiction, the validity, legality and enforceability of the remaining
10 provisions of this Agreement will not in any way be affected or impaired by such
11 determination.

12 18.7 **Attorney's Fees.** If any action is brought in a court of law by either party to this
13 Agreement concerning the enforcement, interpretation or construction of this
14 Agreement, the prevailing party, either at trial or upon appeal, is entitled to
15 reasonable attorney's fees, as well as costs, including expert witness' fees,
16 incurred in the prosecution or defense of such action.

17 18.8 **Notices.** All notices required or permitted under this Agreement must be given
18 by registered or certified mail, return receipt requested, postage prepaid, or by
19 hand or commercial carrier delivery, or by telecopies, directed as follows:

20 If intended for Town to:

21 Town of Breckenridge
22 P.O. Box 168
23 150 Ski Hill Road
24 Breckenridge, Colorado 80424
25 Attn: Town Manager
26 Telecopier number: (970) 547-3104
27 Telephone number: (970) 453-2251
28

29 with a copy in each case (which will not constitute notice) to:

30
31 Timothy H. Berry, Esq.
32 Timothy H. Berry, P.C.
33 131 West 5th Street
34 P. O. Box 2
35 Leadville, Colorado 80461
36 Telecopier number: (719) 486-3039
37 Telephone number: (719) 486-1889
38

39 If intended for Owner to:

40
41 Kurt Ave / Kirk Mickelsen

1 PO Box 7399, PMB 193
2 Breckenridge, CO 80424
3 Telecopier number: (970) 262-7580
4 Telephone number: (970) 453-6700
5

6 with a copy in each case (which will not constitute notice) to:
7

8 David P. Michel, Esq.
9 Michel & McQuain, LLC
10 P. O. Box 409
11 Winter Park, CO 80482
12 Telecopier number: (970) 726-8333
13 Telephone number: (970) 726-3023
14

15 Any notice delivered by mail in accordance with this Section will be deemed to
16 have been duly given and received on the third business day after the same is
17 deposited in any post office or postal box regularly maintained by the United
18 States postal service. Any notice delivered by telecopier in accordance with this
19 Section will be deemed to have been duly given and received upon receipt if
20 concurrently with sending by telecopier receipt is confirmed orally by telephone
21 and a copy of said notice is sent by certified mail, return receipt requested, on the
22 same day to the intended recipient. Any notice delivered by hand or commercial
23 carrier will be deemed to have been duly given and received upon actual receipt.
24 Either party, by notice given as provided above, may change the address to which
25 future notices may be sent. E-mail is not a valid method for giving notice under
26 this Agreement.
27

28 18.9 **Waiver.** The failure of either party to exercise any of its rights under this
29 Agreement is not a waiver of those rights. A party waives only those rights
30 specified in writing and signed by either party waiving such rights.

31 18.10 **Applicable Law.** This Agreement is to be interpreted in accordance with the
32 laws of the State of Colorado.

33 18.11 **Section Headings.** Section headings are inserted for convenience only and in no
34 way limit or define the interpretation to be placed upon this Agreement.

35 18.12 **Terminology.** Wherever applicable, the pronouns in this Agreement designating
36 the masculine or neuter applies equally to the feminine, neuter and masculine
37 genders. Furthermore, wherever applicable within this Agreement, the singular
38 includes the plural, and the plural includes the singular. The term “will” indicate a
39 mandatory obligation to be done or performed.

40 18.13 **Incorporation of Exhibits.** All exhibits referred to in this Agreement are
41 incorporated into and made a part of this Agreement.

1 18.14 **No Adverse Construction.** Both parties acknowledge having had the
2 opportunity to participate in the drafting of this Agreement. This Agreement is
3 not to be construed against either party based upon authorship.

4 18.15 **Town Authority.** This Agreement was approved by Resolution No. _____, Series
5 2009, adopted by the Town Council of the Town of Breckenridge, Colorado on
6 _____, 2009.

7 TOWN OF BRECKENRIDGE, a Colorado
8 Town corporation

9
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11
12 By: _____
13 Timothy J. Gagen, Town Manager

14
15 ATTEST:

16
17 _____
18 Mary Jean Loufek CMC,
19 Town Clerk

20
21
22 ENTRADA AT BRECKENRIDGE, INC.,
23 a Colorado Corporation

24
25
26
27 By: _____
28 Kirk Mickelsen, Vice President

29
30 STATE OF COLORADO)
31) ss.
32 COUNTY OF SUMMIT)

33
34 The foregoing instrument was acknowledged before me this _____ day of
35 _____, 2009, by Timothy J. Gagen, Town Manager, and Mary Jean
36 Loufek CMC, Town Clerk, of the Town of Breckenridge, a Colorado Town corporation.

37
38 WITNESS my hand and official seal.

39
40 My commission expires: _____.

41
42
43 _____

ENTRADA ANNEXATION AND DEVELOPMENT AGREEMENT

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Kirk Mickelsen, as Vice President of Entrada at Breckenridge, Inc., a Colorado Corporation.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

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EXHIBIT "A"

General Plan of Development

1 **FOR WORKSESSION/FIRST READING – JULY 28**

2
3 COUNCIL BILL NO. ____

4
5 Series 2009

6
7 AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE
8 DISTRICT 5
9 (Entrada— 3.98 acres, more or less)

10
11 WHEREAS, the Town has heretofore annexed to the Town the hereafter described parcel
12 of land owned by Entrada at Breckenridge, Inc., a Colorado corporation; and

13
14 WHEREAS, the Town is required by Section 31-12-115(2), C.R.S., to zone all newly
15 annexed areas within ninety (90) days of annexation; and

16
17 WHEREAS, the Town's Planning Commission has recommended that the recently
18 annexed parcel be placed within Land Use District 5; and

19
20 WHEREAS, the Town's Annexation Plan adopted pursuant to Section 31-12-105(1)(e),
21 C.R.S., indicates that the property should be placed in Land Use District 5; and

22
23 WHEREAS, the Town Council finds and determines that the property should properly be
24 placed in Land Use District 5.

25
26 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
27 BRECKENRIDGE, COLORADO:

28
29 Section 1. The following described real property, to wit:

30
31 Tracts A & B, A Subdivision Exemption Plat of Entrada at Breckenridge, as
32 recorded May 29, 2007 under Reception No. 856500 of the records of the Clerk
33 and Recorder of Summit County, Colorado, such two tracts consisting of 3.98
34 acres

35
36 is hereby placed in Breckenridge Land Use District 5.

37
38 Section 2. The Town staff is hereby directed to change the Town's Land Use District
39 Map to indicate that the abovedescribed property has been annexed and placed within Land Use
40 District 5.

41
42 Section 3. This ordinance shall be published and become effective as provided by
43 Section 5.9 of the Breckenridge Town Charter.

44
45 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
46 PUBLISHED IN FULL this _____ day of _____, 2009. A Public

1 Hearing on the Ordinance shall be held at the regular meeting of the Town Council of the Town
2 of Breckenridge, Colorado, on the _____ day of _____, 2009, at 7:30 p.m.
3 or as soon thereafter as possible in the Municipal Building of the Town.
4

5 TOWN OF BRECKENRIDGE, a Colorado
6 municipal corporation
7

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10 By: _____
11 John G. Warner, Mayor
12

13 ATTEST:
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17 _____
18 Mary Jean Loufek, CMC,
19 Town Clerk
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MEMO

TO: Town Council

FROM: Town Attorney

RE: Amendment to Land Use District 5 Guidelines

DATE: July 21, 2009 (for July 28th meeting)

Here is an ordinance to amend the Land Use District 5 Guidelines. The amendments are necessary to accommodate the Entrada development in Distrit 5.

Because of the special notice requirement that is required in connection with this kind of amedment to the Land Use District Guidelines, second reading of this ordinance cannot occur until the Augsut 25th meeting. A motion to adopt this ordinance on first reading should state that second reading of the ordinance will occur on August 25.

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

1
2 ***FOR WORKSESSION/FIRST READING – JULY 28***
3

4 Additions To The Current Land Use District 5 Guidelines Are
5 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~
6

7 COUNCIL BILL NO. ____
8

9 Series 2009
10

11 AN ORDINANCE AMENDING THE TOWN OF BRECKENRIDGE LAND USE
12 GUIDELINES CONCERNING ACCEPTABLE LAND USES AND INTENSITIES IN LAND
13 USE DISTRICT 5
14

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

18 Section 1. Findings. The Town Council has heard and considered the evidence presented
19 in support of and in opposition to the adoption of this ordinance. Based upon the evidence
20 presented to the Town Council in connection with its consideration of this ordinance, as more
21 fully set forth in the record of the proceedings in this matter, the Town Council of the Town of
22 Breckenridge, Colorado hereby finds and determines as follows:
23

24 1. By Ordinance No. 3, Series 1987, the Town adopted the Breckenridge Land Use
25 Guidelines ("Land Use Guidelines").
26

27 2. The Land Use Guidelines contain provisions governing the development of real
28 property located within the various Land Use Districts of the Town, including, but not limited to,
29 Land Use District 5, and represent the Town's general zoning restrictions with respect to real
30 property located within the Town.
31

32 3. By Ordinance No. 18, Series 1997, the Town Council adopted certain procedures to
33 be followed to amend the Land Use Guidelines.
34

35 4. The amendment to the Land Use Guidelines made by this ordinance is quasi-judicial
36 in nature.
37

38 5. The procedural requirements of Ordinance No. 18, Series 1997, with respect to a
39 proposed quasi-judicial amendment to the Land Use Guidelines have been fully satisfied.
40 Without limiting the generality of the foregoing, the Town Council finds that a public hearing
41 was held by the Town Council of the Town of Breckenridge on August ____, 2009 to consider the
42 adoption of this ordinance. Notice of such hearing was published twice in The Summit County
43 Journal, a newspaper of general circulation in the Town, the first publication occurring at least
44 twelve (12) days prior to the hearing and the second occurring at least four (4) days prior to the
45 hearing, all as required by Ordinance No. 18, Series 1997. The Proof of Publication of such
46 notice was admitted into evidence and made a part of the record in connection with the adoption

1 of this ordinance. In addition to the newspaper notice, not less than twelve days prior to the date
2 of the public hearing the Director of the Department of Community Development mailed a copy
3 of the text of the newspaper notice by first class mail to all owners of real property located within
4 Land Use District 5 which would be affected by the proposed Land Use Guidelines amendment
5 as shown by the records of the Summit County Clerk and Recorder. The Director's Certificate of
6 Mailing was admitted into evidence and made a part of the record in connection with the
7 adoption of this ordinance.
8

9 Section 2. Amendment To District 5 Guidelines. The paragraph entitled "Acceptable
10 Land Uses and Intensities" of that portion of the Town of Breckenridge Land Use Guidelines
11 applicable to Land Use District 5 is hereby amended so as to read in its entirety as follows:
12

13 ACCEPTABLE LAND USES AND INTENSITIES

14
15 Land Use Type: Service Commercial, Mini-storage, offices, employee
16 housing
17 Intensity of Use: Floor Area Ratio of 1:5
18 Structural Type: Special Review
19

20 Service commercial activities, similar to those currently found within the district,
21 are acceptable. Mini-storage, office and employee housing are also acceptable
22 uses. They Acceptable uses are generally identifiable by their need for relatively
23 large storage or parking areas, direct vehicular access, and minimal pedestrian
24 activity. ~~Service commercial~~ Acceptable uses shall be restricted to very low noise
25 and low air polluting activities. Proposed development should not produce any
26 major short- or long-term adverse effects to the immediate environment or the
27 existing users. Positive visual impacts shall be obtained through proper screening
28 and natural buffering. The proposed intensity level in this district for service
29 commercial, mini-storage, and office development is one square foot of
30 structural floor area to every five square feet of lot area. The amount of density
31 to be allowed for an employee housing development in Land Use District 5
32 shall be determined by the Town Council on a site specific basis based upon
33 the criteria set forth in the Town's Housing Policy, as amended from time to
34 time.
35

36 No additional water PIFs or parking shall be required for mini-storage
37 development within this district.
38

39 Land Use Type: Lodging
40 Intensity of Use: 10 Units per Acre
41 Structural Type: Special Review
42

43 Hotel and Motel Lodging is also an appropriate use for the area. All lodging
44 proposals will be reviewed for their compatibility and appropriateness to the
45 existing activities in the district. Negative impacts from surrounding service
46 commercial, mini-storage, office and employee housing developments affecting

1 the proper function of any proposed lodging activities should be mitigated. Proper
2 buffering between incompatible uses is necessary. Although lodging and
3 employee housing in this district are acceptable, other types of residential
4 development in this district are strongly discouraged. ~~One possible exception is~~
5 ~~the construction of employee housing within individual developments.~~ The
6 proposed intensity level for lodging in this district is ten dwelling units per acre of
7 land. The highway frontage portions of the district may be best suited for both
8 lodging and highway-oriented commercial uses; non-highway-oriented activities
9 are encouraged to develop internally to the district. The determination of
10 structural types will be subject to special review by staff and Planning
11 Commission. However, this district does constitute a part of the northern entrance
12 to the community, therefore, all development proposals should reflect this
13 function by being compatible with the surrounding environment while providing
14 an appropriate statement for the entrance to the historic downtown area of
15 Breckenridge.

16
17 Section 3. Continued Effect of Land Use Guidelines. Except as specifically amended
18 hereby, the Breckenridge Land Use Guidelines, as adopted by Ordinance No. 3, Series 1987,
19 shall continue in full force and effect.
20

21 Section 4. Police Power Finding. The Town Council hereby finds, determines and
22 declares that this ordinance is necessary and proper to provide for the safety, preserve the health,
23 promote the prosperity, and improve the order, comfort and convenience of the Town of
24 Breckenridge and the inhabitants thereof.
25

26 Section 5. Authority. The Town Council hereby finds, determines and declares that it
27 has the power to adopt this ordinance pursuant to the authority granted to home rule
28 municipalities by Article XX of the Colorado Constitution and the powers contained in the
29 Breckenridge Town Charter.
30

31 Section 6. Effective Date. This ordinance shall be published and become effective as
32 provided by Section 5.9 of the Breckenridge Town Charter.
33

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

40 TOWN OF BRECKENRIDGE, a Colorado
41 municipal corporation
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45 By _____
46 John G. Warner, Mayor
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1 ATTEST:

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Mary Jean Loufek, CMC,
Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Voluntary Defensible Space Ordinance

DATE: July 21, 2009 (for July 28th meeting)

At the last meeting I was directed to prepare an ordinance to allow a property owner to voluntarily create defensible space around his or her property. Such an ordinance could be enacted while the Council decides how to deal with the referendum petition that has been filed concerning the original Defensible Space Ordinance. If the Defensible Space Ordinance is ultimately repealed, the voluntary defensible space program could permanently replace it. If the Council decides to put the Defensible Space program to a vote, the voluntary defensible space program could fill the gap between now and the election. If an election is held and the Defensible Space Ordinance is rejected by the electors, the voluntary defensible space program could remain in effect on a permanent basis. If an election is held and the Defensible Space Ordinance is approved the electors, the voluntary defensible space ordinance would have to be repealed so as not to conflict with the original ordinance.

The proposed ordinance to allow for the voluntary creation of defensible space is enclosed. A lot of the substantive portion of the ordinance is based on language contained in the original Defensible Space Ordinance, but there is nothing in the proposed ordinance requiring a landowner to create defensible space; it simply creates a process for the Town to issue a Class D development permit to allow a landowner to voluntarily create defensible space under certain conditions. No one will be required to create defensible space if this ordinance is adopted.

Please note this ordinance is drafted as an emergency ordinance. This was done because it was my understanding that the Council wanted to have the opportunity of putting a voluntary defensible space program in effect right away. As an emergency ordinance, it will require five affirmative votes for the ordinance to be enacted. If adopted on an emergency basis, the ordinance will become effectively immediately upon adoption.

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

1 ***FOR WORKSESSION/ADOPTION AS***
2 ***EMERGENCY ORDINANCE – JULY 28***

3
4 Additions To The Current Breckenridge Town Code Are
5 Indicated By **Bold + Dbf Underline**; Deletions By ~~Strikeout~~
6

7 COUNCIL BILL NO. ____

8
9 Series 2009

10
11 AN EMERGENCY ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF
12 THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE
13 DEVELOPMENT CODE”, BY ADOPTING PROVISIONS ALLOWING FOR
14 THE VOLUNTARY CREATION OF DEFENSIBLE SPACE AROUND
15 BUILDINGS AND STRUCTURES WITHIN THE TOWN OF
16 BRECKENRIDGE

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

20
21 Section 1. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of
22 the following definitions:
23

“Aerial Fuel” means a potential fire fuel that is located above
the ground in a tree.

“Defensible Space” means the area where basic wildfire protection
practices described in Policy 48 (Absolute)
(Voluntary Defensible Space) of this Code are
implemented, and which provides the key point
of defense from an approaching wildfire or fire
escaping a structure fire. The area is
characterized by the establishment and
maintenance of a firebreak within 30 feet around
a building or structure and a reduced fuel zone
extending up to 75 feet or greater, depending on
slope away from the building or structure.

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

“Fire-wise Landscaping” means trees, shrubs, and other landscaping that:
(i) meet the criteria for fire-resistant landscaping

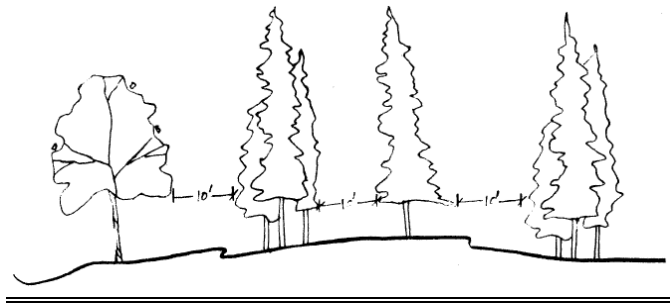
as established from time to time by the Colorado State University Cooperative Extension Service; (ii) are suited to the Town’s sub-alpine environment in accordance with the Development Code; and (iii) are located in conformance with requirements of Policy 48(Absolute)(Voluntary Defensible Space) of this Code.

“Snag”

means a dead tree determined by the Director to be suitable for a bird habitat.

“Well Spaced”

means that the space between the crowns of trees, or between the crowns of trees and the center point of other landscaping, is adequate to reduce the risk of a fire spreading to other vegetation or structures. The adequacy of spacing depends upon slopes, vegetation size, vegetation types (trees, shrubs, grass), and other fuel characteristics (including, but not limited to, fuel compaction and chemical content). In general, a minimum of ten-feet between the widest portion of the crowns of individual trees or groups of trees is adequate. Additional spacing may be required on steeper slopes. The following are examples of trees that are presumptively well spaced:



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Section 2. The definition of “Class D Development” in Section 9-1-5 of the Breckenridge Town Code is hereby amended by the addition of a new item Z, which shall read in its entirety as follows:

Z. Creation of voluntary defensible space around a building or structure, or on a parcel of land.

1 Section 3. There is hereby added to the Section 9-1-19 of the Breckenridge Town Code a
2 new Policy 48 (Absolute), to be entitled “Voluntary Defensible Space”, which shall read in its
3 entirety as follows:
4

5 48. (ABSOLUTE) VOLUNTARY DEFENSIBLE SPACE: A Class D
6 development permit may be issued to authorize a landowner to voluntarily
7 create defensible space around his or her building or structure, or on the
8 landowner’s parcel of land, in accordance with the following requirements:
9

- 10 1. The intent of this policy is as follows:
- 11 a. To allow landowners to voluntarily reduce fuels that can feed a fire.
12 This will reduce the chance of a structure fire spreading to the
13 surrounding forest or other lands or structures.
 - 14 b. To allow landowners to voluntarily provide areas around their
15 structures or on their land where fire suppression personnel and
16 equipment can more effectively fight fires.
 - 17 c. To protect life and property.
 - 18 d. To encourage the development of new diverse forests.
 - 19 e. To preserve visual buffers to the greatest extent possible consistent
20 with the ability of a landowner to voluntarily achieve defensible space
21 in accordance with this policy.
 - 22 f. To protect the Town’s scenic backdrop which is vital to the economic
23 well being of the Town and its citizens.

24 This policy shall be interpreted and applied consistently with this intent.
25

- 26 2. Prior to issuing a development permit authorizing the voluntary creation of
27 defensible space the Director or the Fire District shall conduct a physical
28 inspection of each building, structure, or property that is the subject of the
29 application.

- 30 3. The following standards shall apply to an application for the voluntary
31 creation of defensible space:

- 32 a. The property shall be divided into three zones. Zone One shall be
33 measured 30 feet from the eave of building or structure including
34 attached structures or protrusions, such as a deck on the property.
35 Zone Two shall be measured 75 feet or greater from the eave of
36 building or structure including attached structures or protrusions,
37 such as a deck on the property, depending on slope from the eave of
38 the building or structure on the property, and shall exclude the

1 portion of the property located within Zone One. Zone Three shall
2 extend beyond Zone Two to the property boundary.

3 b. Except as may be required to comply with the requirements of
4 Chapter 11 of Title 5 of this code concerning mountain pine beetle
5 infested trees, substantially all of the trees on a property may not be
6 removed in order to achieve defensible space.

7 c. Except as may be required to comply with the requirements of
8 Chapter 11 of Title 5 of this code concerning mountain pine beetle
9 infested trees, no more trees shall be allowed to be removed than are
10 necessary in order for the landowner to create defensible space
11 around his or her property.

12 d. In reviewing an application for the voluntary creation of defensible
13 space the Director shall consider both the horizontal clearance
14 between aerial fuels, such as the outside edge of the tree crowns or
15 high brush, as well as the vertical clearance between lower limbs of
16 aerial fuels and the nearest surface fuels and grass/weeds.

17 e. Each property that is the subject of an application for the voluntary
18 creation of defensible space shall be reviewed individually, and the
19 location and other physical characteristics of the property shall be
20 considered. Without limiting the generality of the preceding
21 provisions, the Director shall consider the property's proximity to a
22 roadway, parking lot, and other similar areas that create fuel
23 firebreaks. Similarly, large tracts of open space and Forest Service
24 land that may require larger buffers shall be considered.

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

27 a. Healthy trees, shrubs, and other landscaping materials that provide
28 visual buffers shall be preserved if they are well spaced so as to reduce
29 the risk of a fire spreading to other vegetation or structures, but shall
30 be pruned to remove dead branches.

31 b. Healthy trees, trees shrubs, and other landscaping material required
32 by a Town-approved landscape plan shall be preserved if they are
33 well spaced so as to reduce the risk of a fire spreading to other
34 vegetation or structures, but shall be pruned to remove dead
35 branches.

36 c. Other healthy fire-wise trees, shrubs, and other landscaping material
37 shall be preserved if they are well spaced so as to reduce the risk of a
38 fire spreading to other vegetation or structures, but shall be pruned to
39 remove dead branches.

- 1 d. Irrigated trees, shrubs, and other landscaping material may be
2 preserved if they are pruned to remove dead branches and well
3 spaced to reduce the risk of a fire spreading to other vegetation or
4 structures.
- 5 e. All dead and diseased trees, shrubs, and other landscaping material
6 shall be removed.
- 7 f. All vegetation and combustible material shall be removed from under
8 all eaves and decks.
- 9 g. All leaf clutter, dead branches, and dead standing trees shall be removed from
10 the property. Dead branches on living trees shall be trimmed to a minimum
11 height of six (6) feet and a maximum height of ten (10) feet above the ground.
- 12 h. All grasses and ground cover shall be kept under 6 inches in height.

13 Exception: plantings located in an irrigated plant bed, and
14 wildflowers; however, wildflowers shall be cut back to under 6 inches
15 in height by September 1st of each year.
- 16
17 i. All leaf and needle clutter and combustible ground debris shall be
18 removed. Mulch within landscape beds that are irrigated may be
19 maintained at a maximum depth of 3 inches.
- 20 j. All firewood shall be removed unless covered by a canvas tarp, or as
21 approved by the Fire District.
- 22 k. Additional fire-wise landscaping material is encouraged and may be
23 authorized by the development permit.
- 24 5. The following specific standards apply to the creation of defensible space
25 within Zone Two:
- 26 a. Healthy trees, trees shrubs, and other landscaping material required
27 by a Town-approved landscape plan shall be preserved.
- 28 b. Healthy trees, shrubs, and other landscaping material that provide
29 visual buffers shall be preserved if they are well spaced so as to reduce
30 the risk of a fire spreading to other vegetation or structures, but shall
31 be pruned to remove dead branches.
- 32 c. Other healthy fire-wise trees, shrubs, and other landscaping material
33 shall be preserved if they are well spaced so as to reduce the risk of a
34 fire spreading to other vegetation or structures, but shall be pruned to
35 remove dead branches.

- 1 d. Irrigated trees, shrubs and other landscaping material may be
2 preserved if they are pruned to remove dead branches and are well
3 spaced to reduce the risk of a fire spreading to other vegetation or
4 structures.
- 5 e. All dead and diseased trees, shrubs, and other landscaping material
6 shall be removed. However, one snag per acre may be preserved for
7 wildlife habitat if it is well spaced to avoid the spread of fire to other
8 vegetation or structures.
- 9 f. Trees shall be thinned to open up crown spacing to a minimum of ten
10 feet between the widest portion of individual crowns of the trees.
- 11 g. Groups of trees with a minimum of ten feet between the edges of the
12 widest portions of crowns of each grouping shall be preserved to allow
13 buffers to remain and to prevent wind throw.
- 14 h. Firewood may be maintained if an adequate buffer around the
15 firewood is determined to exist by the Fire District.
- 16 i. Additional fire-wise landscaping material is encouraged and may be
17 authorized by the development permit.
- 18 6. The following specific standards apply to the creation of defensible space
19 within Zone Three:
- 20 a. All dead and diseased trees, shrubs, and other landscaping material
21 shall be removed. However, one snag per acre may be preserved for
22 wildlife habitat if it is well spaced from to avoid the spread of fire to
23 other vegetation or structures.
- 24 b. Additional fire-wise landscaping material is encouraged and may be
25 authorized by the development permit.
- 26 7. The Director has the authority from time to time to adopt, amend, alter and
27 repeal administrative rules and regulations as necessary for the proper
28 administration of this policy. Such regulations shall be adopted in
29 accordance with the procedures established by title 1, chapter 18 of this
30 Code. The Director's administrative rules may include, without limitation,
31 spacing guidelines for trees, shrubs, and other vegetation and, if adopted,
32 shall provide that the allowed distances between vegetation will depend on
33 slopes, vegetation size, vegetation type (trees, shrubs, grass), and other fuel
34 characteristics (including, but not limited to, fuel compaction and chemical
35 content).
- 36 8. For the purpose of attempting to make certain that tree removal contractors
37 working within the Town are familiar with the goals of this policy, but not to
38 regulate the means, methods, training, equipment, or business practices of

1 tree removal contractors, the Director shall maintain a list of Town-
2 approved tree removal contractors. The Town makes no guarantees or
3 representations whatsoever concerning the qualifications, experience, ability,
4 competence, or business practices of any Town-approved tree removal
5 contractor. The Town has no liability to any person with respect to the work
6 or business practices of a Town-approved tree removal contractor, and no
7 action at law or in equity shall lie against the Town as a result of a person
8 being placed on or removed from the Director's list of Town-approved tree
9 removal contractors. The Director may provide in his rules and regulations
10 for the removal of a contractor from the list of Town-approved contractors.

11 9. Trees, shrubs, and other landscaping authorized by the Director to be
12 voluntarily removed by the landowner in order to achieve the required
13 defensible space shall be clearly identified in the field and photographed or
14 located by global positioning satellite software by the Director.

15 10. The Fire District may assist the Director in administering this policy if
16 authorized by an intergovernmental agreement with the Town. The
17 intergovernmental agreement shall be consistent with the provisions of this
18 policy. All personnel involved in the enforcement of this policy, including
19 both Town staff and employees of the Fire District, shall be trained by the
20 Director to make sure that they are aware of the Town's goals of preserving
21 buffers and required landscape materials while creating defensible space.

22 Section 4. Except as specifically amended hereby, the Breckenridge Town Code, and
23 the various secondary codes adopted by reference therein, shall continue in full force and effect.
24

25 Section 5. The Town Council hereby finds, determines and declares that this ordinance is
26 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
27 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
28 thereof.
29

30 Section 6. All development permits authorizing the creation of defensible space
31 previously issued by the Director prior to the adoption of this ordinance are hereby ratified,
32 confirmed and approved.
33

34 Section 7. The Town Council of the Town of Breckenridge hereby finds, determines, and
35 declares that an emergency exists and that this ordinance is necessary for the immediate
36 preservation of public property, health, welfare, peace or safety. The Town Council recently
37 adopted Ordinance No. 15, Series 2009, which created a mandatory defensible space program for
38 the Town. Ordinance 15, Series 2009, is the subject of a valid referendum petition submitted by
39 the electors of the Town. **[The Town Council has determined to repeal Council Bill No. 15,**
40 **Series 2009, and] [The Town Council has determined to call a special election to allow the**
41 **electors to decide whether to approve or reject Council Bill No. 15, Series 2009. Pending**
42 **the elector's decision with respect to Council Bill No. 15, Series 2009 the Town Council**
43 **wants to immediately establish a procedure for the Town to issue development permits**
44 **allowing landowners to voluntarily create defensible space around their property. If**

1 **Council Bill No. 15, Series 2009 is approved, the Town Council intends to repeal this**
2 **ordinance so that it does not conflict with Council Bill No. 15, Series 2009. If Council Bill**
3 **No. 15, Series 2009 is rejected, the Town Council intends for this ordinance to remain in**
4 **effect so as to continue to authorize the Town to issue development permits allowing**
5 **landowners to voluntarily create defensible space around their property. [Irrespective of**
6 **the outcome of the referendum on Council Bill No. 15, Series 2009,]** the Town Council
7 believes that it is necessary and appropriate to immediately establish a procedure for the Town to
8 issue development permits authorizing landowners to voluntarily create defensible space around
9 their property and, because, such action will be voluntary on the part of the landowner, there is
10 no just reason to delay the adoption and effective date of this ordinance as would occur if this
11 ordinance was adopted as a non-emergency ordinance. Therefore, the Town Council finds,
12 determines, and declares that the adoption of this ordinance on an emergency basis is necessary.
13 Town Council further determines that the adoption of this ordinance as an emergency ordinance
14 is in the best interest of the citizens of the Town of Breckenridge.

15
16 Section 8. Pursuant to Section 5.11 of the Breckenridge Town Charter this ordinance
17 shall take effect and be in full force upon adoption of this ordinance by the affirmative votes of at
18 least five (5) members of the Town Council.

19
20 Section 9. This ordinance shall be published in full within ten (10) days after adoption,
21 or as soon thereafter as possible, as required by Section 5.11 of the Breckenridge Town Charter.

22
23 ADOPTED AND APPROVED as an Emergency Ordinance this ___ day of _____,
24 2009.

25
26 TOWN OF BRECKENRIDGE, a Colorado
27 municipal corporation

28
29
30
31 By: _____
32 John G. Warner, Mayor

33
34 ATTEST:

35
36
37
38 _____
39 Mary Jean Loufek, CMC,
40 Town Clerk

1 APPROVED IN FORM

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Town Attorney

MEMO

TO: Town Council

FROM: Town Attorney

RE: Options Concerning Defensible Space Ordinance

DATE: July 21, 2009 (for July 28th meeting)

Now that the referendum petition on the Defensible Space Ordinance has been certified by the Town Clerk as being sufficient, the Town Charter requires the Council to promptly reconsider the Defensible Space Ordinance, and to either repeal the ordinance or call a special election to allow the voters to approve or reject the ordinance.

Not knowing what action the Council will take on the Defensible Space Ordinance I have drafted two alternative ordinances for your consideration next Tuesday night—one ordinance to repeal the Defensible Space Ordinance and a second to call a special election. The two ordinances are enclosed with this memo.

The ordinance repealing the Defensible Space Ordinance is simple and self-explanatory. However, you need to be aware that Section 6.6(a) of the Charter requires that this ordinance receive five affirmative votes in order to be adopted.

The ordinance calling a special election is a bit more complicated. If the Council elects to adopt this ordinance, you will need to decide the following:

1. The date of the special election. This date will need to be inserted into the title, Section I(H) and Section 2 of the ordinance. Recall that the Town Charter requires that the election be held not less than 30 nor more than 90 days from the date of the Council's final vote on the ordinance calling the special election. Assuming final Council approval of the special election ordinance is given at the Council's next regular meeting on August 11th, the election window would be from September 10–November 9. In order to avoid the statutory “blackout” period, the preferred election dates would be either September 15, September 22, September 29, or November 3.
2. Is the Council comfortable with the way I have drafted the ballot question (in Section 2 of the ordinance)? I originally drafted the question as follows: “Shall the Defensible Space Ordinance be approved?” or “Shall the Defensible Space Ordinance be rejected?” I thought that perhaps this was the clearest way to ask the voters what they want to do. However, the state statute, as well as common practice, suggests that the ballot question should be capable of being answered with a simple “yes” or “no”. As a result, I've phrased the question to ask whether the Defensible Space Ordinance should be rejected. That question can then be answered with a “yes” or “no”.

3. If the election is to be held on November 3rd, should it be conducted as a coordinated election with Summit County? If so, then the optional language in Section 4 of the ordinance needs to be included in the final version of the ordinance. If not, then Section 4 of the ordinance should be stricken and the subsequent sections of the ordinance renumbered.

Please note that pursuant to Section 6.1(b) of the Town Charter, an ordinance calling a special election on a referred ordinance is itself not subject to a referendum.

Once you have the opportunity to discuss this matter as the worksession I will make whatever revisions are required to the appropriate ordinance. Neither the ordinance repealing the Defensible Space Ordinance nor the ordinance calling a special election are drafted as emergency ordinances, so whichever is selected will require the normal two-reading process outlined in the Town Charter.

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

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Section 2. Repeal. Ordinance No. 15, Series 2009, known as the “Town of Breckenridge Defensible Space Ordinance”, is repealed.

Section 3. 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 _____, 2009. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

1 ***ORDINANCE CALLING SPECIAL ELECTION ON***
2 ***DEFENSIBLE SPACE ORDINANCE***

3
4 COUNCIL BILL NO. ____

5
6 Series 2009

7
8
9 AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF
10 BRECKENRIDGE AT A SPECIAL TOWN ELECTION TO BE HELD ON _____,
11 2009 THE QUESTION OF WHETHER ORDINANCE NO. 15, SERIES 2009, KNOWN AS
12 THE “TOWN OF BRECKENRIDGE DEFENSIBLE SPACE ORDINANCE”, SHOULD BE
13 APPROVED OR REJECTED; SETTING FORTH THE BALLOT TITLE; AND PROVIDING
14 FOR THE CONDUCT OF THE ELECTION

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

18
19 Section 1. Findings. The Town Council of the Town of Breckenridge finds as follows:

20
21 A. Ordinance No.15, Series 2009, known as the “Town of Breckenridge Defensible
22 Space Ordinance”, was adopted by the Town Council on June 9, 2009.

23
24 B. Article VI of the Breckenridge Town Charter provides a procedure for the electors of
25 the Town to petition for a referendum on certain Town ordinances.

26
27 C. Ordinance No. 15, Series 2009, is an ordinance that is subject to the referendum
28 procedures of Article VI of the Breckenridge Town Charter.

29
30 D. A petition seeking a referendum on Ordinance No. 15, Series 2009, has been timely
31 filed with the Town Clerk in accordance with the requirements of the Breckenridge Town
32 Charter.

33
34 E. The referendum petition has been certified by the Town Clerk as containing the
35 required number of signatures of registered electors of the Town.

36
37 F. When a referendum petition has been certified by the Town Clerk as containing the
38 required number of signatures of registered electors the Breckenridge Town Charter requires the
39 Town Council to promptly reconsider the referred ordinance and to either repeal the referred
40 ordinance, or to submit the question of the approval or rejection of the referred ordinance to the
41 electors of the Town.

42
43 G. The Town Council has reconsidered Ordinance No. 15, Series 2009, as required by
44 the Breckenridge Town Charter.

1 H. The Town Council has determined that Ordinance No. 15, Series 2009, should not be
2 repealed by the Town Council, but instead the question of the approval or rejection of Ordinance
3 No. 15, Series 2009, should be submitted to the considered judgment of the registered electors of
4 the Town at a special election to be held on _____, 2009 as provided in this
5 ordinance.
6

7 I. Section 31-11-111(1), C.R.S., provides that after an election has been called on
8 referendum the Town Council or its designee shall fix a ballot title.
9

10 J. The Town Council has determined that it (and not its designee) should fix the ballot
11 title for the referendum to be held on Ordinance No. 15, Series 2009.
12

13 K. In connection with the fixing of the ballot title for the referendum to be held on
14 Ordinance No. 15, Series 2009 the Town Council of the Town of Breckenridge finds and
15 determines as follows:
16

17 1. The Town Council has considered the public confusion that might be caused by
18 misleading ballot titles.
19

20 2. The general understanding of the effect of a “yes” or “no” vote on the referendum to
21 be held on Ordinance No. 15, Series 2009 will be clear to the electors.
22

23 3. The ballot title for the referendum to be held on Ordinance No. 15, Series 2009 will
24 not conflict with those titles selected for any other measure that will appear on the municipal
25 ballot at the special election called by this ordinance; and
26

27 4. The ballot title for the referendum to be held on Ordinance No. 15, Series 2009
28 correctly and fairly expresses the true intent and meaning of the measure.
29

30 Section 2. Special Election Called; Ballot Title Fixed. A special Town election is called
31 and shall be held on _____, 2009. At the election there shall be submitted to the vote
32 of the registered electors of the Town the ballot issue hereinafter set forth. The official ballot for
33 the election, including mail-in and early ballots, shall state the substance of the ballot issue to be
34 voted upon, and as so stated shall constitute the ballot title, designation, and submission clause,
35 and each registered elector voting at the election shall indicate his or her choice on the ballot
36 issue submitted, which shall be in the following form:
37

38 QUESTION ____

39
40 SHALL ORDINANCE NO. 15, SERIES 2009, KNOWN AS “THE TOWN OF
41 BRECKENRIDGE DEFENSIBLE SPACE ORDINANCE” BE REJECTED?
42

43 YES _____

44
45 NO _____
46

1 Section 3. Effect of Vote. If a majority of all the votes cast at the election shall not be to
2 reject Ordinance No. 15, Series 2009, the ordinance shall be approved and shall become effective
3 upon the certification of the election results. If a majority of all the votes cast at the election shall
4 be to reject Ordinance No. 15, Series 2009, the ordinance shall be repealed effective upon the
5 certification of the election results.
6

7 Section 4. [Coordinated Election.] The special Town election to be held on November 3,
8 2009 to consider the referendum on Ordinance No. 15, Series 2009 shall be conducted as a
9 coordinated election with Summit County. The Summit County Clerk and Recorder shall
10 conduct the special Town election on behalf of the Town. Pursuant to Section 1-12-6 of the
11 Breckenridge Town Code, the election shall be conducted under the Uniform Election Code of
12 1992. The Town's share of the cost of the coordinated election shall be paid from the general
13 fund of the Town.]
14

15 Section 5. Officers to Take Appropriate Action. The officers of the Town are authorized
16 and directed to take all action necessary or appropriate to effectuate the provisions of this
17 ordinance.
18

19 Section 6. Notice of Election. The Town Clerk, or the coordinated election official if so
20 provided by intergovernmental agreement, shall give or cause to be given the notice of election
21 required by Section 1-5-205, C.R.S.
22

23 Section 7. Copies of Ordinance Subject to Referendum to be Made Available. Pursuant
24 to Section 6.6 (b) of the Breckenridge Town Charter, copies of Council Bill No.15, Series 2009,
25 shall be made available to the public by the Town Clerk within a reasonable time before the
26 election, and also at the polls at the time of the election.
27

28 Section 8. Designated Election Official. The Town Clerk shall serve as the designated
29 election official of the Town the purposes of performing acts required or permitted by law in
30 connection with the election on the ballot issue, and shall take such action as may be required to
31 comply with all applicable laws pertaining to the conduct of the election.
32

33 Section 9. State Law Adopted. Unless alternative procedures are provided by the
34 Breckenridge Town Charter the election shall be conducted in accordance with the provisions of
35 Article 11 of Title 31, C.R.S., concerning municipal referenda
36

37 Section 10. No Referendum. Pursuant to Section 6.1(b) of the Breckenridge Town
38 Charter this ordinance is not subject to the people's reserved power of referendum.
39

40 Section 11 Effective Date. This ordinance shall be published and become effective as
41 provided by Section 5.9 of the Breckenridge Town Charter.
42

43 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
44 PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be held at the
45 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of

1 _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
2 Town.

3
4 TOWN OF BRECKENRIDGE, a Colorado
5 municipal corporation
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9 By _____
10 John G. Warner, Mayor

11
12 ATTEST:
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16 _____
17 Mary Jean Loufek, CMC,
18 Town Clerk
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July 17, 2009 - for July 28th Worksession

TO: Breckenridge Town Council

FROM: Maribeth Lewis and James Phelps

RE: Intergovernmental Agreement with Colorado Department of Revenue
for Commercial Driver's License Testing

Ladies and Gentlemen of the Breckenridge Town Council:

Attached for your approval is a Resolution for approval of an Intergovernmental Agreement between the Town of Breckenridge and the State of Colorado for the Transit Division to be able to continue testing applicants for their Commercial Driver's License (CDL).

For a number of years, the Transit Division has had Transit Supervisors that were licensed by the State of Colorado to administer the CDL Driving Skills Testing. Upon satisfactory completion of the test, candidates are provided with proof of the test completion to take to the Department of Revenue (DMV) in which to have their Commercial Driver's License issued. Essentially we are a licensed "Testing Unit" for the State of Colorado and Department of Revenue.

However, we opt to only test people that are within our unit. Meaning that the people we are testing are Town employees and we do not offer testing to the general public. Since we are not testing outside of our unit, no performance bond is required by the Town of Breckenridge under this Intergovernmental Agreement.

Our Transit Supervisors receive training from the State of Colorado in which to administer CDL Skills Testing prior to being licensed by the State. They also attend a yearly class to maintain their licensure. Currently, we have two Transit Supervisors on staff that are licensed CDL Testers.

The Transit Division finds it very beneficial to hire qualified individuals and then train them to become drivers for us when we are unable to hire Transit Operators that already possess a CDL. Without the ability to administer these tests in-house, it would be nearly impossible to staff the Transit Division with seasonal drivers each winter.

The Transit Division has also been able to assist other Town Departments with their needs to have candidates tested for CDL's as well. At a minimum, we administer 8 tests per year or more for the Town's benefit. We would appreciate your approval of the Intergovernmental Agreement so that we may continue to conduct business with the State of Colorado and Department of Revenue for CDL Testing.

1 **FOR WORKSESSION/ADOPTION – JULY 28**

2
3 A RESOLUTION

4
5 SERIES 2009

6
7 A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE
8 STATE OF COLORADO CONCERNING COMMERCIAL DRIVER’S LICENSE TESTING
9

10 WHEREAS, governmental entities are authorized by Article XIV of the Colorado
11 Constitution and Part 2 of Article 1 of Title 29, C.R.S., to co-operate and contract with one
12 another to provide any function, service, or facility lawfully authorized to each of the co-
13 operating or contracting governmental entities; and
14

15 WHEREAS, a proposed Intergovernmental Agreement between the Town and the
16 Colorado Department of Revenue, for the use and benefit of the Department of Revenue, Motor
17 Carrier Services Division, CDL Compliance Section, concerning commercial driver’s license
18 testing has been prepared, a copy of which is marked Exhibit “A”, attached hereto and
19 incorporated herein by reference; and
20

21 WHEREAS, the Town Council has reviewed the proposed Intergovernmental Agreement
22 and finds and determines that it would be in the best interest of the Town to enter into such
23 Agreement.
24

25 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
26 BRECKENRIDGE, COLORADO, as follows:
27

28 Section 1. The proposed Intergovernmental Agreement between the Town and the
29 Colorado Department of Revenue, for the use and benefit of the Department of Revenue, Motor
30 Carrier Services Division, CDL Compliance Section, concerning commercial driver’s license
31 testing ("Exhibit "A" hereto) is approved, and the Town Manager is hereby authorized,
32 empowered and directed to execute such Agreement for and on behalf of the Town of
33 Breckenridge.
34

35 Section 2. This resolution shall become effective upon its adoption.
36

37 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____, 2009.
38

39 TOWN OF BRECKENRIDGE
40

41
42
43 By _____
44 John G. Warner, Mayor
45



To: Mayor and Town Council Members
From: Director of Communications
CC: RW&B Fire Marshall
Date: July 23, 2009 (for 7.28.09 meeting)
RE: Special Permit to authorize open burning for Breck150

In conjunction with the Breckenridge 150th Anniversary Grand Celebration (August 8 – 10), the Red White and Blue Fire District would like to host an old fashioned bucket brigade on Sunday, August 9th. The proposed burning would be of their outhouse that they constructed for the Kingdom Days Outhouse Races, in the Blue River Plaza.

The current Town Code (Section 5-5-3) prohibits open burning within town limits. However, Section 5-5-5 allows the Town Council to grant a special permit to authorize open burning. Specifically, Section 5-5-5 states:

Notwithstanding the provisions of section 5-5-3 of this chapter, the town council shall have the authority to issue a special permit for the purpose of authorizing open burning within the town. An application for such a permit shall be made in writing to the town council and shall state the date, time, location and purpose of such fire, and a description of all safety and precautionary measures planned. The town council shall act upon such request at its next regularly scheduled meeting following receipt of the completed application. The town council may grant such application if it finds that there are special and unique circumstances which justify granting the application. All open burning conducted within the town pursuant to a special permit issued pursuant to this section shall be conducted in accordance with the rules pertaining to open burning contained in the town's fire code. The town council may impose such other reasonable conditions upon a special permit as it shall determine to be necessary to adequately protect the health, safety and welfare of the town and its inhabitants. It shall be unlawful for any person to conduct any open burning within the town in violation of the terms and conditions of a special permit issued pursuant to this section. (Ord. 21, Series 1994)

Following is a motion that the Town Council may like to use to approve the special permit:

"I move to approve a special permit to allow the Red White and Blue Fire District to host bucket brigade activities on Sunday, August 9 at the Blue River Plaza as part of Breckenridge's 150th anniversary grand celebration. All burning shall comply with the "Open Burning" requirements of Section 307 of the International Fire Code, 2000 Edition. In addition, the Red White and Blue Fire District shall provide an open burning permit from the Red, White & Blue Fire District."

Thank you. Staff will be available at the Work Session for questions.



Scheduled Meetings, Important Dates and Events

Shading indicates Council attendance – others are optional

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

JULY 2009

Friday, July 3	Town Hall Closed
Tuesday, July 14; 3:00/7:30pm	First Meeting of the Month
Friday, July 17; 8am	Coffee Talk; Cool River Coffeehouse
Tuesday, July 28; 3:00/7:30pm	Second Meeting of the Month
Wednesday, July 29	BRC Annual Meeting

AUGUST 2009

Wednesday, August 5	County Fleet Building Ground Breaking
Tuesday, August 11; 3:00/7:30pm	First Meeting of the Month
Thursday, August 20	TOB Employee Picnic
Tuesday, August 25; 3:00/7:30pm	Second Meeting of the Month
Thursday, August 27-28	CAST Meeting & Dinner in Breckenridge

OTHER MEETINGS

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

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