



TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA

Tuesday, October 13, 2009 (Regular Meeting); 7:30 p.m.

****IMPORTANT- THE ANNUAL BUDGET RETREAT BEGINS AT 1:30PM AT THE POLICE STATION
THEREFORE THERE IS NO WORK SESSION****

- I CALL TO ORDER and ROLL CALL**
- II APPROVAL OF MINUTES – September 22, 2009** **Page 2**
- 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*- NONE**
- VI NEW BUSINESS**
- A. **FIRST READING OF COUNCIL BILL, SERIES 2009 –**
- 1. Council Bill No. 33, Series 2009- AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY ADOPTING A NEW DEVELOPMENT POLICY 4 (ABSOLUTE) CONCERNING MAXIMUM ABOVE GROUND FLOOR AREA RATIO AND MAXIMUM ABOVE GROUND SQUARE FOOTAGE, AND MAKING CONFORMING AMENDMENTS TO POLICY 4 (RELATIVE) CONCERNING MASS** **PAGE 7**
- B. **RESOLUTIONS, SERIES 2009-**
- 1. A RESOLUTION APPROVING A CONTRACT OF SALE WITH COLORADO MOUNTAIN JUNIOR COLLEGE DISTRICT(Lots 1-9, Block 2, Yingling & Mickles Addition – 103 South Harris Street) **Page 14**
- C. **OTHER – NONE**
- VII PLANNING MATTERS**
- A. Planning Commission Decisions of October 6, 2009 **Page 29**
- B. Town Council Representative Report (Mr. Rossi)
- VIII REPORT OF TOWN MANAGER AND STAFF***
- IX REPORT OF MAYOR AND COUNCILMEMBERS*** **Page 43**
- 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**
- A. Klack Placer Cabin Project **Page 45**
- XI SCHEDULED MEETINGS** **Page 47**
- XII ADJOURNMENT**

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

CALL TO ORDER and ROLL CALL

Mayor Warner called the September 22, 2009 Town Council Meeting to order at 7:40 p.m. The following members answered roll call: Ms. McAtamney, Mr. Joyce, Mr. Millisor, Mr. Rossi, Mr. Mamula and Mayor Warner. Mr. Bergeron was absent.

APPROVAL OF MINUTES – September 8, 2009 Regular Meeting

Mayor Warner commented that on page 53 it should say “quit claim”, not “quick claim.” Mr. Rossi commented that on Page 51 the wording was not accurate. The recording will be reviewed for the correct verbiage. With those changes, Mayor Warner declared the minutes were approved.

APPROVAL OF AGENDA

Town Manager, Tim Gagen, commented that they will be adding an Executive Session under Other Matters.

COMMUNICATIONS TO COUNCIL

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

- 1) David Michael- Entrada’s attorney- Apologized on behalf of Entrada. They will not be able to comply with obligations made in the annexation agreement. They will not be able to comply with the Town’s requests and that is not to say that the requests are unreasonable. He commended the staff for their effort and work on this project. They have challenges with their easement with Summit Ridge Center which caused them to not be able to record the plat and close on the property. They wanted the Council to hear it directly from them. They feel they have a valid easement and have sued Summit Ridge Easement but that will not prevent them from going into foreclosure. David went through the details and history. They will come back with an application without the access point. Does the Town want it developed the way they agreed to or not developed at all. They did not say the access point was not important but questioned whether it was necessary.
- 2) 2) Mike Raitman- Owns a gallery in Towne Square Mall. Concerned about the “Get Hi Gallery.” This will be the third shop of this nature within a one block vicinity. Offended by the name and the fact that they plan to have adult content as well. Not happy to see this on Main Street. Why is this happening and why are we dragging our Main Street businesses into the sewer. Tim Gagen commented that we will do a re-review of the business and they will certainly look at it.
- 3) Rebecca Barfoot, from Durango, CO. She is the artist in residence at the Tin Shop. She thanked Council for the Tin Shop and the Arts District. The locals and visitors have been very excited.
- 4) Ryan Miller, with Outboard, the Worlds Largest Gay and Lesbian Snowboard Organization- They are trying to plan a trip for their group March 30-April 4 and is asking the Council to help them with finishing their planning needs. Estimating \$450,000 revenue from their group. What is critical to their event is being able to secure facilities. They have been able to secure the Ice Rink for an event but they are also trying to secure the Rec Center Pool for April 2. In order to make that viable they need to be able to serve alcohol in the facility. They have been working with the Rec Center and BRC staff to see if there are any other options that allow them to be able to do so. They need help securing the last venue. Timeline is as soon as possible. Competitors are in the process of opening their registrations. They have been working on this for months now and are trying to minimize their loss to their market share..

CONTINUED BUSINESS

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

1. Council Bill No. 10, Series 2009- AN ORDINANCE AUTHORIZING THE CONVEYANCE OF CERTAIN TOWN-OWNED REAL PROPERTY TO MERCY HOUSING COLORADO, a Colorado non-profit corporation (Tract 1, Valley Brook Subdivision)

Tim Berry commented that the ordinance would authorize the conveyance of the land to Mercy Housing for the Valley Brook development. Several non-substantive revisions were made since the first reading. The conveyance may not be appropriate until the first of the year. Because of several unresolved issues surrounding the deal, staff is advising that the Council continue final reading of this ordinance indefinitely.

Mayor Warner clarified to the public that this did not mean that they are killing the Valley Brook project. It is just putting on hold the conveyance of the land to Valley Brook. This is so they can utilize the grant money they received and it requires that the money be spent by the Town, not by Mercy Housing. Tim Berry commented that the Town has also not received final pricing. The Town does plan to convey the land just not yet. Mayor Warner opened a public hearing. Victor Girtman informed the Council of the process with Summit Housing Authority. He just did a reservation agreement for one of the properties. He feels the system is silly. He will not make interest on the \$750 he had to put down that will go in escrow. \$187,500 is what the units were listed for he wanted to make sure that was accurate. Tim Gagen commented that Mercy Housing is working on the pricing with the contractors. Mayor Warner clarified that we have NOT pushed the project back, they have just changes the process. They are still going ahead with the project, we just kept the property in our names. Katie Girtman questioned whether they would consider cutting phases. Tim Gagen commented that as many contracts as they have signed is how many will be built. Mayor Warner closed the public hearing.

Mr. Millisor moved to approve Council Bill No. 10, Series 2009. Ms.McAtamney moved that the main motion and the Council's second reading consideration of Council Bill No. 10, Series 2009 be postponed indefinitely. Mr. Rossi seconded the motion. Mayor Warner stated that pursuant to Roberts Rules of Order, we will now have a vote on the subsidiary motion to postpone Council Bill No. 10, Series 2009 indefinitely. If the subsidiary motion passes, there will be no vote on the main motion to approve Council Bill No. 10, Series 2009, and the Council's second reading consideration of Council Bill No. 10, Series 2009 will be postponed indefinitely. The motion passed 6-0

2. Council Bill No. 30, Series 2009- AN ORDINANCE AMENDING TITLE 4 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING PROVISIONS FOR THE REGULATION OF MEDICAL MARIJUANA DISPENSARIES; AND REPEALING CONFLICTING TOWN ORDINANCES

Tim Berry commented that he has made some revisions based on today's work session. Tim Berry explained the changes.

Mr. Rossi moved to approve Council Bill No. 30, Series 2009 with the changes handed out by Tim Berry. Mr. Mamula seconded the motion.

Mayor Warner opened a public hearing.

Chris Culmos commented that he feels there are challenges with the location. He read from the US Disabilities Act and commented that some of his patients are handicap and second floor locations are difficult.

Peter Kuhn apologized about any implication of a lawsuit at last Council meeting, thanked Council for helping with his education, and invited Council to a 'mock' dispensary. He did map out possible locations on a map and asked Council to look at possible locations.

Lauren Davis, attorney representing the Kuhn's, thanked staff and Council for their time and efforts but still has concerns about allowable locations, on-site consumption restrictions, possible HIPPA issues, and what the Town is asking applicants to initial. This might not be what the Town intended with this verbiage.

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, September 22, 2009
PAGE 3

Lee Edwards supports entrepreneurs in our community and questioned whether this application mirrors an application for a liquor license? Tim Berry commented that Liquor licenses are issued by the State of Colorado. Mr. Edwards questioned whether this is more restrictive? Tim Berry commented that it was similar. Mr. Edwards questioned why Ridge Street is excluded? Mayor Warner commented that the Council did not wish to have this type of a facility in the downtown overlay district on ground floor. Mr. Mamula commented that Council was concerned about residential areas. Mr. Edwards asked if this followed Land Use Guidelines and would suggest consistency in Districts 18 and 19. Mr. Mamula commented that Council feels this is a legitimate use and have tried to carve out as many locations as possible. Chris Neubecker brought forth a map showing possible locations and reviewed with Council and interested public. Mayor Warner closed the public hearing.

Tim Berry commented on the federal ADA requirements and that he did not see an issue. He commented on onsite consumption and that it was his understanding that Council was concerned about ventilation and driving after consumption but it is a decision Council can make and he does not believe Amendment 20 requires it. He commented on the locking safe issue that Attorney Lauren Davis brought up and he would like to add language on Page 18, line 35 to allow for this. With respect to the ID card and registration, requiring the licensee to maintain a record of the ID card number furthers the purposes of ensuring that only those allowed to get marijuana are getting it. Whether it is accessible to Police is another issue. Language is OK. Tim Berry commented on Lauren's concerns about the notice given to applicant's that possession of marijuana is a violation of federal law. He feels this is just a fact and that he understands her statement but it is not his intent to try to scare anyone away and does not agree with it. Although the federal administration has said they will not prosecute anyone it is not to say that won't change and it is important for patients to know this. Question of District 18, there is a legislative termination the Council is entitled to make with respect to the appropriate locations. There is a provision on page 17, Paragraph G that he asked Council to review. The thought behind it was to not put the permittee at risk of having to move if another business such as a school were put in. Mr. Mamula asked Tim Berry if this application would go in front of Planning Commission and how this would fit in the review process, with consideration of water taps, parking required, etc. Chris Neubecker commented that they would probably treat it as an office at this point. Tim Berry commented that the material and information provided to Council over the last several months that it has taken to review this topic should be considered part of the record.

Attorney Lauren Davis commented that it would be helpful to have guidance about how this business would be considered (i.e. office, etc.) and would be helpful for tax filing. She commented that patients are not required to have a registry card but rather have a medical recommendation and this could create undue challenge for enforcement. Mr. Berry suggested striking #3. Everyone was OK with that. Mr. Millisor asked Chris Neubecker a clarifying question about the overlay district and suggested adding "or the downtown overlay district" page 16, line 6.

Tim Berry restated the motion to approve the ordinance as handed out with three additional changes. Page 16, Line 6 adding "or the downtown overlay district. Page 18, Line 35 "all the storable inventory of marijuana if marijuana is to be stored overnight on the premises." On Page 19, Section 4-17-37 Required Record, A3 Patients Medical Marijuana Registry Identification Card Number would be deleted.

Ms. McAtamney commented that the voters in Colorado approved this method of but left it up to municipalities. Our job is to bring it to our community in a safe way. Mr. Millisor commented that it's a balancing act for the patients and the neighborhoods but he supports it. Mr. Rossi commented that we had the option to deny this as other municipalities have done, but we are pioneering this process. He believes we are doing the right thing to address it and taking the hard path of trying to make it work. Mr. Joyce commented that this was a new business model. They are trying to create something that works for new as well as existing businesses. Mr. Mamula commented that he believes this is the right thing to do but what bothers him is the abuse of this business segment and urges providers to advocate to the State of

Colorado that this industry needs to regulate better. Mayor Warner agreed that this is the right thing to do and appreciates staff and citizens time. The motion passed 6-0.

3. Council Bill No. 32, Series 2009- AN ORDINANCE AMENDING SECTION 2-4-8 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE RULES AND REGULATIONS OF THE BRECKENRIDGE OPEN SPACE ADVISORY COMMISSION

Tim Berry commented that this ordinance would eliminate the requirement that a change to the BOSAC's Rules of Procedure be approved by the Town Council before becoming effective. There are no changes proposed to ordinance from first reading.

Mayor Warner asked for Public comment. There was none. He closed the public hearing.

Mr. Mamula moved to approve Council Bill No. 32, Series 2009. Ms. McAtamney seconded the motion. The motion passed 6-0

NEW BUSINESS

A. FIRST READING OF COUNCIL BILL, SERIES 2009-

There were no First Readings.

B. RESOLUTIONS, SERIES 2009 –

There were no Resolutions.

C. OTHER –

There was no Other Business

PLANNING MATTERS

A. Planning Commission Decisions of September 15, 2009

With no requests for call ups Mayor Warner declared the Planning Commission decisions of the September 15, 2009 meeting would stand as presented.

B. Report of Planning Commission Liaison (Mr. Rossi)- Mr. Rossi commented that landscaping will be a major issue. The minutes accurately reflect the discussion at the last meeting.

REPORT OF TOWN MANAGER AND STAFF

Tim Gagen commented that per the law the CIP was given to the Council, however, it is a work in progress as staff is working on revenue projections. Budget will be distributed one week prior to the retreat which is on October 13th.

REPORT OF MAYOR AND COUNCILMEMBERS-

A. CAST/MMC (Mayor Warner) – nothing to report

B. Breckenridge Open Space Advisory Commission (Mr. Joyce) – postponed meeting

C. Breckenridge Resort Chamber (Ms. McAtamney) – reminded Council about General Managers roundtable this Thursday.

D. Summit Combined Housing Authority (Mr. Millisor) – meeting tomorrow.

E. Breckenridge Heritage Alliance (Mr. Bergeron) - Mr. Bergeron was absent.

F. Sustainability (Mr. Millisor) – meeting last Friday discussion was focused on work force housing.

OTHER MATTERS

Mr. Rossi: would like to discuss how we can accommodate groups and utilize town facilities. Mayor Warner commented that we need to have a discussion on the criteria to use town facilities and is this current request in our shoulder season. Mr. Rossi commented that we do have a fee structure for renting but the roadblocks have been put in place to discourage facility rental. Mr. Millisor commented that

TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, September 22, 2009
PAGE 5

wasn't the issue, insurance and alcohol were. Tim Gagen commented that John McMahon and Kim DiLallo are working on putting together criteria and a process to handle these town-wide group requests. The red flag issue for this request is alcohol in the pool area, displacing users is a policy issue but staff will take Council's direction. Mr. Rossi heard that there are unanswered phone calls and is concerned. Mr. Millisor commented that this is a chance to reset our norms and think we should look at displacing guests, which are tax payers. Mr. Mamula disagreed because tax payers support Town facilities. He was OK with last hour of the day, or in a slow period. Mr. Rossi questioned what we can do in the short term? Mayor Warner commented that it's both a philosophical and a process issue. Mr. Rossi encouraged us to think outside the box, and solve this in the short term. Mr. Joyce felt it was a short term issue and a long term issue and questioned whether this was a one year or a three year decision? Ryan Miller (from Outboard) commented that it was short term and they need to decide if we can work out the facility issue in order to secure Breckenridge for 2010. He offered to cover the cost of additional insurance. Lynn Zwaagstra commented that we would be setting a precedent by allowing alcohol. Ms. McAtamney commented that we used to do events in public facilities and believes this can be a new way of doing things and that long term we need to come up with metrics and short term we can work out details so she was OK with request. Mr. Millisor commented that it should be allowed after 9pm, and user needs to pay for extra costs. Mr. Rossi commented that the fee structure needs to reflect costs (cleaning, lifeguards, etc.). Mr. Joyce agreed and said, this is good for our community but need to cover costs and is a fair figure; not concerned about 8 or 9 pm. Mr. Mamula was OK with 8pm but staff needs to evaluate number of lifeguards and to look at this as a new revenue source though he is concerned that this event does affect an Easter Sunday operation. Mayor Warner was fine with it. Leave it up to staff to work out details. Asked Shawna Henderson to bring a message back to John McMahon that Breckenridge does have higher taxes than some of our competitors that he spoke about at the joint meeting earlier this evening but we have better facilities and amenities.

At 10:05pm Mr. Rossi moved that the Town Council go into executive session pursuant to Paragraph 4(a) of Section 24-6-402, C.R.S., relating to the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; and Paragraph 4(f) of Section 24-6-402, C.R.S., relating to personnel matters. Mr. Joyce seconded the motion. All were in favor

Mayor Warner declared that the real property that is the subject of the executive session is real property located within the Town boundaries that the Town Council may have an interest in acquiring.

The personnel matter that is the subject matter of the executive session involves possible personnel changes that may need to be made in light of the Town's current and anticipated future financial situation.

At 10:32pm Mr. Rossi moved that the Town Council adjourn the executive session. Mr. Mamula seconded the motion. All were in favor.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 10:32 p.m.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

Memo

To: Town Council

From: Julia Puester, AICP

Date: October 7 for meeting of October 13, 2009

Re: Neighborhood Preservation Policy (NPP) First Reading

Since presenting the July open house results and Task Force recommendations to the Town Council, staff has met in August and September work sessions with the Planning Commission on the Neighborhood Preservation Policy (NPP). The Planning Commission was generally supportive of the NPP at the worksessions with some minor changes.

Since the work sessions, staff has worked on the Warriors Mark subdivision further to allow for larger home sizes, address duplexes, and address homes which are currently over the FAR or maximum square footage limitation. This work was in response to concerns raised by Warrior's Mark residents.

Changes made since the last Town Council review are:

- Modification to FARs and/or maximum square footage limitations to allow for some additional square footage in some of the subdivisions such as Brooks Hill, Sunbeam Estates, Sunrise Point, Trafalgar, Warriors Mark and Warriors Mark West.
- Separate subdivision within the Warriors Mark area for Gold King Placer (2 lots in Town limits), and addition of Tyra subdivision.
- An additional 500 square feet permitted for any properties already at or over the maximum square footage allowance, as well as for properties which have less than 500 square feet remaining within the set FAR or maximum square footage. Therefore, all properties existing or approved prior to this ordinance would be permitted an additional 500 square feet minimum from what is existing.
- Change to the existing Policy 4R Mass for consistency.

Comments received from the public since the last Town Council meeting have been attached for your review.

1 ***FOR WORKSESSION/FIRST READING – OCT. 13***

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2009

9
10 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
11 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”, BY
12 ADOPTING A NEW DEVELOPMENT POLICY 4 (ABSOLUTE) CONCERNING
13 MAXIMUM ABOVE GROUND FLOOR AREA RATIO AND MAXIMUM ABOVE
14 GROUND SQUARE FOOTAGE, AND MAKING CONFORMING AMENDMENTS TO
15 POLICY 4 (RELATIVE) CONCERNING MASS

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

19
20 Section 1. The Town Council finds and determines as follows:

21 A. In September, 2007, the Town Council expressed its concern about the increasing
22 number of large single family residence that were being built in the Town.

23
24 B. The Town Council desires to maintain the character of the Town, particularly the
25 character of its older, more established neighborhoods.

26
27 C. The Town’s “small town” character is vitally important to its social and economic
28 future and, as a result, to the social and economic well being of the current and future residents
29 of the Town.

30
31 D. The Town Council has tried to maintain the Town’s “small town” character, and has
32 made the preservation of the Town’s small town character part of the Town’s Vision Plan. The
33 Town’s Vision Plan envisions a community “where residents and visitors experience a historic
34 mountain town with characteristic charms that offers a safe, friendly and peaceful atmosphere
35 where individuals can live, work, play and raise a family.”

36
37 E. Although the Town’s land use and development codes (Chapter 1 and Chapter 2 of
38 Title 9 of the Breckenridge Town Code, primarily) require platted building envelopes and site
39 disturbance envelopes for newer subdivisions, the current Town codes do not adequately control
40 the size of single family residences in the Town’s older subdivisions.

41
42 F. Large single family and duplex residences outside of the Town’s Conservation
43 District have been built with increasing frequency in recent years, and the sizes of such
44 residences have also increased.

45

1 G. The development of large single family and duplex residences has a significant
2 number of negative impacts on the Town and its residents. Such impacts, include, but are not
3 limited to, development that:

- 4
- 5 1. is out-of-scale with existing neighborhood home sizes;
- 6 2. increases the demand on existing infrastructure, such as water, sewer, and other
7 utility services;
- 8 3. decreases important areas of wildlife and vegetative habitat;
- 9 4. increases the Town’s overall “carbon footprint” and creates other adverse
10 environmental impacts;
- 11 5. increases the demand for workers to construct, service, and maintain the large
12 residences; and
- 13 6. increases the demand for attainable employee housing within the Town.
- 14

15 H. Establishing a Town development policy providing a maximum above ground floor
16 area and maximum above ground square footage in those older subdivisions that do not have
17 platted building or site disturbance envelopes will help to preserve the character of the
18 community, and will protect the public health, safety and welfare. As such, the adoption of such
19 a policy is a legitimate exercise of the Town’s zoning and police powers.
20

21 Section 2. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of
22 the following definitions, which shall read in their entirety as follows:

Above Ground Square Footage: That portion of the floor area of the structure
that is above finished grade. Any portion of a
foundation wall that is exposed more than two
feet (2’) above finished grade shall be counted as
above ground square footage.

Floor Area Ratio (F.A.R.): The total square footage of the structure to be
developed divided by the total square footage of
the lot, tract or parcel.

23
24 Section 3. Section 9-1-19 of the Breckenridge Town Code is amended by the addition
25 of a new Policy 4 (Absolute), to be entitled “Mass”, which shall read in its entirety as follows:

26 4. (ABSOLUTE) MASS

27
28 A. Maximum Mass:

29
30 A. For any development permit application submitted on or after [REDACTED],
31 2009 [DATE OF ADOPTION OF ORDINANCE TO BE INSERTED], the maximum above
32 ground square footage of a single family or duplex structure located on a lot, tract or parcel
33 without a platted building or disturbance envelope shall be the lesser of:
34
35
36

SUBDIVISION OR GEOGRAPHIC AREA	FLOOR AREA RATIO (F.A.R.)		MAXIMUM ABOVE GROUND SQUARE FOOTAGE
Brooks Hill	1:5.00	OR	7000
Breckenridge South	1:5.00	OR	6000
Christie Heights	1:3.50	OR	6500
Gold King	1:8.50	OR	7000
Gold Flake	1:4.50	OR	9000
Highlands, Filing 1	1:8.50	OR	9000
Highlands, Filing 2	1:8.50	OR	9000
Highlands, Filing 3	1:8.50	OR	9000
Highlands, Filing 4	1:8.50	OR	9000
Peaks	1:1.75	OR	6500
Penn Lode	1:3.00	OR	6000
Snowflake	1:2.00	OR	5500
Sunbeam Estates	1:3.50	OR	7000
Sunrise Point	1:2.00	OR	6500
Trafalgar	1:2.00	OR	7500
Trapper's Glen	1:4.50	OR	8000
Tyra	1:2.00	OR	6000
Warrior's Mark	1:2.00	OR	4000
Warrior's Mark West	1:2.00	OR	4500
Weisshorn	1:4.00	OR	8000
Yingling & Mickles	1:1.30	OR	5600

1
2 Real property that is not located within one of the subdivisions or geographic areas
3 of the town described in the table, and any lot, tract or parcel of land with a platted
4 building or disturbance envelope, or with a density or mass determined by an active
5 Master Plan or Planned Unit Development is not subject to this policy.
6

7 The Floor Area Ratio and Maximum Above Ground Square Footage of any lot,
8 tract or parcel of land without a platted building or disturbance envelope that is not listed
9 in the table above shall be determined by the Director. In making such determination, the
10 Director shall consider the applicable Floor Area Ratio and Maximum Above Ground
11 Square Footage of adjacent subdivisions or geographic areas, and shall establish the
12 applicable Floor Area Ratio and Maximum Above Ground Square Footage so that it will
13 be compatible with the character of the area in which the lot, tract or parcel of land is
14 located.
15

16 B. If a single family or duplex structure contains a garage, the measurement of
17 above ground square footage in subsection A applies only to that portion of the garage that
18 exceeds 900 square feet.
19

20 C. Any single family or duplex structure lawfully constructed before the date
21 described in subsection A of this policy remains lawful and may be maintained or rebuilt in

1 the event of damage by fire or other calamity, even if it is larger in size than would be
2 allowed by subsection A.

3
4 D. For any single family or duplex structure existing or for which a development
5 permit has been issued before the date described in subsection A of this policy:

6
7 1. an additional 500 square feet of above ground square footage is permitted for a
8 single family or duplex structure if such square footage is not allowed by subsection A; and

9
10 2. an interior addition is permitted without violating this policy if the additon does
11 not result in any change to the exterior of the single family or duplex structure. If such
12 addition results in the reduction of the size of the garage to below 900 square feet,
13 additional garage space constructed on the property shall be counted toward the maximum
14 allowable floor area ratio and maximum above ground square footage in Section A.

15
16 E. For any duplex structure that is subject to the provisions of subsection D(1), if
17 each duplex unit has the same above ground square footage each duplex unit shall be
18 allocated an additional 250 square feet of allowed above ground square footage. If either of
19 the duplex units has a greater amount of above ground square footage than the other
20 duplex unit, the smaller duplex unit shall receive so much of the additional above ground
21 square footage as is required to make it equal to the above ground square footage of the
22 larger duplex unit, and the remaining additional above ground square footage shall be
23 divided equally between the two duplex units. If both duplex owners agree to an alternative
24 allocation of the duplex's additional 500 square feet of allowed above ground square
25 footage, the Town may approve such alter native allocation if both owners submit an
26 agreement in a form acceptable to the Town Attorney prior to the submission of any
27 application for a development permit that involves the use of any of the duplex's additional
28 500 square feet of above ground square footage. The duplex owners' agreement for an
29 alternative allocation of the additional above ground square footage must be recorded in
30 the real property records of the Clerk and Recorder of Summit County prior to the
31 issuance of a development permit for the use of such additional square footage, and must
32 run with the land and be binding upon all subsequent owners of the two duplex units.

33
34 Section 4. Section (A)(2) of Policy 4 (Relative) Mass of Section 9-1-19 of the
35 Breckenridge Town Code is amended so as to read in its entirety as follows:

36 2. Single-Family, Duplexes, Bed and Breakfasts, and Townhouses. Single-family,
37 duplex, bed and breakfast, and townhouse developments may be allowed an additional
38 twenty percent (20%) of aboveground floor area for the provision of garages, common
39 amenity areas, and common storage areas. **This mass bonus does not apply to single**
40 **family or duplex structures listed in Policy 4 (Absolute) Mass, subsection A.**

41
42 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and
43 the various secondary codes adopted by reference therein, shall continue in full force and effect.

44 Section 6. The Town Council hereby finds, determines and declares that this ordinance
45 is necessary and proper to provide for the safety, preserve the health, promote the prosperity,

1 and improve the order, comfort and convenience of the Town of Breckenridge and the
2 inhabitants thereof.

3 Section 7. The Town Council hereby finds, determines and declares that it has the
4 power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling
5 Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning
6 municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police
7 powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority
8 granted to home rule municipalities by Article XX of the Colorado Constitution; and (vi) the
9 powers contained in the Breckenridge Town Charter.

10 Section 8. The Town Council hereby finds, determines and declares that it has the
11 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by
12 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
13 Charter.

14 Section 9. This ordinance shall be published and become effective as provided by
15 Section 5.9 of the Breckenridge Town Charter.

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

21
22 TOWN OF BRECKENRIDGE, a Colorado
23 municipal corporation

24
25
26 By _____
27 John G. Warner, Mayor
28

29 ATTEST:

30
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32 _____
33 Mary Jean Loufek, CMC,
34 Town Clerk
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500-238\Neighborhood Preservation Policy Ordinance_8 (10-07-09)(First Reading)

MEMO

TO: Town Council
FROM: Town Attorney
RE: Contract To Purchase Old CMC Building
DATE: September 29, 2009 (for October 13th meeting)

Enclosed are the following:

1. Executive Summary of proposed contract to purchase the old CMC Building located at 103 South Harris;
2. Proposed resolution to be adopted to approve purchase contract; and
3. Proposed Contract of Sale with CMC (Exhibit "A" to the resolution).

I will be happy to review these documents with you on Tuesday. Please note that the resolution has been scheduled for action Tuesday evening.

SUMMARY OF CMC CONTRACT

1. Seller: Colorado Mountain Junior College District
2. Purchaser: Town
3. Legal Description: Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, Block 2, Yingling & Mickles Addition, and a portion of the Klack Gulch Placer
4. Street Address: 103 South Harris Street (“old” CMC Building)
5. Purchase Price: \$2,250,000. \$50,000 earnest money upon signing of contract. Balance due in cash at closing.
6. Date of Closing: November 3, 2009
7. Title insurance: paid for by CMC (Note: title has been reviewed by Town Attorney and is acceptable.)
8. Survey: Survey has been completed, and discloses no significant problems. Cost of survey will be split between Town and CMC at closing.
9. Form of Deed: special warranty deed
10. Special Provisions:
 - A. Town to get any “as built” drawings in CMC’s possession.
 - B. CMC has 90 days after closing to remove its property from the Building.
 - C. Property is sold by CMC and taken by Town in “AS IS” condition. (Note: property has been inspected by Town Engineer.)
 - D. Town and CMC agree in the contract work together and to cooperate in good faith to development and implement future agreements for:
 - i. CMC’s future operation of a ceramics studio, photography lab and dance studio. Such facilities may be either in their current locations in the CMC Building, or within the Arts District. The agreements will allow CMC to use the facilities at no charge for a maximum period of 10 years, but CMC will pay its fair share of the applicable utility costs based on the square footage of the property used and the actual number of hours the property is occupied by CMC.
 - ii. CMC’s equipment currently located in the ceramics studio, photography lab, and dance studio will remain on the property after closing. Such property will remain the property of CMC, but will be made available for the joint use of the Town and CMC for a maximum period of 10 years after closing.

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4. The performance of all other things necessary to the acquisition of the subject property by the Town.

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

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

TOWN OF BRECKENRIDGE

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

APPROVED IN FORM

Town Attorney date

1
2
3 CONTRACT OF SALE

4 THIS CONTRACT OF SALE ("Contract") is made and entered into this ___ day of
5 _____, 2009, by and among COLORADO MOUNTAIN JUNIOR
6 COLLEGE DISTRICT, a Colorado statutory junior college district ("Seller") and the TOWN OF
7 BRECKENRIDGE, a Colorado municipal corporation ("Buyer").

- 8 1. Real Property. Seller hereby agrees to sell to Buyer, and Buyer agrees to purchase from
9 Seller, the fee simple property described as:

10
11 Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, Block 2, Yingling & Mickles Addition, and that
12 portion of the Klack Gulch Placer, U.S. Survey No. 1224 situate between
13 Washington Avenue and Lincoln Avenue and bounded on the West side by Block
14 4, Abbett's Addition and on the East by Block 2, Yingling & Mickles Addition,
15 all in the Town of Breckenridge, County of Summit and State of Colorado.

16
17 also known as: 103 South Harris Street, Breckenridge, Colorado 80424

18
19 Such real property, together with its appurtenances, is hereinafter called the "Property".
20 Seller makes no warranty or representation with respect to the acreage of the Property.

- 21
22 2. Personal Property. The purchase price does not include any personal property, but does
23 include all fixtures located on the Property.

- 24
25 3. Purchase Price. The purchase price to be paid by Buyer to Seller for the Property is Two
26 Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) ("Purchase Price"),
27 payable as follows:

28
29 (a) Fifty Thousand Dollars (\$50,000.00) in the form of Buyer's check, payable
30 upon execution of this Contract, to be held by Land Title Guarantee of
31 Summit County, Breckenridge, Colorado ("Closing Agent") as earnest
32 money and part of the Purchase Price ("Earnest Money"); and

33
34 (b) The balance in Good Funds (as defined by Colorado law) at time of
35 Closing (as hereafter defined).

- 36
37 4. Buyer's Right Of Entry And Inspection. During the term of this Contract, Buyer, its
38 agents, employees, contractors and engineers, shall have the right from time to time to
39 enter upon the Property at their risk for the purpose of inspecting the same and
40 conducting non-destructive surveys, engineering studies, soil tests, investigations,
41 feasibility studies and the like. Within a reasonable time after such entries Buyer shall
42 restore the Property to its prior condition. With Seller's prior written approval, in Seller's
43 sole discretion, during such time period the Buyer shall also have the right to begin any
44 renovations necessary to make the Property useable for the Buyer's intended purposes,
45 provided that if Buyer does not acquire the Property, and if CMC has so requested at the
46 time renovations are commenced, Buyer shall restore the Property to its prior condition.

1 Buyer agrees to indemnify and save Seller harmless from all claims arising by reason of
2 such entries. This indemnity obligation shall survive the termination of the Contract and
3 continue to be enforceable thereafter. Buyer shall coordinate its inspections and any
4 approved and agreed renovations with the Seller in advance so as minimize the disruption
5 and inconvenience to the Seller. Seller shall determine, in its sole discretion, when the
6 timing of inspections or renovations are appropriate so as not to interfere.
7

8 5. Closing.
9

10 5.1 Date and Place of Closing. Closing shall occur on November 3, 2009, or at such
11 earlier date and time or other location as the parties may agree upon. Closing
12 shall occur at the office of the Closing Agent located at 200 North Ridge Street,
13 Breckenridge, Colorado.
14

15 5.2 Payment of Purchase Price; Deed. At Closing, Buyer shall pay the Purchase Price
16 as provided in Paragraph 3, and Seller shall execute and deliver to Buyer a special
17 warranty deed for the Property. The title to the Property so conveyed shall be a
18 good and merchantable fee simple absolute title, both of record and in fact, free of
19 all liens and encumbrances, except those title exceptions accepted by Buyer
20 pursuant to Paragraph 6 hereof.
21

22 5.3 As-Built Drawings. If in Seller's possession, at Closing Seller shall deliver to
23 Buyer, at no additional cost, legible copies of any "As-Built" drawings of the
24 building located on the Property which are in Seller's possession. Buyer shall
25 indemnify and hold Seller harmless from any liability associated with Buyer's use
26 of such drawings.
27

28 6. Title Insurance; Title Review.
29

30 6.1 Title Insurance Commitment; Title Policy. Seller acknowledges receipt of title
31 insurance commitment number M20091207-2, with an effective date of June 19,
32 2009, issued by Closing Agent. Buyer agrees to accept the title to the Property
33 subject to the title exceptions set forth in such title insurance commitment.
34

35 6.2 Buyer's Right to Object to Title Matters. Within twenty (20) days after Buyer's
36 receipt of any endorsement or update to the title commitment adding new title
37 exceptions ("Exceptions") to the title commitment, Buyer shall give written notice
38 to Seller of any title exceptions shown in such endorsement or update which are
39 not acceptable to Buyer. Seller shall have twenty (20) days from the receipt of
40 Buyer's notice within which to determine whether to cure or remove those
41 Exceptions which are not acceptable to Buyer. Should Seller elect not to cure or
42 remove any Exceptions which are not acceptable to Buyer, Seller shall give Buyer
43 written notice of such election within the twenty (20) day period, otherwise Seller
44 shall be deemed to have elected to cure or remove all of the Exceptions which are
45 unacceptable to Buyer. If Seller elects not to cure or remove any Exceptions
46 which are unacceptable to Buyer, Buyer shall then have until thirty (30) days prior

1 to Closing to terminate this Contract by delivery of written notice of termination
2 to Seller in accordance with Paragraph 21. If Buyer does not deliver to Seller
3 such notice of termination within such time period, Buyer shall be deemed to have
4 accepted the title proposed to be delivered by Seller.
5

6 6.3 Refund of Earnest Money. Should Buyer elect to terminate this Contract pursuant
7 to Paragraph 6.2, the Closing Agent shall promptly refund to Buyer the Earnest
8 Money, and this Contract shall become null and void and each party shall be
9 released from any further obligation-hereunder.
10

11 7. Costs. Buyer shall pay the cost of recording the deed conveying the Property to it. Seller
12 shall pay the cost of the title insurance premium. Each party shall pay one-half of the
13 reasonable cost of closing services charged by Closing Agent. Otherwise, each party
14 shall pay the usual and customary closing costs.
15

16 8. Real Estate Taxes; Other Prorations. The parties acknowledge that Seller and Buyer are
17 both tax-exempt governmental entities, and that no proration of the real estate taxes for
18 the year of Closing shall be required. Water and sewer charges, and other usual and
19 customary charges and expenses, shall be prorated to date of Closing.
20

21 9. Possession. Possession of the Property shall be delivered to Buyer at Closing, subject
22 only to those leases or tenancies approved by Buyer prior to Closing. At Closing the
23 Property shall be in neat and clean condition, free of trash and debris. All office and hard
24 surface areas shall be broom clean. Not later than ninety (90) days after Closing the Seller
25 shall remove or cause to be removed, at its sole cost and expense, any and all items of
26 personal property not to be conveyed to the Buyer by the terms hereof, including, but not
27 limited to, office furniture and equipment.
28

29 10. Survey. Buyer has had prepared an Improvement Location Certificate ("Survey") of the
30 Property prepared by Baseline Surveys LLC. Buyer accepts the Survey, and agrees not to
31 object to the title to the Property based upon the Survey. At Closing the Buyer and Seller
32 shall each pay one-half (1/2) of the actual cost of the Survey (or if Buyer has paid for the
33 Survey, Buyer shall receive a credit from Seller for one-half (1/2) the cost of the Survey at
34 Closing). If, for any reason, Closing does not occur then Seller shall pay the entire cost
35 of the Survey and shall be entitled to retain as its sole property the Survey plat and any
36 other documents prepared by the surveyor in connection with the preparation of the
37 Survey.
38

39 11. Seller's General Disclaimer. Buyer acknowledges that the Property shall be conveyed
40 and transferred "**AS IS**," "**WHERE IS**" and "**WITH ALL FAULTS**", and that Seller
41 does not warrant or make any representations, express or implied, relating to the
42 **MERCHANTABILITY**, quality, condition, suitability or **FITNESS FOR ANY**
43 **PURPOSE WHATSOEVER** of the Property. Seller has no liability whatsoever to
44 undertake any repairs, alterations, removal, remedial actions, or other work of any kind
45 with respect to any portion of the Property. Buyer also acknowledges and agrees that the
46 provisions in this Contract for inspection and investigation of the Property by Buyer

1 should be, and are, adequate to enable Buyer to make Buyer's own determination with
2 respect to the merchantability, quality, condition, and suitability or fitness for any
3 purpose of the Property.
4

5 12. Environmental Condition of the Property.
6

7 12.1 Seller's Representations Concerning Environmental Matters. Seller represents
8 that, since it acquired the Property, it has not knowingly caused, and through the
9 Closing date will not knowingly cause, any contamination of the Property
10 (including land, surface water, ground water and improvements), including: (i)
11 any "hazardous water", "underground storage tanks", "petroleum", "regulated
12 substance", or "used oil" as defined by the Resource Conservation and Recovery
13 Act of 1976 (42 U.S.C. §§6901, et seq.), as amended, or by any regulations
14 promulgated thereunder; (ii) any "hazardous substance" as defined by the
15 Comprehensive Environmental Response, Compensation and Liability Act of
16 1980 (42 U.S.C. §§9601, et seq.), as amended, or by any regulations promulgated
17 thereunder (including, but not limited to, asbestos and radon); (iii) any
18 "petroleum" and "fuel products", as defined by Section 25-15-101 et seq., C.R.S.,
19 as amended, or by any regulations promulgated thereunder; (iv) any "hazardous
20 waste" as defined by the Colorado Hazardous Waste Act, Section 25-15-101, et
21 seq., C.R.S., or by any regulations promulgated thereunder; (v) any substance the
22 presence of which on, in or under the Property is prohibited by any law similar to
23 those set forth above; and (vi) any other substance which by law, regulation or
24 ordinance requires special handling in its collection, storage, treatment or
25 disposal. Buyer understands and acknowledges that the representations contained
26 in this Paragraph are based on Seller's actual knowledge derived from Seller's
27 ownership of the subject property, and that Seller does not make any
28 representations regarding any contamination of the Property before Seller
29 acquired it. Seller's representations in this Paragraph shall be deemed
30 automatically reaffirmed by Seller on the Closing date as true and correct without
31 the necessity of any further writing or affirmation, and shall survive the Closing
32 and delivery of the deed(s) for the Property from Seller to Buyer. Seller
33 understands and acknowledges that Buyer shall be entitled to act in reliance upon
34 these representations, and Seller shall indemnify and hold Buyer harmless with
35 respect to any and all liability incurred by Buyer as result of any intentional
36 misrepresentation contained in this Paragraph. Buyer releases Seller from any
37 obligation to have inquired into the environmental condition of the Property.
38

39 12.2 Buyer's Inspection of Environmental Condition of the Property. Not less than
40 three (3) months prior to Closing Buyer may at its election and at its sole expense
41 obtain a Phase I environmental report or study at its expense by a qualified person
42 selected by Buyer, showing an absence of any Hazardous Substances on the
43 Property. For purposes of this Paragraph, Hazardous Substances are defined as
44 follows: "Hazardous Substance" shall mean and include, but shall not be limited
45 to, any element, substance, compound or mixture, including disease-causing
46 agents, which after release into the environment and upon exposure, ingestion,

1 inhalation, or assimilation into any organism, either directly or indirectly, will or
2 may reasonably be anticipated to cause death, disease, behavior abnormalities,
3 cancer, genetic mutation, physiological malfunctions, including malfunctions in
4 reproduction, or physical deformations in such organisms or their offspring, and
5 all hazardous or toxic substances, wastes, materials, pollutants or contaminants
6 (including without limitation, asbestos, any petroleum or petroleum derived waste
7 or products, and raw materials that include hazardous constituents), or any other
8 similar substances, or materials which are included under or regulated by any
9 local, state or federal law, rule or regulation pertaining to environmental matters,
10 as now or hereafter amended, including, without limitation, the Federal
11 Comprehensive Environmental Response, Compensation and Liability Act of
12 1980, the Federal Resource Conservation and Recovery Act, the Federal
13 Superfund Amendments and Reauthorization Act of 1986, the Federal Toxic
14 Substances Control Act, the Federal Hazardous Material Transportation Act, the
15 Federal Clean Air Act, the Federal Water Pollution Control Act, and any state or
16 local super lien or environmental cleanup or disclosure statutes, rules or
17 regulations, as now or hereafter amended. If the report shows the existence of any
18 Hazardous Substances, the Buyer may, at its election, upon giving the Seller
19 notice thereof within twenty (20) days following the Buyer's receipt of the report,
20 (i) terminate this Contract, in which event Closing Agent shall refund to Buyer the
21 Earnest Money, this Contract shall become null and void, and each party shall be
22 released from any further obligations hereunder, or (ii) waive the requirement of
23 this Paragraph and proceed with Closing hereunder.

24
25 Buyer agrees to indemnify and save Seller harmless from all claims arising by
26 reason of the performance of the Phase I environmental report. This indemnity
27 obligation shall survive the termination of the Contract and continue to be
28 enforceable thereafter. The person performing the Phase I environmental report
29 shall coordinate his inspections, tests and assessments with the Seller in order to
30 minimize the disruption and inconvenience to the Seller and its students.

31
32 13. Buyer's Contingency. The obligations of the Buyer hereunder are expressly contingent
33 upon the an appropriation being made by the Town Council of the Town of Breckenridge
34 in an amount sufficient to allow the Buyer to complete the purchase of the Property in
35 accordance with the terms of this Contract. If Buyer gives Seller written notice of the
36 nonfulfillment of such contingency not later than six (6) months from the date of this
37 Contract, or not later than sixty (60) days before Closing, whichever is earlier, this
38 Contract shall terminate, in which event Buyer's Earnest Money shall be returned and
39 each party shall be released from any further obligation hereunder.

40 14. Seller's Warranties. The Seller hereby makes the following warranties to Buyer:

41
42 (a) As of the date hereof, the Seller has received no notice from any
43 governmental authority of any building code violations or any other
44 violations of law or governmental regulation affecting the Property which
45 have not been corrected. However, Seller makes no representation or
46 warranty that the Property complies with current local building and zoning

1 codes and regulations. Buyer acknowledges that Seller, as a statutory
2 junior college district, is not required to comply with local building and
3 zoning codes and regulations.

4 (b) The Seller knows of no condemnation or eminent domain proceeding
5 pending or contemplated against the Property or any part thereof.
6

7 (c) The Seller is not now a party to any litigation affecting the Property or the
8 Seller's right to sell the Property, or any part thereof, and the Seller knows
9 of no litigation or threatened litigation affecting the Property, or any part
10 thereof.
11

12 (d) As of the date hereof adequate and usable public sanitary and storm
13 sewers, and electrical facilities (collectively "Utilities"), necessary to the
14 Seller's current operation of the Property for Seller's purposes, are
15 installed in and are connected to, the Property, and can be used without
16 charge except for normal and customary charges of public utility
17 companies. The Utilities enter the Property either through adjoining
18 public streets or via public or private easements.
19

20 Seller shall give Buyer written notice if any of these warranties become incorrect prior to
21 Closing. If Seller gives written notice that any enumerated warranties have become
22 incorrect, the Buyer may, at its election, upon giving Seller notice thereof within twenty
23 (20) days following the Buyer's receipt of the notice, (i) terminate this Contract, in which
24 event Closing Agent shall refund to Buyer the Earnest Money, this Contract shall become
25 null and void, and each party shall be released from any further obligations hereunder, or
26 (ii) waive the change in warranty and proceed with the Closing hereunder.
27

28 15. Insurance and Risk of Loss Pending Closing. The Seller shall continue and keep in force
29 throughout the term of this Contract all fire and similar hazard insurance policies
30 covering the Property. The risk of loss or damage to or destruction of the Property
31 occurring prior to Closing shall be upon the Seller. In the event of destruction of or
32 damage to the Property where the cost of repair or restoration exceeds \$300,000.00, the
33 Closing Agent shall promptly refund to Buyer the Earnest Money, and thereupon this
34 Contract shall automatically terminate and the parties hereto shall be released from all
35 further liability hereunder, at law and in equity. In the event the cost of repair or
36 restoration of any damage or destruction is equal to or less than \$300,000.00, all
37 insurance proceeds shall be delivered to the Seller; the Seller shall repair the damage at
38 its sole cost and expense prior to Closing; the Closing date shall be extended for a
39 reasonable time so that the Seller can complete the repair; and this Contract shall remain
40 in full force and effect. The Seller shall promptly notify the Buyer of any damage to or
41 destruction of the Property. Pending Closing, the Seller shall keep the Property in its
42 present state of condition and repair, reasonable wear and tear excepted.
43

44 16. Additional Consideration. As additional consideration to be received by Seller under this
45 Contract, Seller and Buyer agree to work together and to cooperate in good faith to
46 develop and implement the following agreements:

1
2 (a) Future Space for Seller’s Arts Programs in Breckenridge Arts District. An
3 agreement for Seller’s use of suitable space in facilities owned by Buyer
4 for the continued operation of Seller’s ceramics studio, photography lab
5 and dance studio. Such facilities may be either in their current locations
6 at the Property, or at one or more other suitable locations within the Town
7 of Breckenridge “Arts District.” Such agreement shall provide that Seller
8 may use such facilities at no charge for a maximum period of ten (10)
9 years after Closing. Once the location(s) for such facilities are established
10 in the agreement, the locations may be changed from time to time by
11 mutual agreement. Such agreement shall further set forth the agreement of
12 the parties to share in the utility costs of such facilities based on the square
13 footage of the property used by Seller, and the actual number of hours
14 such property is used by the Seller .
15

16 (b) Use of Seller’s Equipment. An agreement providing that all of Seller’s
17 equipment located in the ceramics studio, photography lab, and dance
18 studio at the Property as of the date of Closing will remain on the Property
19 after Closing, but will remain the property of the Seller, and will be made
20 available for joint use of Buyer and Seller after Closing, without charge to
21 either party, for a maximum period of ten (10) years after Closing. Such
22 agreement shall further set forth the agreement of the parties to share in
23 the operating costs of such facilities.
24

25 17. Real Estate Commission. Seller and Buyer each warrant and represent to the other that
26 they have not used the services of any broker, agent or finder who would be entitled to a
27 commission on account of this Contract or the consummation of the transaction
28 contemplated hereby, and agree to defend, indemnify and save the other harmless from
29 any commission or fee which may be payable to any broker, agent or finder with whom
30 the indemnifying party has dealt in connection with this Contract. This indemnity
31 obligation shall survive the termination of the Contract and continue to be enforceable
32 thereafter.
33

34 18. Default; Remedies. If any obligation is not performed as herein provided, there shall be
35 the following remedies:
36

37 (a) IF BUYER IS IN DEFAULT, then Buyer's Earnest Money shall be
38 forfeited by Buyer and retained on behalf of Seller, and both parties shall
39 thereafter be released from all obligations hereunder. It is agreed that such
40 Earnest Money represents LIQUIDATED DAMAGES and (except as
41 provided in Subparagraph (C)) are the SELLER'S SOLE AND ONLY
42 REMEDY for the Buyer's failure to perform the obligations of this
43 Contract. Seller expressly waives the remedies of specific performance
44 and additional damages.
45

1 (b) IF SELLER IS IN DEFAULT, (1) Buyer may elect to treat this Contract
2 as terminated, in which case the Earnest Money shall be returned to Buyer
3 by Closing Agent and Buyer may recover such damages as may be proper,
4 or (2) Buyer may elect to treat this Contract as being in full force and
5 effect and Buyer shall have the right to an action for specific performance
6 or damages, or both.
7

8 (c) Anything to the contrary herein notwithstanding, in the event of any
9 litigation arising out of this Contract, the court may award to the
10 prevailing party all reasonable costs and expenses, including attorneys'
11 fees.
12

13 19. Notices. All notices required or permitted under this Contract shall be given by
14 registered or certified mail, return receipt requested, postage prepaid, or by hand or
15 commercial carrier delivery, or by telecopies, directed as follows:
16

17 If intended for the Buyer, to:

18
19 Timothy J. Gagen
20 Town Manager
21 Town of Breckenridge
22 P.O. Box 168
23 150 Ski Hill Road
24 Breckenridge, Colorado 80424
25 Telecopier number: (970)547-3108
26 Telephone number: (970)453-3161
27

28 with a copy in each case (which shall not constitute notice) to:

29
30 Timothy H. Berry, Esq.
31 Timothy H. Berry, P.C.
32 131 West 5th Street
33 P. O. Box 2
34 Leadville, Colorado 80461
35 Telecopier number: (719)486-3039
36 Telephone number: (719)486-1889
37

38 If intended for the Seller, to:

39
40 Lin Stickler, Executive Vice President
41 Colorado Mountain Junior College District
42 831 Grand Ave.
43 Glenwood Springs, Colorado 81601
44 Telecopier number: (970) 947-8385
45 Telephone number: (970) 947-8321
46

1 with a copy in each case (which shall not constitute notice) to:
2

3 Beattie, Chadwick & Houpt, LLP
4 932 Cooper Avenue
5 Glenwood Springs, CO 81601
6 Telecopier number: (970) 945-8671
7 Telephone number: (970) 945-8659
8

9 Any notice delivered by mail in accordance with this Paragraph shall be deemed to have
10 been duly given and received on the second business day after the same is deposited in
11 any post office or postal box regularly maintained by the United States postal service.
12 Any notice delivered by telecopier in accordance with this Paragraph shall be deemed to
13 have been duly given and received upon receipt if concurrently with sending by
14 telecopier receipt is confirmed orally by telephone and a copy of said notice is sent by
15 certified mail, return receipt requested, on the same day to that intended recipient. Any
16 notice delivered by hand or commercial carrier shall be deemed to have been duly given
17 and received upon actual receipt. Either party, by notice given as above, may change the
18 address to which future notices may be sent.
19

20 20. Survival. The provisions of Paragraphs 4, 11, 12, 16(A), 16(B) and 17 shall survive
21 Closing and shall not be merged upon the delivery and acceptance of the deed for the
22 Property.
23

24 21. Miscellaneous.

25
26 (a) This Contract contains the final and entire agreement between the parties
27 and neither they nor their agents shall be bound by any terms, conditions
28 or representations not herein written.
29

30 (b) Time shall be of the essence of this Contract.
31

32 (c) Neither party shall have the right to assign this Contract, or any interest
33 therein, without the express written consent of the other party.
34

35 (d) The individual executing this Contract on behalf of Buyer represents that
36 he has all requisite powers and authority to cause Buyer to enter into this
37 Contract and to bind Buyer to fully perform its obligations as set forth in
38 this Contract.
39

40 (e) The individual executing this Contract on behalf of Seller represents that
41 he or she has all requisite powers and authority to cause Seller to enter into
42 this Contract and to bind Seller to fully perform its obligations as set forth
43 in this Contract.
44

1 (f) Both parties acknowledge having had the opportunity to participate in the
2 drafting of this Contract. This Contract shall not be construed against
3 either party based upon authorship.
4

5 22. No Constitutional Debt. Buyer's and Seller's obligations under this Contract are subject
6 to appropriation of funds, and shall not constitute a general obligation indebtedness or
7 multiple year direct or indirect debt or other financial obligation whatsoever within the
8 meaning of the Constitution or laws of the State of Colorado.
9

10 23. Governmental Immunity. Nothing in this Contract shall be deemed or construed to
11 constitute a waiver of any provisions of the Colorado Governmental Immunity Act by
12 either party.
13

14 IN WITNESS WHEREOF, the parties hereto have executed this Contract of Sale on the
15 date first above written.
16

17 SELLER:

18
19 COLORADO MOUNTAIN JUNIOR COLLEGE
20 DISTRICT
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24 By: _____
25 Lin Stickler, Executive Vice President
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28 By: _____
29 Sam Skramstad, Purchasing Manager
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31 BUYER:

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33 TOWN OF BRECKENRIDGE, a Colorado
34 municipal corporation
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38 By _____
39 Timothy J. Gagen, Town Manager
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41 ATTEST:

42 _____
43 Mary Jean Loufek, CMC, Town Clerk
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Receipt For Earnest Money

The undersigned hereby acknowledges receipt of the Earnest Money described in Paragraph 3(A) of this Contract, and agrees on behalf of the Closing Agent that such funds shall be held in the Closing Agent's trust account on behalf of the Seller and Buyer.

Signed the ____ day of _____, 2009.

LAND TITLE GUARANTEE OF SUMMIT
COUNTY

By _____

Title: _____

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: October 7, 2009

Re: Town Council Consent Calendar from the Planning Commission Decisions of the October 6, 2009, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF October 6, 2009:

CLASS C APPLICATIONS:

1. Lot 1, Block 9, Breckenridge Airport Subdivision Change of Use, PC#2009047; 1925 Airport Road Change of use of 980 sq. ft. office space into 1 bedroom, 1 bathroom residential apartment. Approved.
2. Entrada at Breckenridge Airport Subdivision Change of Use, PC#2009045; 32, 36, 74, 110 Huron Road

Modification of the approved development permit for Entrada at Breckenridge to remove the vehicular access connection between Lot A of Entrada and the parking lot at Summit Ridge Center and to move the eastern access drive on Tract A to the western edge. Approved.

CLASS B APPLICATIONS:

1. Carter Ridge Residence, PC#2009076; 112 North Ridge Street
Construct a new single family residence with 4 bedrooms, 5 bathrooms, 8,174 sq. ft. of density, 5,113 sq. ft. of mass, and an accessory apartment for a F.A.R. of 1:1.64. Approved.
2. 49 White Cloud Variance, PC#2009043; 49 White Cloud Drive
Variance to setbacks allow 7.5 foot side yard setbacks. Approved.

CLASS A APPLICATIONS:

1. USPS Satellite Building, PC#2009046; TBD Airport Road (Between 1700 & 1760)
Courtesy review of request to relocate the existing 1,500 square foot "NPU" (Non-Personnel Unit) Post Office building from Lot 1, Block 2, Parkway Center to a portion of the Town owned Lot 4, Block 5, Breckenridge Airport Subdivision. Approved. Recommendation to the Town Council for Approval.

PLANNING COMMISSION MEETING

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

ROLL CALL

Rodney Allen Michael Bertaux Leigh Girvin
Dan Schroder JB Katz Jim Lamb
Dave Pringle arrived at 7:24pm

APPROVAL OF MINUTES

Ms Girvin had a change on page 8. She meant to reference the Snake River Water District, not to imply the Breckenridge Water District, would be limiting the amount of sod. With no other changes, the minutes of the September 15, 2009, Planning Commission meeting were approved unanimously (6-0).

APPROVAL OF AGENDA

Mr. Neubecker requested the Town Council Report be moved to the beginning of the agenda immediately after the worksessions. With no other changes, the October 6, 2009 Planning Commission agenda was approved unanimously (6-0).

COMBINED HEARINGS:

1. USPS Satellite Building (CK) PC#2009046, TBD Airport Road (between 1700 & 1760)

Mr. Kulick presented a courtesy review of the application to relocate the existing 1,500 square foot “NPU” (Non-Personnel Unit) Post Office building from Lot 1, Block 2, Parkway Center to a portion of the Town owned Lot 4, Block 5, Breckenridge Airport Subdivision. No retail service is planned at this time. Building materials consist of a green metal roof, cedar lap siding, a brown split face block base, bronze clad windows, and round green columns. Colors were originally designed to be consistent with the beige and green scheme of the Parkway Center. Location is just north of Airport Road Auto and just south of the dirt road to overflow ski area parking. The plan calls for 14 parking spots, snorkel lane landscaping plan similar to what is seen now at current location.

A project proposed by a governmental agency is not formally subject to the Town’s review process; however, the U.S. Postal Service has been cooperative to work with the Town to design a facility, within their constraints, that fits Breckenridge, and undergo a courtesy review by the Planning Commission. Because there is no requirement for this project to obtain a development permit, the presented findings and conditions were included for advisory purposes.

The Planning Department was supportive of the proposed site plan and believed the U.S.P.S. had made a commendable effort to incorporate good design elements. Staff expected that the applicants would support the landscape plan suggested by the staff. With the exception of this one outstanding item for this courtesy review, staff recommended the Planning Commission provide a favorable recommendation to the Council based on the evidence of having a passing point analysis.

While this is a courtesy review, the applicant was open to comment and willing to incorporate suggestions. Accordingly, staff suggested the Commission comment specifically on anything they had concerns over.

Mr. Lee Heddick (USPS, Applicant): Not quite sure in the right of way in terms of contribution of paving right of way, needed some guidance as to what is expected of USPS. (Mr. Mosher: Right of way does not exist yet. Would expect paving of half the right of way once it is created.) (Mr. Grosshuesch: We will be working with Town Manager’s office and the Town Engineer. We are not in a position to give a definitive answer on those details yet.) Just looking for some clarification. In landscape plan, it talked about grass being what we have now. Other jurisdictions looking for more xeriscape. (Mr. Mosher: Standard conditions call for native grass seed, not sod or something like that.) Noticed there are five parking spaces further from building, seven closer. That creates negative points. (Mr. Kulick: We did not recommend negative points; that was from draft report.) Exterior lighting, there is permanent lighting on the building, is permanent lighting on the building currently perceived as over lighting at this time? (Mr. Neubecker: Can you clarify “overlighting”?) Too much lighting. (Mr. Neubecker: We do have a dark sky policy, downcast & fully shielded. We would ask the applicant to meet that policy.) We are certainly willing to take care of that.

Mr. Allen opened the hearing to public comment. There was no public comment and the hearing was closed.

Commissioner Questions/Comments:

Mr. Schroder: Trash component, trash taken away from site by person who delivers the mail. Does that person know that this is part of his duties? (Mr. Heddick: There is no change for us, that staff member already does that from the current location.)

Final Comments: Thanks for coming from Denver. (Mr. Heddick: staff has been wonderful to work with.)

Ms. Girvin: This is not on the road for the overflow skier parking access? (Mr. Grosshuesch: No.)

Final Comments: Thank you also, thank you for the communities request to work on this as an alternative.

Mr. Lamb: Final Comments: Agreed with what has been said, thank you for coming.

Ms. Katz: Final Comments: Appreciated your comments on what you are willing to do to work within our ordinances.

Mr. Bertaux: Is there water to the site for landscaping? (Mr. Kulick: There are utilities to the site, they need water for the restrooms, utilities are accessible.) Is there going to be potential for expansion? (Mr. Heddick: Right now we are not in a position to financially, but after this experience with town staff, I am going to put Breckenridge on the list for potential future expansion.)

Final Comments: Would like to see paving, see parking paved, don't remove exterior lighting for safety of residents going to location late. Consider land acquisition in the future. Landscaping, supported all of that going in suggested by staff report. (Mr. Truckey: The site provides potential expansion to the east, expansion was thought of, expansion potential is there.) On land they don't own? (Mr. Truckey: correct.)

Mr. Allen: Can you walk us through site plan? (Mr. Kulick: Showed the site plan in more detail to the commission. We are working with the notion that USPS would be leasing the land from the Town. Functions a bit differently where the USPS will not own the lot. Mr. Mosher and Ms. Best worked on the plan to create some flexibility in the future due to it being a lease. Lot line splits with parking and drop box. Similar to in front of Town Hall where drop boxes are right on the sidewalk and are probably actually in the right of way.) (Mr. Mosher: Lot A, future development, was pushed further south to utilize the most efficient way to put the USPS building on the lot.) (Mr. Grosshuesch: No concurrent subdivision. In the future, we may need to establish the subdivision, and then would establish the right of way at that time.) What happens if in the future the boxes are in the right of way and don't work any more? (Mr. Kulick: This is viewed as a temporary solution with potential to extend into the future. We may decide in the future we want a different configuration, hard to conceptualize when we are unsure, this may be the final plan, or we may need to reconfigure in the future.) (Mr. Grosshuesch: We can make it work with the license agreement.)

Final Comments: Liked the location. Concerned about future expansion, as this lot gets developed, may see future concerns. Would like to see future potential bus stop, if needs arrive over the years. Supported the application.

Ms. Girvin made a motion to approve USPS Satellite Building, PC#2009046, TBD Airport Road, and to recommend approval by the Town Council of USPS Satellite Building, PC#2009046, TBD Airport Road. Mr. Schroder seconded, and the motion was carried unanimously (6-0) with Mr. Pringle abstaining.

WORKSESSIONS:

1. Preservation Village at Reiling Road

Mr. Mosher presented. The Town has been approached by Mr. Royce Tolley, Preservation Development Group, LLC, and Mr. Marc Hogan, BHH Partners, to development Lots 1, 2 and 3 (3.85 acres) at the Vista Point Subdivision. The current Master Plan and Plat are for three single family lots with a 4,000 SF/home density limitation. The proposal was for 6 two-story duplexes (12 units) to be accessed off Reiling Road, across from the Little Red Schoolhouse. This proposal has been before Town Council for worksession. The Council requested the Commission to review and comment on the proposed plans against the Development Code.

The three existing market-rate single family SFEs would become three duplex SFEs and the remaining nine units (asked to be provided by the Town) would be for equity/deed restricted workforce housing. Site plans, floor plans and computer model renderings were provided to the Planning Commission for review.

Part of this process would include creating a new master plan and subdivision with a Development Agreement approved by Town Council. The property would no longer be part of the Vista Point Homeowner's Association (at the HOA's request).

Staff was initially seeking Planning Commissioner input on how this proposal would fit on the site, specifically how the proposal would conform to Policy 7, Relative, Site and Environmental Design, Policy 8, Absolute, Ridgeline and Hillside Development and Policy 9, Placement of Structures.

Efforts have been made to minimize the visual impacts of the development. All units would be two-story with tuck-under garages accessed from a common driveway along the front of the units.

Staff sought Planning Commissioner comments on the proposal as it related to Policies 7, 8, and 9 of the Development Code.

1. Would the Commission suggest negative points under Policy 7/R?
2. Did the development meet the intent of Policy 8/A?
3. Would the Commission support a variance for Policy 9/A?
4. Were there any other "fit-test" concerns the Commission might have?

Since this is affordable housing project, negative points will likely be offset. Past discussion was always about the negative impact to the site.

Mr. Rossi: Questioned the applicability of Policy 8 from the past submittal. (Mr. Mosher: This location was already platted when Policy 8 was not yet in existence.)

Mr. Marc Hogan, BHH Partners, Architect: Thanks to Mr. Mosher and Ms. Best for working on this through three different revisions. 12 units, 11-3bedroom, 1-2 bedroom, all have garages, two have double car garages, two spaces plus 1/2 space for guests. All other units have three spaces. One of spaces in every case is tuck under garage.

Highest building height would be 25 feet; Building 12 would be 1.5 stories. Drive is basically level. Units have tuck under garages with parking in front of the garages. Explained unit types. Recessed turnout on Reiling Road for fire department turn out or bus. Keeping trail access preserved. Will dedicate easements for those trails so they are formalized and cleaned up. Regarding Policy 7 site disturbance, we would largely confine to already disturbed areas on site. Terracing building on edges, stepping up the hill.

Key element shown was that we were able to eliminate secondary retaining wall. Each unit can gain access to trails at rear. Solar thermal will be roughed in on all the units. Minimized paved areas, turned end units 90 degrees to reduce retaining walls and paved areas. Front retaining walls under four feet in height. Regarding privacy in Policy 7, buffered from Little Red Schoolhouse, Reiling Road, sites are quite large. Green areas are the sides. Will restrict development on that, will be private open space. Felt we have dealt with Policy 7 adequately.

Regarding Policy 8, we are willing to do muted colors, lighting, everything discussed in Policy 8. Regarding Policy 9A setbacks, right now is seven feet can fix and go to 10 feet, can slide buildings back 3 feet if the Planning Commission suggests. This will be a great addition to the Town's affordable housing.

Mr. Sam Kellerman, BHH Partners: Topography is taken from Google Earth, so topography as accurate as satellite can be.

Mr. Royce Tolley, Preservation Development (Applicant): Trying to meet criteria in several local areas of Breckenridge to create affordable housing. This one is near daycare, transit and town. Have to have enough density in order to meet the approximately \$300,000 sales price. We have reduced the scale and size after comments we have already received. Don't want to overwhelm the community. Perfect location, small number of units, similar type of housing that is already there. Number of smaller projects to meet great demand. Not asking for any more than the three existing market share units. Frontage drive to keep people off main road. Preferable to have 12 - 1,200 square foot houses instead of three 6,000 square foot houses. Mr. Hogan has done great job minimizing the damage to the area. All but one are 3 bedroom, one 2 bedroom, proposed to meet 110% to 115% AMI.

Mr. Allen opened the hearing to public comment. There was no public comment and the hearing was closed.

Commissioner Questions/Comments:

Mr. Schroder: Regarding the frontage drive, it looks like a dead end driveway and not circulation. One policy is about circulation safety. (Mr. Hogan: We met with Mr. Jay Nelson, Red White & Blue Fire District, that is why we have the pull out. Circulation policy in development code is separate from the fire department requirements, and we didn't want to have issues with the fire department.) (Mr. Mosher: We have a precedent in The Highlands with a private drive and a similar pullout for the fire department.)

Final Comments: The representative stakes placed for the site visit on the site look so far back into hillside; regarding Policy 8/A, is all of it able to stay on the property? 17 feet tall retaining wall behind and part of units, massive slice into hillside, supported envelope site disturbance, but would suggest negative points for cutting into the hillside under Policy 7/R. This many units create an intense space, and also affects Policy 7. Hillside development is relevant to Policy 8; there are points listed that are of importance to community value. You are building around a school, park, proximity to town; community hub, protection, vibrancy, place for kids and families; I don't see detriment to the community. Regarding Policy 8/A, no problem there. Views would be consistent with development around it now, similar to Vista Point. Building itself as retaining wall is good. Social trail may be compromised, but clearly said that would be protected. Regarding Policy 9/A, Placement of Structures, why would we support any variance? Since we can get to 10 foot setback, let's do that. Wanted to reaffirm to Mr. Rossi the automatic 10 positive points for employee housing with these deals, we need to have Town Council look the impact potential. (Mr. Bertaux: Besides, an applicant gets positive ten (+10) as well as keep the three market units.)

Ms. Girvin: Requested clarification on the site plan. (Mr. Mosher clarified.) 110%-115% AMI; are we getting close to that need or exceeding? (Ms. Best: With our goal of 900 units, a big chunk of those are very low AMI, but second largest category is over 175%. There is still a demonstrated need and we definitely need these 12 units in this range.) (Mr. Bertaux: Where is the greatest need?) (Ms. Best: Under 60% AMI rental units.)

Final Comments: Supported negative points being assigned for Policy 7/A; lots of site disturbance, need to look in terms of code, not what was previously approved before. (Mr. Bertaux: Good point on the aspen stand.) Policy 8/A does apply. (Read from the code.) Variance for Policy 9/A; didn't like end structures so close to end of road, pushing into hillside would be better, but still too much going on generally, getting rid of bookend units would help it fit a lot better.

Mr. Pringle: Regarding Policy 7; Staff suggested negative points and Mr. Hogan was saying positive points? (Mr. Mosher: Staff considered the impact of the large cut into the hillside for the development.) Requested clarification on amount of disturbance to the site. (Mr. Mosher: Described disturbance, indicated on site plan.) The whole area from the approved three SFEs will be disturbed in addition to the ends. The west end disturbance is outside the existing platted envelope area (Mr. Hogan: The building envelopes are set disturbance envelopes, net effect is we are disturbing a longer area of the site, reality is as anxious as we are to help staff with point analysis, with the affordable housing we have a ten point ability to mitigate certain things.) (Mr. Mosher: Suggest the Commission interpret the impacts on the Code only, not previous approvals or existing disturbance.)

Final Comments: Disturbance is significant pre Policy 7; wanted another solution to end units being too close to the front setback. Agreed with Mr. Bertaux on Policy 8/A - not applicable. Would like to comment to Town Council about providing free density and having applicant easily making up any negative points with the positive 10 points for the employee housing. Need to consider the impacts of 36 cars potentially, have to look at number of units on property and look at it harder even though it is employee housing. We have been very lenient in past, and that is now creating some issues.

Mr. Lamb: Would it be safe to say any single family structure built on the existing platted envelope would take up entire disturbance envelope? (Mr. Mosher: Not with structure, but between access, decks and house, most likely.) Requested clarification regarding drainage? (Mr. Hogan: We worked with engineering on drainage.) With three SFEs, how is site impacted?

Final Comments: Commendable for affordable housing, but it is a lot of impact on the site. There will be some nice specimen trees that will be taken out. Agreed with negative points on disturbance.

Regarding Policy 9, supported variance to setbacks. Liked affordable housing, amount of overall square footage being similar to that of the 3 single family houses; concerned about disturbance envelopes and amount of disturbance.

Ms. Katz: When we are looking at this and thinking about points, is it appropriate to think about what is already approved instead of looking at starting from scratch? Lots of disturbance there already. How much site disturbance do you want in the end? (Mr. Mosher: The Town wants whatever best meets the Development Code.)

Final Comments: Impossible for me to keep out of mind that there is existing application and assuming negative points would be incurred under Policy 7/R. I could live with negative four (-4) points under Policy 7/R; Regarding Policy 8/A, no problem, not view corridor, yes iconic aspen stand, but compare northwest of property and aspen stand and east and gaping scar of the land, it washes as a net effect. Regarding Policy 9/A, it sounds like Mr. Hogan could move it, could support the variance, don't want anything moving further back, rather have variance than moving back. Fit test, agreed with lots of program, but this is a worksession; what would you get rid of? Can live with what is there now. In the end I still have to say I didn't like application the 1st time, and I like it a whole lot better now. Reflecting on the Valley Brook people camping out over night for a unit to buy, it screams to me we still have work to do. I am in favor of it. Should we revisit making up points via employee housing with the Town Council? I hope this application goes forward.

Mr. Bertaux: What about the small pile of dirt there now? (Mr. Mosher: Referenced photographs of the site.) Requested to see rear of units again. (Mr. Hogan: The roof comes down within about five feet of the rear. Did have three stories, but tried to stay in context with neighborhood and eliminated third floor.) Was there a height issue? (Mr. Hogan: We did not feel 3rd floor was compatible with neighborhood. Comments that Vista Point looked too tall from Wellington. Did not want to overreach on building height.) Is the presented photo from units 5-6? (Mr. Mosher: Yes, indicated on site plan.)

Final Comments: Compared to previous application, I appreciate the direction of affordable housing, three units on top of three already approved, still seems to me that there is a lot of program on this site. Cuts into the hillside. Seems like a long stretch of cut, large cut and fill on hillside that could, with three market units, not cut into the hillside so much. Still significant vegetation on this site. Units 1A and 12B being so close to the road, perhaps flare out on side instead to cure setback violation. If it is supposed to be 10 feet then be at 10 feet. Supported variance for Policy 9 that they would be at 10 feet, but did not support the retaining wall moving back along the whole site. Protect vegetation on the site already. Regarding Policy 8/A, have to say yes it does meet the intent of this policy. But, the Code added some of that policy seems rather broad. May not meet the intent pre these definitions. Policy 7 is significant; yes, negative four (-4) points for site design & grading because of cut and fill. Also negative four (-4) for significant natural features, could slide building away.

Mr. Allen: Questioned slope topography. (Mr. Mosher: This is based on what is there now. Flat area to pull out and park noted on site plan.) Requested Mr. Hogan address topography. Explain and show the car ports? (Mr. Hogan: Car space in front of garage door, two spaces in front of each garage door. Garage is pushed back underneath. Garage is oversized, space in front of car for storage of bicycles and toys. Go into unit through lower entry from garage.) Three market units, do you know which three? (Mr. Tolley: No.) During construction, will hill be cut back and then filled in? (Mr. Hogan: That is correct. We will build the retaining wall and then backfill.) Retaining wall is 17 feet tall all the way along? (Mr. Hogan: Roofs will not dump between buildings. Otherwise, snow hooks over access windows.)

Final Comments: Great site for affordable housing. Thank you for formalizing the trail. Perfect site for solar thermal; great to integrate or design for it. I have a hang up on the car ports, will be full of junk. Would rather see large two-car tandem garage. Regarding Policy 8/A, you have done a pretty good effort of blending into terrain, ok with Policy 8/A, but in regard to landscaping, you will have to do a bunch on south side in buffering bearing in mind fire ordinances. Liked what was done with height compared to previous. Liked Mr. Bertaux's idea of pushing two end buildings and making them flared out to get more distance from the street. Any specimen trees being taken out? How will you replace them in your buffering? Regarding Policy 7/R, you are in trouble there with the 17 foot retaining wall. In the second paragraph of 7/R, "some may be unsuitable for development, buildings may be located elsewhere". Town Council comment that giving away points for affordable housing

is problematic, this is only 12,000 square feet, but the impact of people cars traffic has a lot more impact on the community, wants Town Council to look at giving away the points automatically, is giving 10 points straight away proper? Seems like we are opening up every affordable housing project mitigating every negative point we throw at them.

Mr. Rossi: Rear of units is tailings? (Mr. Hogan: Yes, otherwise the western side is trees.)

Final Comments: Background reason you are seeing this is joint session where Leigh Girvin was the voice for us to really use you guys early on. Council did not feel comfortable with this project early on. We had a general sense of being rushed. Perfect example where something should be tested by Planning Commission before Town Council tries to assess. The three-story to two-story was not so much architect change of heart as Town Council pressing against a looming site. Town Council had issue with it. If this does come back to hearing stage, the green and grey shading on plan presented is deceiving, would like to see actual overlay of what the heights and actual backdrop are. Hope to see more accuracy.

TOWN COUNCIL REPORT:

Mr. Rossi: You may already know Valley Brook is delayed a bit due to grant technicalities. Base Building has left the project. Sure it will be topic next Tuesday on how to move forward. (Mr. Allen: It has been pushed to spring?) (Ms. Best: Yes, we are looking at spring start due to CDBG grant issue, can save a bit of money doing it in two stages subject to who owns land, once infrastructure is completed, then transfer to Mercy. We just got word today on vertical development, which will help us get to the final. Not anticipating start until the spring. Mercy was negotiating with Base could not get to contract, beginning negotiations with other contractors.) Tuesday is our fun budget retreat, come by!

CONSENT CALENDAR:

1. Lot 1, Block 9, Breckenridge Airport Subdivision Change of Use (CK) PC#2009047, 1925 Airport Road

Mr. Bertaux: Is this at the Summit Landscaping building? (Mr. Kulick: Yes.)

2. Entrada at Breckenridge Development Permit Modification (MM) PC#2009045, 32, 36, 74 and 110 Huron Road

Ms. Girvin: I think it is a shame Summit Ridge is not offering access.

Mr. Bertaux: Any points?

Mr. Schroder: This is strictly an access issue? (Mr. Mosher: Yes.)

3. Entrada at Breckenridge Subdivision Permit Modification (MM) 32, 36, 74 and 110 Huron Road (***Removed at the request of the Applicant.***)

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

FINAL HEARINGS:

1. Carter Ridge Residence (MGT) PC#2008076, 112 North Ridge Street

Mr. Thompson presented a proposal to construct an 8,174 sq. ft. residence with four bedrooms, five bathrooms, and an accessory apartment.

Changes from the Previous Submittal

Change to all windows on west side of building; previously windows were all together to look like large window, so applicant separated them, which meets historic guidelines more appropriately. Applicant changed the roof pitch of the north module from 12/12 pitch down to a 10/12 pitch, which in turn lowered that roof mean height from 22' – 11 ¾" down to 20' – 11 7/8". This change in the roof pitch and roof height will help the neighbors to the east to still have their view of the Ten Mile Range. The applicant has added sixty square feet of living area; 30 sq. ft. upstairs as a breakfast nook and another 30 sq. ft. underground just below the new proposed breakfast nook. The new kitchen nook also allows for a more interesting roof form on the north module on the French Street side of the building and makes the connector element appear shorter in length. The applicant has changed the roof form above the garage at the request of Staff and the Planning Commission. Staff believed the new shed roof off of one garage bay was a positive change to the design. The applicant also switched the exterior logs to the north module as that is closer to the Carter Museum. At Staff request, the applicant changed the exterior material of the garage to match that of the south module, as opposed to the same exterior material as the connector element.

Mr. Al Stowell, Applicant: We made every change you requested from the last hearing. Mr. Matt Stais and I have met a couple of times to address his issues. Also we put two gables that weren't there before, which allowed us to make the window change. We got the window design from the house to the south of Mr. Steve West's house. Pitch will enhance solar capacity and the concerns from the inn across the street to the East. You will see three dimensional image on the monitor. We moved the post off the south module and cantilevered that more.

Mr. Thompson echoed that Mr. Stowell responded to the Planning Commissions requests and suggestions. Two remaining issues were Policy 145 and exterior materials; currently doesn't meet Policy 145, Staff would like Planning Commission comment on that. Specifically says logs are discouraged, but materials presented are historically accurate. Only 4" lap siding we have is on the connector. Precedent of 100 South Harris Street, where they found logs during construction and Planning Commission approved keeping them. Energy conservation, we have not finished the revamp of Policy 33, but the information that we got from Innovative says that panels offset more than 100% of this project's energy use. Would be interesting to look at some of these down the road to see if Innovative delivers on what they say. Except for snow guard, all south facing roofs will be filled with solar panels, believed that is worth positive six (+6) points.

Mr. Stowell: Regarding the solar, Xcel Energy is trying to charge more for energy if you use their energy and have solar panels. That is in the legislature now, go figure. 15% increase in efficiency annually with technology, using Xcel's rebate for the energy I will put back into the grid, works out to about \$3,000 per year which is good for me as well as the community. Positive six (+6) points would encourage others to use technology available. We worked hard over last five years to come up with a design that benefits the community as well as me. Hopefully when you turn up the hill on Wellington, the nicer view and correlation to museum will be apparent. Asked for Planning Commission support with 60% of property being open space. Less disturbance on site.

Staff recommended the Planning Commission approve the Carter Ridge Residence, PC#2009076, Lot 3, Abbetts Addition, located at 112 North Ridge Street, with the presented Findings and Conditions.

Mr. Allen opened the hearing to public comment.

Mr. Lee Edwards, property owner across French Street: 52 foot setback, what set that? (Mr. Thompson: Mr. Stais's building and the County building.) Two facades, one of two would violate the 52 feet. Walking down Ridge Street, envisioning what it would look like, suggested roof coming around on west facades, two faces being so close to each other and so similar, need to enhance them a bit more so much of the rest is so interesting.

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

Commissioner Questions/Comments:

Mr. Schroder: In support of point analysis. Policy 145, given the history and other examples, contradiction between 145 and North End Historical, you have made a conscientious step to make it work, it does adhere to 145. In support of it as it is. Didn't mean to say it adheres to 145, 145 does not apply to this application. I am ok with the logs.

Ms. Girvin: I had a really hard time with Policy 145, not meeting it, the structure is very modern looking, very good looking, but Ridge Street shows a very modern building with piece that juts off north section of south structure. Would not see bowed top window on log. Vertical lap on South building more appropriate for accessory, this is primary. Only place we see horizontal lap is on connector. As far as fitting into historic district, my opinion is that it does not fit in. I am talking aesthetically here. Get rid of corrugated, board and batten on connector. Everything else is exemplary, I have a problem with Policy 145 and I know staff does too.

Mr. Pringle: On the materials sample, horizontal lap siding will be four inches? (Mr. Stowell: Yes.) Let the record reflect that. (Mr. Stowell: We actually had to find a special place to mill the siding to that size.) Policy 145 does apply, but hand hewn logs are appropriate. Need Policy 145. Energy conservation is worthy of positive six (+6) points and is appreciated. Long process, you have made a great effort. Architectural compatibility, great work. Supported application.

Mr. Lamb: These are not round logs, but hand hewn? (Mr. Stowell: Correct.) Was a change to west facades discussed? (Mr. Thompson: Yes, but we felt the 52' setback was most important. Patio would not count but overhanging roof would.) Appreciate all the changes you made. Policy 145 does not

apply in this application, it is across from the Carter Museum. In the Historic District we focus on one little section, I hear Ms. Girvin, but the Applicant was creative with historic material which I personally like. Nice to kick it up a little bit. Really appreciated solar information on south facing and your data, liked to see that. Clearly eligible for positive six (+6) points on energy. Would like to see results, does it work at altitude? Round saddle notch you don't see, fact that it is hand hewn works well.

Ms. Katz: Confirmed the measurement of Mr. Stais office, deck not counted in the setback. (Mr. Thompson: Deck was not historic.) I live in Longbranch and have always been worried about this spot. It feels so much better now. The Planning Commission has a long standing tradition to not change points. When I walk past courthouse, I never really feel courthouse next to me, great suggestion to break up the structure a little bit. Site calling to do something there on the west facade, but I don't feel that walking there. Do with that what you want. Supported point analysis. Data to support positive six (+6) points; wanted to know if the Applicant would share with the Town in the future if their expectations are met. Would love to know so we can rely on that data. (Mr. Stowell: Xcel has tried to go to legislature to get these panels eliminated.) (Mr. Stowell: We met with the neighbors to address any concerns.) Thank you for working so hard. On Policy 145, I think this should not have four inch lap siding considering it extends a very small period representation, I think Carter Museum is the only real representation of that period. (Mr. Thompson: Maybe some barns and 100 South Harris Street.) So very for extending that representation; it is more appropriate to extend that period's representation.

Mr. Bertaux: Positive six (+6) points for PV, glad to see there is commitment to that, will follow legislation on that. We can contact State Senator Gibbs on that. Ms. Girvin's suggestion is good, roof overshadows entry. Might improve look of that area. Sidewalk angles to front door, patio is called out and would be appropriate there. Agreed with Ms. Girvin, does not follow Policy 145 due to too much of a mix of materials for it to say it is all wonderful especially with Carter Museum across the street. Not a big fan of corrugated metal, but no reason to change point analysis, agreed with staff there, supported the project.

Mr. Allen: Ms. Katz echoed all my comments. Copy and paste her statements to mine. Policy 145 does apply, but it meets it with the hand hewn logs.

Ms. Girvin made a motion to change the point analysis for the Carter Ridge Residence, PC#2008076, 112 North Ridge Street, to state the Application does not comply with Policy 5A which relates to Historic Priority Policy 145. Mr. Bertaux seconded. The motion was denied (5-2).

Mr. Pringle moved to approve the presented point analysis for the Carter Ridge Residence, PC#2008076, 112 North Ridge Street. Ms. Katz seconded and the motion was carried (6-1).

Mr. Pringle made a motion to approve the Carter Ridge Residence, PC#2008076, 112 North Ridge Street, with the presented findings and conditions. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

PRELIMINARY HEARINGS:

1. Whitehead House (Prospector) Renovation and Landmarking (MM) PC#2009042, 130 South Main Street
Mr. Mosher presented a proposal for a historically accurate restoration of the west façade of the Whitehead Building, a new foundation beneath the historic building, restoration and full basement for the historic shed, removal of the east non-historic additions and replacement of a historically compliant new addition. The upper level will be for residential use while the main level will remain as restaurant use.

Introduced Mr. Steve Pinewski (Applicant) and Mr. Andy Stabile (Architect).

The applicant and agent have worked closely with staff to work out the details of this proposal prior to this preliminary hearing. There have been pre-application meetings with both Planning and Building staff to answer questions as the drawings were created. Under density, mass, height, over in parking, setbacks not affected. Density in report was over, but has been fixed since the report. Upper floors have been preserved perfectly. A lot of design standard handbook refers to developing empty lot, this is a renovation. On ADA, Applicants have met with Chief Building Official. Building is actually below sidewalk; the building will be raised to meet accessibility. Foundation will be placed under the building. Building raised to meet the sidewalk and drainage issues repaired. Still no issue with height. Between the

buildings, lots of drainage issues. More permeable with correction to site. Drainage from back of building flowing toward the alley, so drainage is being looked after. Primarily commercial building, zero setbacks. Snow removal is ample. Landscape, not a place where you see multiple trees, they have permeable space where gravel is placed for snow. Three spaces for the residential, additional space for manager of restaurant or chef. Only required to have two on site, so they are over parked. Impacts with unit above rented, could be more than two cars there. For projects under 5,000 square feet, no need for employee housing. Policy 9 for positive nine (+9) points for foundation plus additional work. Great amount being done to modernize building while restoring it. Anticipated positive points for historic restoration.

Staff had the following questions for the Commission and welcomed any additional comments regarding this application:

1. Based on the removal of the existing addition and the replacement of the new addition, did the Commission believe that Priority Policy 80A (concerning links) was non-applicable?
2. Would the Commission support rotating the existing roof over the shed 180 degrees to correct drainage issues and find that the intent of Priority Policy 69 was being met?
3. Did the Commission concur with staff regarding the positive nine (+9) points for historic restoration efforts?
4. Did the Commission support having the building and the shed locally landmarked?

Based on the Planning Commission's comments, the Planning Department recommended this application return for second review. All other priority policies are met with this application.

Mr. Steve Pinewski, Applicant: My building company, Pinewski Builders, will also be doing construction. First historic construction project, but not first construction project in Town. We are excited to put it back to historic front. Building is a wreck right now, drainage, foundation, bringing it up to nice strong lasting building is aim and goal.

Mr. Allen opened the hearing to public comment.

Mr. Lee Edwards, Local Architect: Fantastic. Very encouraged. Is it still going to be restaurant use? (Mr. Pinewski: Yes.) Addition won't be visible from Main Street? (Mr. Mosher: No.)

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

Commissioner Questions/Comments:

Mr. Schroder: Appreciated historic colors, is really helpful. Connector issue pre Policy 80/A, does not seem to apply, the link not visible from alley of Main Street. Shed change OK with Policy 69. Last Friday three Commissioners including myself attended a historic preservation workshop, and in one of the sessions they explained the adaptive reuse criteria for historic structures. So I am in full favor of spinning roof to assist drainage, and in support of the point analysis and local landmarking. To have local landmark, do we need to have list of criteria met? (Mr. Mosher: The more you meet the better, but only have to meet one criteria.) Thank you.

Ms. Girvin: Is the Wildflower historic? (Mr. Mosher: Does not show on the Sandborn Maps, but falls into our period of significance. Sistering framing is when 2X4 balloon framing has new stronger framing like a 2x12 attached to it to help support.) Did you consider a full basement beneath the restaurant? (Mr. Pinewski: We initially did, but from a cost perspective it would be too expensive and a danger to the neighboring buildings. Building to the North only 18" away.) Door next to the reatroom has conflict with kitchen door. (Mr. Mosher: Staff will use double swinging doors next to bar. This doss is little used.) Will building be separated into Condominium unit? (Mr. Pinewski - will be an apartment under same ownership. (Mr. Neubecker: Not a planning code requirement, may be building code.) Really awesome project. Yes, yes, yes, and yes to the questions Staff posed.

Mr. Pringle: Do we address the connection via Policy 80/A? (Mr. Neubecker: Is the addition more than 50%, is addition higher than original structure? Then connector is required. However, a step in building form of a foot or so distinguishes between old and new well.) Agreed with Mr. Lamb. Solid to void ratio comes into play here? (Mr. Mosher: Front lower level was all glass on historic photographs, not a lot of information on the detail of the door. As far as the Core Commercial historic standards,

this is very classic, except the recess of the entry door.) Did we want to have more solid, not early siding? (Mr. Mosher: The idea was to follow the photograph.) Tally ho, no issues.

Mr. Lamb: I have done this myself, you have a lot of work ahead. Off to a fantastic start. Priority Policy 80/A non applicable to my reading. Shed makes sense. Supported work and application.

Ms. Katz: If we do suggested specialized finding, how does that affect the application? (Mr. Mosher: It would go forward with that finding.) (Mr. Neubecker: You could also grant a variance to this policy.)

Mr. Bertaux: What will happen upstairs? (Mr. Pinewski: It will be a 2 bedroom apartment; we are not sure if we will rent that or not.) Supported project.

Mr. Allen: Me too! Agreed with all other commissioner comments.

Mr. Pinewski: Can I get a demo permit? (Mr. Mosher: No, you still need to get Planning Commission approval at a final hearing and then Town Council approval prior to applying for a demo and building permit.)

COMBINED HEARINGS:

1. 49 White Cloud Variance (MGT) PC#2009043, 49 White Cloud Drive

Mr. Thompson presented two additional letters of opposition to the setback variance that came in after the deadline. There are eight total opposition letters. Presented photographs in case the Planning Commissioners did not have a chance to visit the property.

Mr. Thompson presented a proposal for a variance request from Policy 9, Placement of Structures, to allow reduced side yard building setbacks on Lot 4, Block 1, Warrior's Mark West Filing 3. (No home was proposed at this time. The home would be designed after the setbacks are determined.) Current Town of Breckenridge setbacks are 25' front, 50' combined side, 15' rear. Proposed setbacks are 25' front, 7.5' side, 7.5' side, 15' rear. Applicants are property owners, Antoinette and Kurt Harries. Also present were Mr. Brad Appel and Mr. Mark Meiser, potential purchasers of the lot, Mr. Doyle Richmond, Realtor for the owners of the lot in question, Mr. Garold and Mrs. Mary Nyberg, resident of house to the rear of the lot, and Mr. Bernard E. Wieland and Mrs. Dee Phelps, owners of the 39 White Cloud Drive immediately adjacent to the lot.

No plat note of any setbacks on plat for Warrior's Mark West Filing 3, so this parcel reverts to current Town of Breckenridge setbacks. Mr. Brad Appel and Mr. Mark Meiser are both builders who can't build reasonable size house with those setbacks. Not a large impact from the street, but most of the neighbors feel the impact to their lot, not from the street.

Staff worked closely with the agent to address all concerns about developing this property. Staff believed all applicable code issues have been addressed. Staff welcomed any additional comments from the Commission.

The Planning Department recommended approval of the setback variance, PC# 2009043, by supporting the presented Point analysis, showing a passing score of zero points, with the presented Findings and Conditions.

Mr. Brad Appel, Applicant: I am a Denver homebuilder. I lived here several years ago and fell in love with the area. We want to build family home, not a spec house, that we can enjoy year round. Two of letters originally submitted by people over 300 feet away, not even on adjacent lots. We are presenting the way we designed this lot. Tried to slice every which way possible. 1,500 square foot house with no negative points. Economy of scale come in to play where the lot cost \$299,000 plus building costs, impossible to build on because of the cost. Houses in neighborhood are comparable sized lots, tried to distribute equally. Some variances in the neighborhood already, precedent set don't meet Summit County requirements. Another 4,200 square foot house, 3,800 square feet, trying to maintain with what the rest of the neighborhood has. All came in at 7.5 foot setbacks. Open space over crowding lot, lot size creates hardship. Unfair to have inability for sellers to sell the lot. We plan a very robust landscape plan. Meeting their request of over 30 feet to the rear with 32 feet. On Policy 30-5, desired character and function, 3,500 square feet house meets that consistency, not asking for multifamily or condo or something, just a single family residence.

Mr. Mark Meiser: I am a Denver builder as well. Mr. Thompson and Mr. Appel did a good job. We worked diligently with our architect to create solution. Most importantly we did center the structure in the middle of the lot. Two existing homes in front have 7.5 foot side setbacks, which is what we are asking for. Based on lot itself our orientation on Baldy, we wanted to work on existing structures to design something that fits into that context. To

Mrs. Nybergs' house in the back, we worked with architect to orient house properly. 35 foot height limit a bit of an issue, because from front to back we have a 20 foot drop off; looking at size reduction there as well. The deck will be elevated 13 feet while Mrs. Nybergs' deck is on the ground, 35 feet away. We are excited, most people that don't have this expertise would say no way, we stumbled on it and said let's take a hard look at this for sale piece of property and make it work.

Mr. Allen opened the hearing to public comment.

Ms. Mary Nyberg, Owner of adjacent property at 108 Gold King Way: Not a question about the front or back of our house. We did not get any setbacks for our addition. We lived within our setbacks. We had a driveway that is like an intermediate ski slope. We chose to change our driveway which impacted our house; it is very long and narrow. The point is that our setback was 7.5 feet which is where our kitchen window and deck and living room is. Not like a side of a house like no one is on that side. Very dominant part of our house. 7.5 feet from property line, if they build 15 foot setback, 22.5 feet from parts of our house to their house. Looking at city setbacks, implied setbacks side and rear, if you got city to city setbacks, there is almost 30 feet between structures, 15 feet to 15 feet, always 30 feet apart from another structure. They want 7.5 side and then don't have to ask but happy to have 15 foot city setbacks. At least three houses meet that 30 foot side setbacks. They are building too big of a house, it is a crazy lot. At very least, wish you would say this should be plotted to county setbacks also. Maybe that lot doesn't support a 3,500 square foot house. Yes, surrounding houses are that size, I don't think the criteria on whether variance should pass be based on what other house sizes are. Maybe a 2,200 square foot house would work, fine, not encroaching on the neighbors. I looked at your guidelines, hoping you think about those when deciding. In coming up with variances for setbacks, look at other houses. All our houses are there, built on under county setbacks, assumed always someday there would be a house, but it would be at least 25 feet away. I wish you would take the time to go visit the lot, it is unusual, steeply shaped, there are other lots, corner lot on White Cloud, you could build the size house you are planning. Really a detriment to us personally, our house, also some of the others. Our neighbors on Lot 5 will also be impacted negatively. We are the most impacted because we will have wall of a house because we are so low compared to the new house. I assumed the house would look towards the ski area instead of all the way over our house. I am rambling on. I wish you would take that into consideration that there is a reason why the lot has not been built on yet, the lot does not on its own merit that large a house. There is a smaller house across from us. This is a small lot, because of the long driveway; have to keep in mind I wish somebody had figured out the usable square footage for building. Be mindful of the rest of us who have been there and spent a lot of money on our houses too. If it won't meet the city and county setbacks, they are building a bigger house. Thank you so much. Please go visit the lot, there are setback stakes. 22.5 feet is really going to dramatically impact us and the neighbors. If you can live within your setbacks, we have no issue.

Mr. Bernard Wieland and wife Dee Phelps, Owners of adjacent property at 39 White Cloud Drive: By setting that house back it really affects the privacy of the back of our home. By pushing it back, it very much affects us. If we could ask for a variance, our home is 3,158 square feet, we would like to have a variance to move our house back and put an addition on it. Then we could enjoy more privacy. Once you approve one, you will have others asked. County refused when I requested stairs because it did not meet their setbacks, don't see why that can't happen here.

Mr. Larry Neider, Owner of 25 White Cloud Drive: I was out of the Country until last night and therefore not able to send a letter. My house is just under 3,000 square feet, so they are not 3,500-4,000 square foot homes in the neighborhood. I think what the others have said, this lot is small because of the flag shape, the only thing you can do with a small lot is build a small home. Can't think I can't build a house without abiding by the setbacks.

Mr. Doyle Richmond, Realtor of record for the Harries: I have had the lot in question listed since 2007. This was developed in the 70s with a number of odd shaped lots you would not see today. Precedent was set, 7.5 side, 25 front and back when Harries bought this property. They designed a house of about 3,500 square feet, but never went through the process, though they were told they were along the right lines. People keep wanting to say I want 30 feet between homes. Everyone knew that Lot 49 was buildable property. Knew you had 7.5 foot setbacks. Adds up to 15 feet away from each other. Harries are trying to design a house on this lot. All adjacent properties are 3,700 square feet as an average on surrounding lots. Increases the value of the neighborhood. If they are forced to have the Town of Breckenridge setbacks, you will have an odd shaped house, which would decrease the value in the neighborhood. Unfair to not allow this variance, when in fact this is how the area was designed with 7.5 foot side setbacks. To deprive them of the 7.5 feet would be a shame to incur on the owners. No one is asking to build a

5,000 square foot house, but a reasonable house. Under the Neighborhood Preservation Policy code for this neighborhood, well below that.

Mrs. Dee Phelps, Owner of adjacent property at 39 White Cloud Drive: We have the 3,100 sf home adjacent to this lot. None of us have problem with the house being built. We knew the setbacks for the county, so if you keep the same characteristics of the County that is ok, but to start asking for changes, we did not expect those. We were denied for setback. If it is County setback that is ok.

Mr. Mark Meiser: We did look at pushing the house further up into the flag, we did look at that. Stoop needs to be turned further away from the flag,

Mr. Brad Appel: Speaking to Mr. Wieland, Town of Breckenridge setback is 15 feet. Structure we are asking for (3,500 square feet) all other neighbors knew County setbacks and we are adhering to those. It would be 33 feet deck to deck. To counter Mrs. Nybergs' argument, we are over 33 feet away. We had the plat done by Range west.

Mrs. Mary Nyberg: We had survey too, we put our house right on setback, our overhangs are smaller so we wouldn't go over setback our entire house is not over setback. I do a lot of walking in the neighborhood, 7.5 foot sides and if you look at plats, most of side setbacks are portions of corners, makes a huge difference in space. Mainly opposed to the deck and hot tub and how huge the deck will be.

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

Commissioner Questions/Comments:

Mr. Schroder: Challenged by the flag shaped lot with the setbacks. Supported county setbacks. I don't have a lot of sympathy for those not paying taxes on a property just because you don't like it. I don't usually speak out like this, but the owners of the lot have the rights to develop that lot.

Ms. Girvin: I support a variance that provides for 7.5 foot side, 25 foot front and 25 foot rear. 25 feet should comply with County planning; not fair to get Breckenridge on one side and County on the other. They shouldn't get negative points. Variance process supports that because there are special circumstances, created by the County. Maintaining county setbacks maintains character. All are bound by those. This property needs to abide by what the County setbacks were.

Mr. Pringle: Is the setback for this the existing setbacks for adjacent properties? (Mr. Thompson: Most in the neighborhood are 25 foot front and back, 7.5 foot sides, which is County setbacks; rear would be consistent with Town of Breckenridge, side would be consistent with County setbacks with variance approval. In other filings, 25 foot front and rear and 7.5 foot sides are platted; this filing not listed.) (Mr. Neubecker: When we annexed, we knew we would find some that did not comply. Only requesting variance to side yard setbacks.) Agreed with exactly what Mr. Bertaux said, don't understand everyone else not meeting setbacks. (Mr. Thompson: Surveyors get foundation; we look at eave overhangs and decks.) Real problem with deck but not dealing with that now.

Mr. Lamb: Asked for clarification on the presented overlay. (Mr. Thompson: Came up with 2,300 square foot house.) Surrounding house sizes? (Mr. Thompson: Approximately 4,000 square feet. Mrs. Nyberg asked about Neighborhood Preservation Policy; 4,500 square foot house plus 900 square foot garage.) If deck went away we completely meet County standards. (Mr. Thompson: Correct.)

Ms. Katz: Agreed with staff report, I was on the Town Council when annexation occurred. Agreed with Mr. Schroder's statement; does not impact the neighbors, there are a lot of crazy lots and this is one of them.

Mr. Bertaux: Agreed with Ms. Girvin. Problem with deck thinks you need to look at that when you apply for the residence.

Mr. Allen: Where is the deck, is it going to wrap around? (Mr. Meiser: Explained using plat.) (Mr. Neubecker: Reminded the Commission the hearing was about the setback variance, not a development plan.) I support the variance because Town of Breckenridge setbacks are for regularly platted lots. Agreed with Ms. Girvin that County setbacks should prevail as all neighbors built to County setbacks. Supported 7.5 foot side, 25 foot front and rear. Agreed with findings statement.

Ms. Girvin made a motion to approve a setback variance for the 49 White Cloud Variance, PC#2009043, 49 White Cloud Drive, of 7.5 feet on the side, 25 feet front and rear, based on variance criteria that there are special

circumstances or conditions applying to the land, buildings, topography, vegetation or other matters on the subject lot which would substantially restrict the effectiveness of the development in question. In addition, no negative points would be assigned under Policy 9 (Relative), Placement of Structures. Ms. Katz seconded. (Mr. Neubecker: Indicated that the application did not include a variance to the rear yard a setback. The existing setback per the code is 15 feet. If the application would agree to a 25 foot setback, the Commission should include this as a condition of approval, rather than as part of the variance.)

Mr. Richmond amended the application by agreeing to setbacks of 25 foot front and back, 7.5 foot sides.

Ms. Girvin amended her motion to allow a 7.5 foot side yard setback, include that there not be negative points assigned and that there be a condition of approval that the rear yard setback be a minimum of 25 feet. Ms. Katz seconded. The motion was approved (6-1).

OTHER MATTERS:

Mr. Bertaux: Three of us went to preservation workshop last Friday. There are scholarships available to attend a week long workshop in Grand Rapids, MI. There are dollars available to apply for funds to pay for airfare lodging etc. I am interested in going.

Mr. Allen: Please add to Other Matters on the next agenda for the three Commissioners who attended the preservation workshop last week to give us an update on what they learned. Also please add an agenda item to discuss the order of consent calendar items on the agenda.

Mr. Neubecker: The Planning Commission field trip is scheduled for Friday, October 30, agenda to be determined.

ADJOURNMENT

The meeting was adjourned at 11:29 p.m.

Rodney Allen, Chair

MEMO

TO: Mayor & Town Council

FROM: Tim Gagen

DATE: September 30, 2009

RE: Committee Reports

Summit Stage **James Phelps** **September 30**

Surveys for Bekkedal and Summit Cove subdivisions have been completed. Bekkedal had over a 50% return considered to be very good. Both surveys were not intended to have immediate (or short term/this season) impact to the Summit Stage Service Plan. The surveys will be used in future discussion of adding/modifying service plans as revenues improve. Additionally the Summit Cove survey information will be used in determination of route/service improvements.

The Summit Stage Board is moving forward with an engineered plan to “replace” the Stage stop at Razor Drive/Keystone. This stop was removed last fall due to safety concerns. The new plan will include an improved “pull-off” on Hwy 6. Grant funding will be used for the Transit stop improvement. The Board remains optimistic that the stop will be functional this season with full design improvements to be complete next summer.

Other Business: The Board has moved forward to replace the Bus Shelters in some Silverthorne locations. The shelters scheduled to be replaced are the “cabin” style. 5309 grant funds will be used for the replacement. The Summit Stage will begin the Winter Schedule on December 06, 2009. Lake County has not been able to raise the necessary matching funds for Bus Service. If this remains the case there will be no bus service for the upcoming season.

Total Ridership for August: decrease of 15.49% under 2008. Para transit Ridership for August: decrease of 0.40% under 2008. Late night Ridership for August: decrease of 7.19% under 2008. Tax Collections January through July 2009 are down 14.4% under same period collections for 2008 or -\$695,573.

Other Meetings

CML	Tim Gagen	No Meeting
Summit Leadership Forum	Tim Gagen	No Meeting
SCHA	Laurie Best	No Meeting
CAST	Tim Gagen	No Meeting
Public Art Commission	Jen Cram	No Meeting
CDOT	Tim Gagen	No Meeting
I-70 Coalition	Tim Gagen	No Meeting

CAST
Wildfire Council
Police Advisory Committee
LLA

Tim Gagen
Matt Thompson
Rick Holman
MJ Loufek

No Meeting
No Meeting
No Meeting
No Meeting



MEMORANDUM

To: Town Council

From: Laurie Best, Community Development

Subject: Breckenridge Heritage Alliance-Klack Cabin repair- 2009

Date: October 5, 2009 (for October 13th meeting)

The Alliance is requesting authorization from the Town to utilize their 2009 operating fund balance to perform repair and maintenance on the Klack cabin. The Alliance is projecting a balance of \$4,777.65 in their capital account and the cost of the repair and maintenance work is \$12,000-\$15,000. The Alliance would like to cover the balance of the project expense with funds that were originally designated for operation expenses. With only two months left in the year the Alliance is now able to project final 2009 operating expenses and is anticipating a year end balance of approximately \$12,000-\$13,000. This would be sufficient to cover the Klack cabin repairs provided the Council will allow the transfer of unspent operating funds to this capital project.

Background/Project Description:

The cabin is owned by the Town and is located on the Klack placer behind 209 S. Harris Street. In the past there has been some debate over the ownership, but the Town obtained clear title to the structure through a lawsuit in 1990. Until very recently the cabin was being used by neighbors without Town consent for storage. In September the Town advised all users to remove their personal belongings. While the original date of construction has not been confirmed the cabin is thought to be one of the oldest structures in Breckenridge still standing in its original location.

The roof of the cabin is severely compromised. In addition damp and rotted floor beams and logs at the base of the cabin are causing the cabin to sink into the moist soil causing additional deterioration. The roof, building base, and grading can be repaired so the structure will not continue to rot, degrade, and sink from contact with moist earth, lack of proper drainage, and lack of water tight roof. The Alliance has defined two phases for the repair work. The first phase includes the roof repair and the second phase includes raising the cabin, repairing and replacing

the building base, replacing the earth with gravel that will promote drainage, and regrading to create a positive drainage away from the building. The Alliance has organized a community/volunteer based effort and have obtain commitments for volunteer labor and donated materials from Harris Construction, the Theobald family, and Breckenridge Building Center to complete phase one. They have also consulted with Harris Construction regarding phase two and determined that the work could be accomplished this fall. The Alliance has identified this as a priority project that should be done as soon as possible to prevent deterioration.

The Alliance did reduce 2009 expenses by approximately \$99,000 with Tier 1, 2, and 3 cuts. This was accomplished primarily with salary/position reductions. They expect to end the year with a balance of approximately \$12,000-\$13,000 and would like authorization from the Council to transfer unspent funds to this project.

At this time the future use of the cabin is undetermined. The cabin may be left on the site and used by the Town for storage or interpretation, or the cabin may at some time be moved to a more accessible location. The work that is being proposed will help to preserve the cabin until its future use is determined.

Recommendation:

Staff agrees that this project is an important project and supports the transfer of funds.



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.

OCTOBER 2009

Tuesday, October 13; 3:00/7:30pm	***BUDGET RETREAT***
Tuesday, October 13; NO WORK SESSION/7:30pm	First Meeting of the Month
October 16; 8am; Location TBD	Coffee Talk
Tuesday, October 27; 3:00/7:30pm	Second Meeting of the Month
Thursday, October 29-30	CAST- Grand Junction

NOVEMBER 2009

Tuesday, November 10; 3:00/7:30pm	First Meeting of the Month
Tuesday, November 24; 3:00/7:30pm	Second Meeting of the Month
Thursday, November 26-27	Town Hall Closed for Thanksgiving

FUTURE DATES

Friday, December 4	Town Holiday Party
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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