



**BRECKENRIDGE TOWN COUNCIL
WORK SESSION
Tuesday, January 26, 2010**

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

3:00 – 3:15 pm	I. <u>PLANNING COMMISSION DECISIONS</u>	Page 2
3:15 – 4:00 pm	II. <u>LEGISLATIVE REVIEW</u> *	
	• Old BBC Modifications	Page 60
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4:00 – 4:30 pm	III. <u>MANAGERS REPORT</u>	
	• Committee Reports	Page 10
	• Public Projects Update/Experimental Parking	Verbal
	• Housing/Childcare Update	Verbal
	• Financials	Page 12
4:30 – 5:15 pm	IV. <u>OTHER</u>	
	• Rec Center Business Model Hours	Page 19
	• Town Charter Proposed Amendments	Page 21
	• Sales Tax increase for Marketing	Verbal
5:15 – 6:00 pm	V. <u>PLANNING MATTERS</u>	
	• Housing Policy 24R	Page 37
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6:00 – 7:30 pm	VI. <u>ISSC WELCOME RECEPTION</u>	
	*ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA	Page 54

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

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

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: January 20, 2010

Re: Town Council Consent Calendar from the Planning Commission Decisions of the January 19, 2010, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF January 19, 2010:

CLASS C APPLICATIONS:

1. Theobald Building Master Sign Plan (MGT) PC#2010001; 101 South Main Street
New Master Sign Plan for commercial spaces and building identification for this existing building.
Approved.

PLANNING COMMISSION MEETING

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

ROLL CALL

Leigh Girvin Michael Bertaux
Dan Schroder Jim Lamb Dave Pringle arrived at 7: 34
Rodney Allen was absent.
JB Katz was absent.

APPROVAL OF MINUTES

With no changes, the minutes of the January 5, 2010, Planning Commission meeting were approved unanimously (4-0).

APPROVAL OF AGENDA

With no changes, the Agenda for the January 19, 2010 Planning Commission meeting was approved unanimously (4-0).

CONSENT CALENDAR:

1. Theobald Building Master Sign Plan (MGT) PC#2010001; 101 South Main Street
Mr. Schroder: There are already signs there on the building so what are we looking at with this application? (Mr. Thompson: Buildings with three or more businesses are required to do a master sign plan per Code. They didn't do anything contrary to the sign code.) So this is a formality? (Mr. Thompson: Yes. The allowed sign area is based on the building frontage per the Code. It is pretty straightforward.)

With no requests for call up, the Consent Calendar was approved as presented.

WORKSESSIONS:

1. 90 Flintstone 1 Car Garage (CK)
Mr. Kulick presented an application to make a determination of what the appropriate setbacks are for an existing duplex subdivision. The applicants requested the Planning Commission's guidance in this interpretation to better enable them to design and construct a single car garage in the near future on Tract A-1 of the property. Staff included the plat of the property in the presented packet to help orient the Commission to the unique site plan of this property. Additionally staff included a letter of support from the applicant's neighbors which reside in the other unit of the duplex.

Staff supported the possibility of locating a garage on Tract A-1. Staff believes the code clearly states that in instances of duplexes, only perimeter boundary setbacks are relevant. Staff recommended, based on information gathered from The Illustrated Book of Development Definitions, that the three property line setbacks for the property be determined to be a front setback adjacent to Flintstone Lane and the remaining two be considered sides for setback purposes.

Questions for the Commission

- Did the Commission support the potential development of a garage on Tract A-1?
- Did the Commission believe that only perimeter boundary setbacks would be relevant?
- Did the Commission agree with which setbacks should be applied to the three sided lot?

Steve Lapinsohn, Applicant, spoke briefly about the home and the request. The home is for sale and everyone that has looked at our home is interested in a garage. We wanted to determine if we could build a garage on this property. It has made it a problem to sell it. Our current parking situation is surface parking, and since our neighbors are not in town often, we also park in their carport at times.

Commissioner Questions/Comments:

Ms. Girvin: Is the lot over density of over mass? (Mr. Kulick: Both.) I would like to see this project looked at comprehensively, considering the lots are already over density. I would like to see what you and your neighbor can do together with the garages. I am concerned with the precedent that we might set without looking at the whole future picture. It might make sense to work with your neighbor to

build it as well. (Mr. Lapinsohn: When we looked into this we determined that there are no legal or title issues. I have also checked with an architect and he indicated that it would be fairly simple to finish off the carport of the neighbors. I was planning to see what type of size garage we could have on the site, not necessarily planning on building it.) I would prefer to see it as a whole. I don't have a problem with a garage on the tract as long as it looks good and the neighbors are okay with it. How would the setbacks work – relative or absolute? (Mr. Kulick: The first part is that they have to be 20 feet from the right-of-way. The second part is that it would have to be a minimum three feet off the property line, which would incur negative points, or five feet from the property line to avoid negative points.) Whatever you can nail down before you sell will benefit you, your neighbor and the future owner.

Mr. Bertaux: I am okay with this. I think that we should allow a garage and the relevant setbacks are the ones we should go by; I agree with staff's conclusions.

Mr. Schroder: What are the current setbacks based on? (Mr. Kulick: Based on the original county plat, before annexation into the town. The town setbacks may be more permissive.) (Mr. Neubecker: On the plan, there are utility easements located but setbacks are not shown.) There is no rear yard to work with, based on staff's interpretation. (Mr. Kulick: Correct.) I also think that the garage would be useful to the property and the future homeowner. I appreciate staff's homework on the situation and the garage siting. I think it could move forward to an application.

Mr. Lamb: I am okay with the setbacks and the proposed garage. I appreciate you working with your neighbors.

2. Energy Policy (LB)

Ms. Best presented. Staff has met twice with the Planning Commission in 2009 (July 15 and September 15) to discuss Policy 33R and specifically how the policy could be amended to clarify point assignment relative to energy use, conservation, and renewable sources of energy. The policy was included in the development code in 1978 and has been used on eighteen projects with four projects assigned negative points (heated/snow melt drives, parking, walks). Fourteen projects have been awarded positive points (passive orientation and on-site renewable energy).

As staff began to work on the policy it became clear that there is considerable overlap between energy and sustainability issues. Policy 33R is an energy policy and while there are many benefits to sustainable development, those issues are being addressed by the Sustainability Task Force. There may be subsequent amendments throughout the development code to encourage sustainable development, but the focus of Policy 33R is energy use. Possible opportunities include HERS (Home Energy Rating Software) Index and LEED Certification.

We'd like to discuss some specific concepts including:

- *require testing, perhaps a mandatory HERS (or equivalent) rating, which would be equivalent to an absolute policy in the Development Code*
- *rewards for exceeding or meeting a certain target HERS (or equivalent) rating that reflects greater energy efficiency than achieved by the Sustainable Code by awarding positive points in Policy 33R*
- *a mandatory LEED certification (or equivalent rating) or incentive for LEED certification for commercial/industrial buildings*
- *additional assignment of negative points for high energy uses that are not accounted for in the HERS rating through allocation of negative points in policy 33R*

This is the first discussion with Planning Commission regarding HERS and staff does plan to contact energy professionals as well as local architects for their input. Staff was not proposing or discussing specific point assignments, but would appreciate the Commissions input.

Glen Morgan, Chief Building Official for the Town of Breckenridge, presented the Sustainable Code that was adopted by the Town. There was a two year process that included a Task Force and public meetings and the code was adopted County-wide. Beginning in 2009, homes were required to submit following the Sustainable Code. The concept of "measuring" was difficult when this code was adopted; therefore the code was developed without measurable quantities. This has changed now, and this is now a gap in this code. To establish the code, we looked at a "datum" house and what was a standard quality house of 3,000 square feet. We looked at outdoor "energy intensive amenities", such as air conditioners, outdoor heated driveways, hot tubs, etc., which are assigned negative points. Homes over 3,000 feet are also given negative points for size. We set standards for homes to meet for positive points as well. There is a five page checklist for energy and green methods, and the goal is to meet the

“datum” house energy and environmental impacts. There are a number of different ways for architects to reach this with a variety of points. We are not currently measuring the results, and we can’t compare house to house. This is the opportunity that Ms. Best and I have discussed through the potential changes to the development code.

Commercial buildings are not currently covered under the code, and multi-family was included in the adoption process originally, but many of these types of large building are difficult to achieve under this code. We allowed larger buildings to use Green Globes, LEED and other nationally recognized rating systems in lieu of our code. Energy is covered by IECG (energy code), required under state regulations in 2008.

Mr. Lamb opened the public hearing.

Lindsey Shorthouse, Bridgeline Consulting: I think the HERS rating would be a good way for a third party verification to qualify how these homes are being built. This would help to ensure that homes are being built the way they are being planned. It will create buyer awareness and an elevated industry of tradesman, builders and architects. On remodeling for permits, I would like to see a 60 HERS rating, especially for homes remodeling or adding over 1,000 sf.

Adam Savage, Savage Architecture: We are concerned with affordability. We have clients that are optimistic that they can improve upon the industry green standards, and it is always a tough decision making process for them. Our goal is better, greener, and cheaper, and we need more education and discussions like this. We all want to be healthy for the environment.

Commissioner Questions/Comments:

Ms. Girvin: Do you think the HERS rating will meet the need for measuring? (Mr. Morgan: Yes. It is the nationally recognized rating system. It is done by the United States Green Building Council - USGBC.) Is there a target in the sustainability code for the HERS rating? (Mr. Morgan: As adopted, the houses under our code would be a “100”. Each house would be different. In the theory that you would give positive points if it was an upgrade from the sustainable code, you might aim to reach an 80 or a 90. It is an engineered calculation. Inspections during the construction process are really critical.) I think that the matrix is really helpful that staff put together, and I think we have been a little inconsistent with points awarded under policy 33R in the past. I like that the HERS rating is quantifiable and that it is becoming an industry standard. It is not a new thing to the building industry. I don’t think it is too much of a leap to require testing and have thresholds for meeting and rewards for exceeding. I agree with Mr. Bertaux that we need to require something for commercial and multi-family as well. I agree with Mr. Schroder that requiring LEED or making it mandatory should be flexible, but it needs to be addressed. I would like to hear more input from local architects, developers and real estate community.

Mr. Bertaux: Is the HERS index applicable to buildings in the historical district? (Mr. Morgan: It could be used for all areas in town, but there may be exemptions for historic buildings. New buildings should try to meet the 100 score. HERS could be a benefit to a historical building to determine an energy rating and methods that could be used to improve the energy efficiency without damaging historic fabric.) You brought up the example of a person that wants to add a hot tub. Would they have to go through this analysis? (Mr. Morgan: Only buildings that were built under the Sustainable Code.) Who is going to do all of these energy audits? Town staff? (Mr. Morgan: A third party would complete the audit, that is where the \$1,200 comes in.) So the third party wouldn’t also be a sales person for insulation? (Mr. Morgan: No.) Wouldn’t it be fairer to audit both homes and commercial? I think we should be looking at both. (Mr. Morgan: Yes, we should require it for both.) I agree with Mr. Pringle’s thoughts. If testing is required, it should be required for residential, commercial and industrial. We need to be consistent. I think that awards for meeting a target are important. I like that Frisco is doing LEED and I think we should do it as well. I am concerned that people doing an energy audit be independent, and not selling anything else.

Mr. Pringle: I am confused about the process and how we would award positive points under 33R. We would require people to do an energy rating and then how would we award points? I am not so sure that the plans we look at are developed to a level where a HERS rating could be done to award these points. (Mr. Morgan: They would have to do additional work to commit to that energy level during the planning review process.) This is quite a deviation from our current process. (Mr. Grossheusch:

I think there are ways to handle this. When Mr. Morgan gets the plans and it doesn't meet that goal, they wouldn't get a permit for construction and would have to come back through the planning process.) I think that this seems complicated. If somebody used "energy star appliances" and carpeting and paint that doesn't have volatile organic compounds (VOCs) how would we make sure that this is continued? (Mr. Morgan: We would be looking for these at building permit. We wouldn't be able to review if they are changing these things out in the future.) I think that we ought to put this out to the community and see what kind of response we get from them. I think that this is going to add a dimension to our building process. Our original quest was that if we are going to give positive points for 33R, how do we measure it? I am cautious on how fast this is going. This is a moving industry and changes continually. I am not opposed to where we are going, but cautious. I like the idea of an energy saving component for the development that we have a way to test it before we award points, but this might be so complicated I am not sure it is where we want to go. I think that positive points should be awarded if baselines are exceeded. I do not think there should be a mandatory LEED certification. We need buy-in from the development community.

Mr. Schroder: Do we know of any other jurisdictions that are requiring testing? (Mr. Morgan: Boulder. Frisco requires LEED for commercial buildings.) The price for energy testing is around \$1,200? (Mr. Morgan: Yes, for now.) I think that I am resistant to the words "required" and "mandatory". We want to make consistent decisions. I would like to "encourage" rather than mandate, and highly incentivize. I appreciate the ability to quantify the improvements.

Mr. Lamb: It was interesting on our field trip that the architect mentioned that only a few people were able to do this energy rating testing, and now they said that there were as many as 14 people that can do this testing in Boulder alone. It is a great industry to have in a community. (Ms. Best: We are considering requiring a HERS rating, but there would be positive points for going above and beyond what the testing shows. The Planning Commission needs to decide if we should award positive points for going above and beyond.) I agree with pretty much everything that has been said. I am struggling with the mandate of this. If someone were seeking positive points I think we should make them get a good HERS rating, but I am a little concerned with mandating it. If someone was building a small house we may be able to determine if they are building a good house without this testing process. I think it is a good discussion to begin, and appreciate the ability to measure it. I think we need the development community to weigh in. I support LEED certification for commercial buildings.

3. Housing Policy Amendment (LB)

Ms. Best presented. Recently several large affordable housing projects have been approved or submitted that have utilized the positive ten (+10) points that are awarded under Policy 24R to offset significant site disturbance or design concerns. This is not common, but the potential exists, primarily in conjunction with annexations or development agreements where the Town is providing significantly more density (for affordable housing) than was contemplated in the original Land Use District.

Both Planning Commission and Town Council have raised this as an issue and have asked Staff to draft an amendment to Policy 24R. From conversations with Town Council, it appears that the original intent of Policy 24R was to incentivize affordable housing but not to allow significant 'upzonings' that also have the benefit of positive ten (+10) points to mitigate questionable design or excessive site disturbance.

There were several issues for consideration including:

1. Should positive points under Policy 24R ever be allowed for using 'free' density for affordable housing? Would the density enough of an incentive? In the case of annexations where up to 80% of the project density is brought to the site by the Town, Staff is concerned about the "double dipping", and the potential unintended site impacts resulting.
2. Would positive ten (+10) points be too many points in that it offsets too many site related negative points? It appears that none of the recent projects required all ten points and that this cap may need to be lowered.
3. Should a different point assessment (or multiple matrixes) be established based on the size of the project, the amount of natural versus 'free' density that is used for affordable housing and the price points (i.e. maximum points available for projects that utilize 10% of their own density with fewer points available for projects that utilize primarily 'free' density and maximum points available for projects that deliver lower price points)?

4. Should projects that take advantage of the density bonus of 10% under Policy 3A (D) also be allowed positive points under Policy 24R, or should this also be considered “double dipping”? The density bonus under Policy 3 has worked well as an incentive and the addition of 10% density does not seem to result in over programmed sites. Staff believes that bonuses should still be allowed, these projects should still be eligible for the positive points, and that the focus of this policy modification should be annexations and development agreements that are adding substantial density.

Summary

Staff still believes that incentives are necessary to encourage the private sector to contribute affordable housing units. In addition, Policy 24R has resulted in many dispersed units throughout Town as projects need to make up points. Based on the projects that have been approved, it seems that a sliding scale (or multiple matrixes) based on natural verses ‘free’ density and lower price points (Item 3) might achieve the highest quality projects while still providing some incentive.

Commissioner Questions/Comments:

- Ms. Girvin: I like the matrix approach that weighs different priority policies. I am not averse to positive ten (+10) being the highest, but I don’t think it has to be nothing or ten. I appreciate that affordable housing should be reviewed at the same standard of other development and I agree we need incentives, but am concerned that affordable housing we had seen previously – it was pretty terrible and not dignified. As we see projects come through we need to think about the quality of life for the people to live.
- Mr. Bertaux: I agree with rewarding for the AMI. I do not think that the ten points should be used to offset site impacts.
- Mr. Pringle: Back in the old days, we couldn’t get developers to do affordable housing. What changed such that affordable housing is all of a sudden profitable for the private sector? Is it the density we are proposing? (Mr. Grosshuesch: One of the elements is that annexations are only allowed if there is an affordable housing component and so now there are more projects.) (Mr. Neubecker: Maybe instead of giving away the farm we should be giving away only a cow or two.) (Ms. Best: I don’t think that it is necessarily that profitable.) We are creating an additional burden on the land that the additional density causes. We need to look at the annexation problem. (Mr. Mosher: We should look at these site impacts that you are bringing up, like we do on other projects.) Are there any of our deed restricted units in foreclosure? (Ms. Best: We follow this very closely. Most of our deed restrictions will survive a foreclosure, and if it doesn’t we have the option to purchase the unit. There are specific requirements for FHA loans) (Mr. Lamb: The town is prepared to do that?) (Ms. Best: Yes. We have the funds to step in.) This is really important to make sure our affordable housing units are preserved.
- Mr. Schroder: I think we should do this. I think that the ratcheting version looks good, the third bullet point in the staff report. A matrix is a good way to go. I think that the original concept, 10,000 square feet for positive ten (+10) points is a little low. I am not negating what work went in previously, but it seems low. At the time we needed that much incentive.
- Mr. Lamb: Are we hearing a consensus that positive ten (+10) points is too much? (Mr. Pringle: No. It isn’t too much if the site plans are reviewed correctly.) (Mr. Mosher: We need to be examining the quality of product in relationship to the ten points.) What if you couldn’t use the ten points for site disturbance? (Ms. Best: Yes, that is one we could address with this updated policy.) (Mr. Pringle: Wouldn’t this be a deviation from the code?) (Mr. Neubecker: We have discussed having sections of the code grouped together that are pass/fail points for that particular group.) (Ms. Cram: Ten points is a lot of positive points. The matrix is a good way to achieve this.) Why couldn’t we have a multiplier of two points that reflects the impact of the project on the town? (Ms. Best: The AMI would work this way as well.) I don’t think that anyone supports “double-dipping”. I think that this needs some massaging and that staff has our direction to move forward.
- Mr. Rossi: I think that the concern with Planning Commission previously was the architectural character. Ms. Best said that we should hold affordable housing to the same standards as regular market rate development. I think we want to ensure that quality architecture is a part of affordable housing. Do we always relax everything for affordable housing projects? (Mr. Grosshuesch: At staff level we aren’t treating these affordable housing projects differently than others during the review process.) Are you requesting that a matrix be added that awards points based on the AMIs that are being met?

(Ms. Best: Yes. Points would be determined by the AMI target being met. It is appropriate to offset some of the points in our policies, but not all. Also, perhaps the percentage of density that you bring to the table along with the free density or density from the town would be taken into account. We need a more objective way of doing the points analysis.) What was the original intent of the ten points? (Mr. Neubecker: It was to encourage the inclusion of affordable housing in larger projects.)

4. Landscape Policy (JC)

Ms. Cram presented. The Planning Commission last reviewed proposed changes to the Relative Landscaping Policy on October 20, 2009. A draft of additional proposed changes based on Planning Commission input and staff consideration of the primary goals for new landscaping was presented in the packet. Staff requested the Commission keep in mind that, as proposed, the new Absolute requirements that were discussed in September included the removal of dead and diseased trees, basic forest health requirements and minimal landscaping/screening requirements as ground zero.

- During review of the relative policy, Staff asked the Commission to consider whether it would make sense to have absolute minimum requirements for landscaping or have the opportunity to assign negative points. Staff believed that the absolute minimum requirements will help to raise the bar for better landscape plans and will be easier to administer in the future. However, Staff requested Commission input.

Some of the highlights of the changes included new language that gives greater emphasis to the preservation of natural landscape areas and wildlife habitat, utilization of native plantings, the inclusion of xeriscape plantings, use of bio-swales and permeable paving. In addition, Staff has taken another try at developing some examples for the award of positive two (+2) up to positive six (+6) points.

Commissioner Questions/Comments:

Ms. Girvin: I think you have done a really nice job of stating the goals. I was thinking of situations where you might want to apply negative points for landscaping, and the one situation is if a lot of the site is disturbed, but that should be covered under site disturbance. Did we determine whether our water rights allow us to use gray water? (Mr. Neubecker: Yes, we determined our water rights are fully consumptive, therefore we are allowed to recycle and use gray water.) Regarding the proposed points, what is Zone 1? (Ms. Cram: It relates back to the absolute policy and defensible space.) One thing that stands out for positive six (+6) points, I think that the word “complete” in reference to screening of the site sounds unattainable. I think the word “significant” or “substantial” might be more appropriate.

Mr. Bertaux: One comment is under number 6 under irrigation systems, the language says “irrigation systems that are sustainable are strongly encouraged” and I think we should add “and should be maintained”. The maintenance of the landscaping is critical and irrigation helps to achieve this, especially in a drought year. What is “sustainable” irrigation? (Ms. Cram: The absolute policy includes maintenance. Low flow, drip irrigation and gray water are methods to achieve sustainable irrigation. This can be defined.) Regarding number 13, I tend to think it should be absolute. The example that comes to mind is a lot that has been scraped. Who decides what disturbed area needs to be “softened”? (Ms. Cram: If it is absolute then staff would bring it up in the report. This will run really close with site disturbance. (Mr. Schroeder: What if a tree was removed right next to the house, would they have to replace the tree?) (Ms. Cram: We wouldn’t require that because of the new defensible space requirement. I think this is covered in other policies.) Buffering the offsite views, if the architecture is good it might not want to be buffered. It seems subjective. Maybe you don’t need this language? I would support that. (Mr. Pringle: The key phrase is “beyond the absolute policy” and if that isn’t enough maybe we should ask them to do more as an absolute.) (Ms. Cram: Staff will look at this one further and see if other policies cover the goal.)

Mr. Pringle: Is the use of bio-swales the same as the use of a berm? (Ms. Cram: No. A bio-swale collects storm water, filters the water and while providing water for the landscape.) Like a detention pond? (Mr. Rossi: Detention ponds are more collection areas, not filter areas.) (Mr. Lamb: It puts water back into the system.) (Ms. Girvin: It also is more natural. Some pictures would be really helpful.) Is there a better descriptive word than “permeable paving”? The word paving is confusing. (Ms. Cram: We will bring you some more examples of bio-swales and permeable paving. Paving allows us to not conflict with the existing parking code. It also would apply to pedestrian surfaces.) Do we

want to look at your landscaping plan from a perspective of maturity or at installation? (Ms. Cram: You will look at it from a perspective of maturity.) (Ms. Girvin: I think that looking at mature plants is good in plans, but there should be some kind of wiggle room for slower growing trees.)

Mr. Schroder: I like the language that is presented in the goals and that staff established a “ground zero”. I think that on old number 5 the answer should be yes, an absolute. (Ms. Cram: The fire wise task force also agrees that defensible space should be absolute for new construction.) Is the new number 8 going to get blocked because it isn’t new construction? I agree with the policy. (Mr. Neubecker: Nothing in this policy would preclude them just because it isn’t new development.) Would gravel suffice? (Ms. Cram: No, this allows for people to use surfaces other than solid asphalt or concrete.) I think the 2, 4, 6 point system looks good. I think that visuals would be a great guide.

Mr. Lamb: For the “ground zero” I think that the very minimum is already there in the code. (Ms. Cram: In addition to that we are looking at removal of dead and diseased trees.) The challenge is that we are writing one policy for all areas of the town and all sites. I agree with Ms. Girvin regarding the “screening” terminology for the 6 positive points.

Mr. Truckey: Why aren’t we requiring drip irrigation? (Ms. Girvin: We can’t drip irrigate a lawn.) (Ms. Cram: There should be flexibility for the property owner.) (Mr. Schroder: We also can’t mandate that someone turns on the irrigation, even if it is required.) (Mr. Pringle: Perhaps in a multi-family situation an irrigation system should be required and absolute.)

TOWN COUNCIL REPORT:

Mr. Rossi: One thing Council is struggling with on the Gondola Lots Master Plan is the brick on the grand lodge, and that they would incur negative points for its use. I think we want it to be brick, but they will get negative points for doing brick. We need some way to address that. (Mr. Lamb: I think some of us were okay with brick. I personally think brick is an okay application.) (Ms. Girvin: I know that I brought it up. Why are we encouraging it and then giving them negative points?) (Mr. Neubecker: I think it is our code that we are following, but the final decision is up to the Planning Commission and Council when the individual building is reviewed. You could determine that no negative points are assigned for brick due to historic buildings in town, building significance, etc.) (Ms. Girvin: How many negative points is it?) (Mr. Neubecker: It is a 3 multiplier, so up to negative 6 points). (Mr. Grosshuesch: The way the code works is that if you are going to do brick, you are going to get negative points. We don’t want people to manipulate the code. We don’t want site planning policies evaluated at the time of the master plan. We said at Council that we would work with the Commission to amend that policy. Possibly we could add that for “significant buildings”). (Mr. Pringle: Let them take the negative points.) (Mr. Schroder: Why would we want to change the code?) (Mr. Neubecker: I don’t know.)

I think that the Bradley Residence (French and Washington) will get called up by Council if it is landmarked. What might help the discussion is getting the full Tim Barry findings and recommendations from the Planning Commission. Commissioners agree that we need to be careful in going this route and how the code is interpreted. On one side we have the code, and the other side we have the potential to remodel this building.

OTHER MATTERS:

None.

ADJOURNMENT

The meeting was adjourned at 10:05 p.m.

Jim Lamb, Vice Chair

MEMO

TO: Mayor & Town Council

FROM: Tim Gagen

DATE: January 7, 2010

RE: Committee Reports

Summit Stage James Phelps

Lake County Bus Service began on January 03, 2010. Summit Stage is the contracted service provider. As of the BOD meeting date there was very little to report. John Jones did indicate there will be some minor changes to the current service to potentially increase ridership. John also reported that Lake County is increasing their marketing efforts and still has solid support from Commissioners for this service. The ridership data that has been collected to date is considered consistent with any new service.

Other business: The survey data for Bekkedal, Blue River, and Summit Cove are still be compiled. The survey for Summit Cove was large and is taking longer than expected. In discussion of performance of this route the BOD is committed to re-examining this route as it does not currently meet service performance criteria. The BOD has chosen to wait until the recent survey data is compiled to examine prior to making any changes to this route. John Jones reported that the Summit Stage 2010 Summer Schedule will be exactly the same as this past summer. This included a service modification/reduction during non-peak times.

Total Ridership for November: decrease of 9.19% under 2008. Para transit Ridership for November: decrease of 19.50% under 2008. Late night Ridership for November: increase of 19.88% over 2008. Tax Collections January through October 2009 is down 16.3% under same period collections for 2008 or -\$1,058,744.00

Police Advisory Committee Rick Holman January 7, 2010

Holiday Recap: Chief Holman provided an update regarding the holiday calls for service and traffic egress. Calls for service during the holidays were fairly routine, yet prior to the holiday there were two incidents where pedestrians were struck by vehicles. Traffic in town during the holidays was at a high volume on some days, and efforts to egress vehicles met with greater success than in prior years. The PAC was reminded that when officers are seen in vehicles or standing at intersections with high traffic volume, that the officer is usually actively engaged in the operation of the remote traffic signal controls.

- **Investigations Update:** An update of burglary at Fatty's was discussed; and, ski theft trends and cases were discussed.
- **Parking Update:** The Chief shared that there was greater coordination with Vail Resorts and BES (Vail's Breckenridge Emergency Services) this season, as well as with senior management at BSR. Efforts to coordinate should continue to improve.

One continued parking issue is the ingress at the Vail lots in the morning, causing traffic backup. The volume of vehicles in the satellite lot appeared to be similar to last year during the holiday. On average days, we are still parking 500+ cars in satellite lot, and close to 1000 on busy days. More vehicles may be using the gondola lots mid-week, with reduced pricing in those lots. There

will be alternative parking plans during snowsculpting, including some parking in otherwise non-parking areas.

The Chief sought the input of the PAC with respect to use of the old CMC parking lot and spaces west of the courthouse. The PAC members were in favor of using CMC spaces for employee parking, and converting other spaces to shorter time frames, to encourage turnover of the spaces.

➤ **Misc. Updates/Discussion:**

- Police Facility Litigation: The Chief briefly shared the outcome of the recent litigation and trial that resulted in a significant initial settlement ruling.
- School Zone Flashing Speed Signs: The new, grant-funded signs were discussed, and PAC members were positive regarding the placement and functionality of the signs. There was discussion regarding the clarity of speed limits, so the Chief is reviewing those concerns.

LLA **MJ Loufek** **January 19, 2010**

- All consent calendar items were approved.
- A new Resort Complex License was approved for Keystone Food & Beverage Company d/b/a One Ski Hill Place. The licensed premise will include most of the base area of Peak 8. The building is expected to be complete in April.
- Fire Marshal Jay Nelson of the Red White & Blue Fire Department reported on special event permit issues with Cecilia's (Dew Tour) and Burke & Riley's (New Year's Eve tent); and is working with a new licensee in Main Street Station to clear up code violations.
- The Authority held an executive session to receive legal advice relating to an investigation.
- The Liquor Licensing Authority's 2009 Annual Report was presented. A copy is attached for the Council's information.

I-70 Coalition **Tim Gagen** **January 14, 2010**

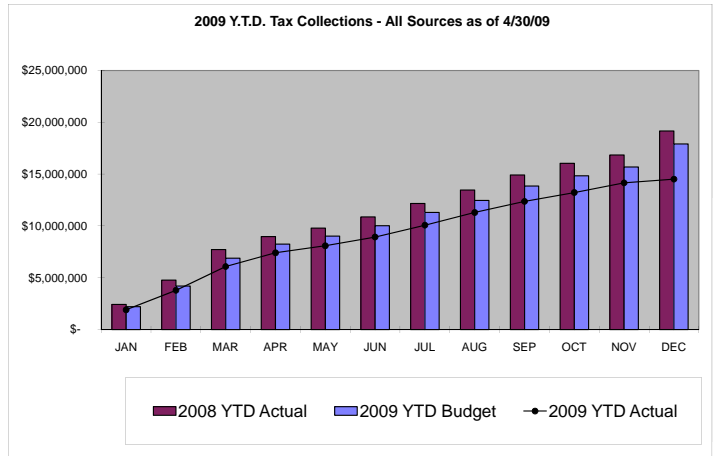
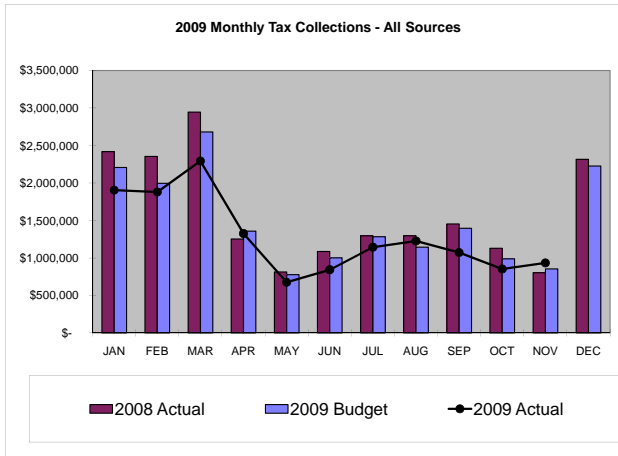
Board of Directors and Officers for coming year were elected. Tim Gagen was re-elected to the Board of Directors and Michael Penny was re-elected as President. Updates were given on the new State Division of Transit and Rail, Rocky Mountain Rail Authority and High Performance Transportation Enterprise. CDOT reported they will be more focused on TDM for I-70.

Other Meetings

CML	Tim Gagen	No Meeting
Summit Leadership Forum	Tim Gagen	No Meeting
SCHA	Laurie Best	No Meeting
CAST	Tim Gagen	No Meeting
CAST	Tim Gagen	No Meeting
Wildfire Council	Matt Thompson	No Meeting
CDOT	Tim Gagen	No Meeting
Public Art Commission	Jen Cram	No Meeting
Fire Wise task Force	Jen Cram	No Meeting
LLA	MJ Loufek	No Meeting

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

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 2,418,737	\$ 2,418,737	12.6%	\$ 2,206,630	\$ 2,206,630	12.3%	\$ 1,905,484	-21.2%	86.4%	\$ 1,905,484	-21.2%	10.6%
FEB	\$ 2,354,775	\$ 4,773,512	24.9%	\$ 1,996,244	\$ 4,202,874	23.5%	\$ 1,879,892	-20.2%	94.2%	\$ 3,785,377	-20.7%	21.1%
MAR	\$ 2,943,976	\$ 7,717,488	40.3%	\$ 2,680,714	\$ 6,883,589	38.4%	\$ 2,292,728	-22.1%	85.5%	\$ 6,078,104	-21.2%	33.9%
APR	\$ 1,253,479	\$ 8,970,968	46.8%	\$ 1,357,940	\$ 8,241,529	46.0%	\$ 1,325,630	5.8%	97.6%	\$ 7,403,734	-17.5%	41.3%
MAY	\$ 813,163	\$ 9,784,131	51.1%	\$ 777,466	\$ 9,018,994	50.3%	\$ 676,385	-16.8%	87.0%	\$ 8,080,120	-17.4%	45.1%
JUN	\$ 1,086,064	\$ 10,870,194	56.7%	\$ 1,002,387	\$ 10,021,381	55.9%	\$ 843,427	-22.3%	84.1%	\$ 8,923,547	-17.9%	49.8%
JUL	\$ 1,294,864	\$ 12,165,059	63.5%	\$ 1,283,829	\$ 11,305,210	63.1%	\$ 1,144,138	-11.6%	89.1%	\$ 10,067,685	-17.2%	56.2%
AUG	\$ 1,295,684	\$ 13,460,743	70.3%	\$ 1,144,904	\$ 12,450,114	69.5%	\$ 1,225,854	-5.4%	107.1%	\$ 11,293,539	-16.1%	63.0%
SEP	\$ 1,453,616	\$ 14,914,359	77.8%	\$ 1,396,497	\$ 13,846,611	77.3%	\$ 1,072,949	-26.2%	76.8%	\$ 12,366,488	-17.1%	69.0%
OCT	\$ 1,128,981	\$ 16,043,340	83.7%	\$ 988,792	\$ 14,835,403	82.8%	\$ 853,262	-24.4%	86.3%	\$ 13,219,750	-17.6%	73.8%
NOV	\$ 802,593	\$ 16,845,933	87.9%	\$ 854,627	\$ 15,690,030	87.6%	\$ 934,602	16.4%	109.4%	\$ 14,154,352	-16.0%	79.0%
DEC	\$ 2,314,976	\$ 19,160,909	100.0%	\$ 2,225,205	\$ 17,915,236	100.0%	\$ 358,422	-84.5%	16.1%	\$ 14,512,774	-24.3%	81.0%

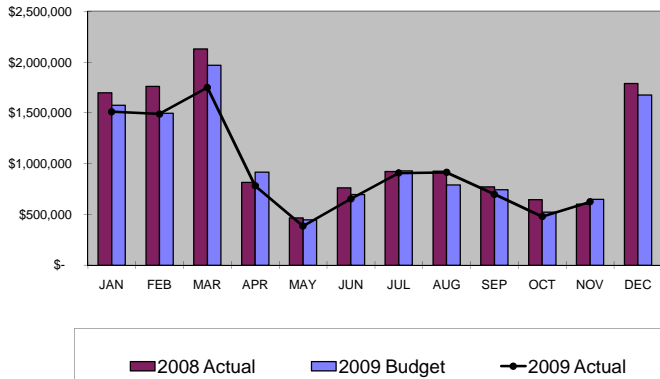


Prior Year Actual and Current Year Budget Variances					
	TOTAL	Sales	Accommodations	RETT	Housing
vs. Nov08 Actual	132,008	21,855	5,957	104,557	(361)
vs. Nov 09 Budget	79,974	(25,952)	(4,156)	109,572	510
vs. YTD 08 Actual	(2,691,581)	(1,305,636)	(312,193)	(1,013,185)	(60,567)
vs. YTD 09 Budget	(1,535,678)	(537,465)	(119,086)	(892,037)	12,911

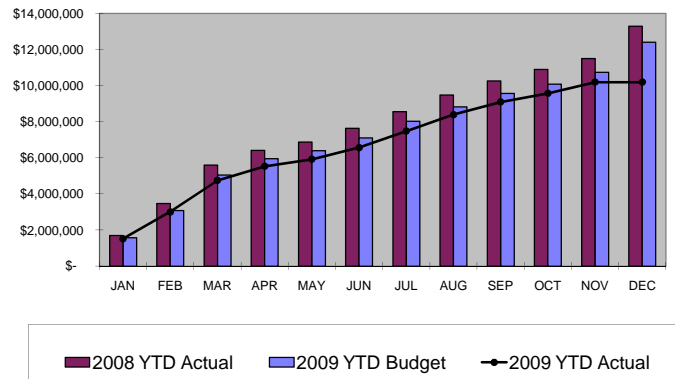
**TOWN OF BRECKENRIDGE
SALES TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 1,699,052	\$ 1,699,052	12.8%	\$ 1,574,195	\$ 1,574,195	12.7%	\$ 1,511,420	-11.0%	96.0%	\$ 1,511,420	-11.0%	12.2%
FEB	1,759,932	3,458,985	26.0%	1,496,091	3,070,286	24.8%	1,488,667	-15.4%	99.5%	3,000,087	-13.3%	24.2%
MAR	2,129,985	5,588,969	42.1%	1,967,425	5,037,711	40.6%	1,749,041	-17.9%	88.9%	4,749,128	-15.0%	38.3%
APR	814,209	6,403,179	48.2%	914,797	5,952,508	48.0%	780,544	-4.1%	85.3%	5,529,671	-13.6%	44.6%
MAY	464,918	6,868,097	51.7%	445,750	6,398,258	51.6%	384,759	-17.2%	86.3%	5,914,431	-13.9%	47.7%
JUN	761,897	7,629,994	57.4%	695,674	7,093,932	57.2%	651,911	-14.4%	93.7%	6,566,341	-13.9%	52.9%
JUL	922,613	8,552,607	64.4%	929,455	8,023,387	64.7%	907,582	-1.6%	97.6%	7,473,924	-12.6%	60.3%
AUG	924,291	9,476,897	71.3%	788,750	8,812,137	71.1%	914,206	-1.1%	115.9%	8,388,129	-11.5%	67.6%
SEP	770,561	10,247,459	77.1%	741,531	9,553,668	77.0%	697,168	-9.5%	94.0%	9,085,297	-11.3%	73.3%
OCT	644,680	10,892,138	82.0%	522,493	10,076,161	81.2%	479,350	-25.6%	91.7%	9,564,648	-12.2%	77.1%
NOV	601,530	11,493,668	86.5%	649,337	10,725,498	86.5%	623,385	3.6%	96.0%	10,188,032	-11.4%	82.2%
DEC	\$ 1,789,075	\$ 13,282,743	100.0%	\$ 1,676,204	12,401,702	100.0%		n/a	0.0%	\$ 10,188,032	-23.3%	82.2%

2009 Monthly Sales Tax Collections



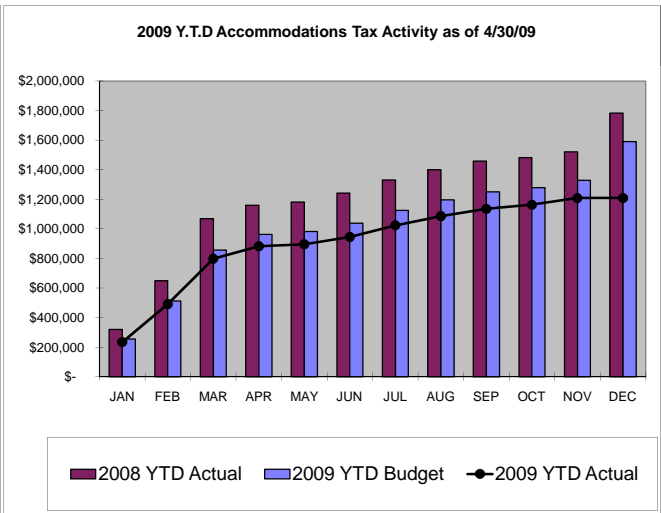
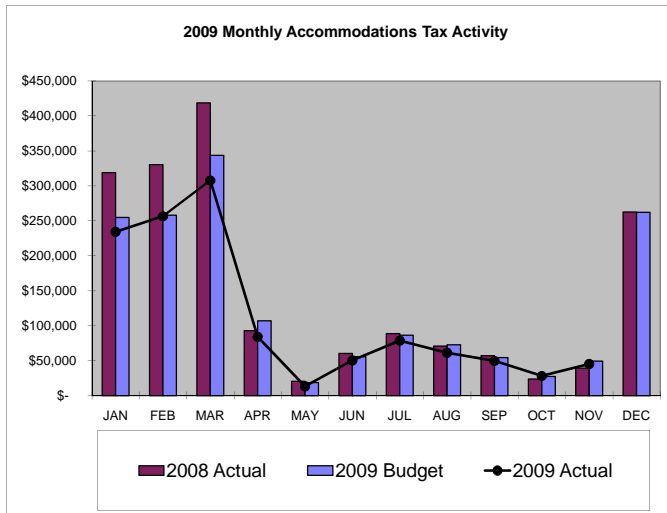
2009 Y.T.D. Sales Tax Collections as of 4/30/09



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

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 319,027	\$ 319,027	17.9%	\$ 254,720	\$ 254,720	16.0%	\$ 234,107	-26.6%	91.9%	\$ 234,107	-26.6%	14.7%
FEB	330,262	649,289	36.4%	257,892	512,612	32.2%	256,470	-22.3%	99.4%	490,577	-24.4%	30.9%
MAR	418,622	1,067,911	59.9%	343,506	856,117	53.9%	307,773	-26.5%	89.6%	798,350	-25.2%	50.2%
APR	92,660	1,160,571	65.1%	107,159	963,276	60.6%	84,014	-9.3%	78.4%	882,363	-24.0%	55.5%
MAY	20,413	1,180,984	66.2%	18,397	981,674	61.8%	13,100	-35.8%	71.2%	895,464	-24.2%	56.3%
JUN	60,094	1,241,078	69.6%	55,869	1,037,543	65.3%	50,092	-16.6%	89.7%	945,555	-23.8%	59.5%
JUL	88,754	1,329,831	74.6%	86,546	1,124,089	70.7%	78,528	-11.5%	90.7%	1,024,084	-23.0%	64.4%
AUG	70,749	1,400,580	78.6%	72,430	1,196,519	75.3%	61,312	-13.3%	84.6%	1,085,395	-22.5%	68.3%
SEP	57,015	1,457,595	81.7%	54,323	1,250,842	78.7%	49,574	-13.1%	91.3%	1,134,969	-22.1%	71.4%
OCT	23,615	1,481,210	83.1%	27,148	1,277,990	80.4%	28,091	19.0%	103.5%	1,163,060	-21.5%	73.2%
NOV	39,286	1,520,496	85.3%	49,398	1,327,389	83.5%	45,243	15.2%	91.6%	1,208,303	-20.5%	76.0%
DEC	\$ 262,520	\$ 1,783,016	100.0%	\$ 262,274	1,589,663	100.0%		n/a	0.0%	\$ 1,208,303	-32.2%	76.0%

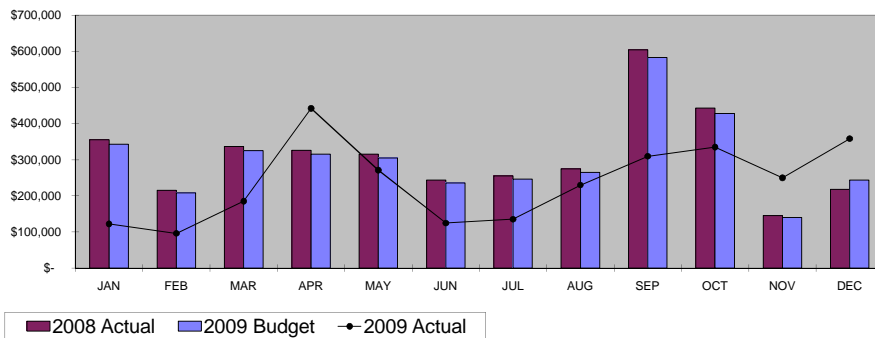
Accommodation tax amounts reflect collections at the 2% rate.



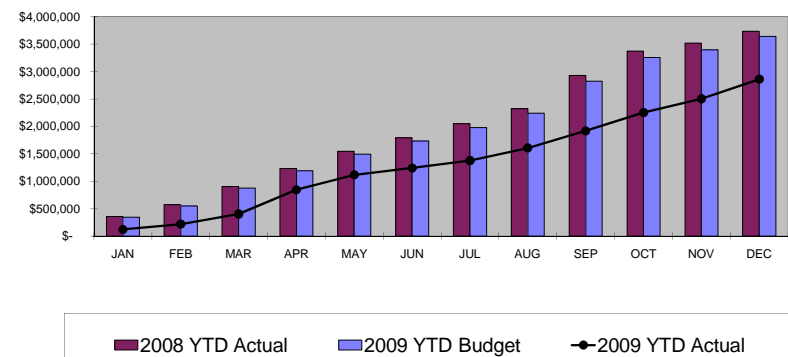
**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2007 Collections			2008 Collections			2009 Budget			2009 Monthly				2009 Year to Date			
	Tax Collected	Year To Date	Percent of Total	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% of Budget	% Change from 2007	% Change from 2008	Actual	% of Budget	% Change from 2007	% Change from 2008
JAN	\$ 352,958	\$ 352,958	6.2%	\$ 355,179	\$ 355,179	9.5%	\$ 342,940	\$ 342,940	9.43%	\$ 122,238	35.6%	-65.4%	-65.6%	\$ 122,238	3.4%	-65.4%	-65.6%
FEB	342,995	695,953	12.3%	215,566	570,745	15.3%	208,138	551,078	15.15%	96,379	46.3%	-71.9%	-55.3%	218,617	6.0%	-68.6%	-61.7%
MAR	271,817	967,770	17.1%	336,956	907,701	24.3%	325,345	876,423	24.09%	185,714	57.1%	-31.7%	-44.9%	404,331	11.1%	-58.2%	-55.5%
APR	564,624	1,532,394	27.0%	326,521	1,234,222	33.1%	315,270	1,191,693	32.75%	442,039	140.2%	-21.7%	35.4%	846,370	23.3%	-44.8%	-31.4%
MAY	533,680	2,066,074	36.4%	315,494	1,549,716	41.5%	304,623	1,496,317	41.13%	271,393	89.1%	-49.1%	-14.0%	1,117,763	30.7%	-45.9%	-27.9%
JUN	522,999	2,589,073	45.6%	243,969	1,793,685	48.0%	235,562	1,731,879	47.60%	124,788	53.0%	-76.1%	-48.9%	1,242,551	34.2%	-52.0%	-30.7%
JUL	343,610	2,932,683	51.7%	255,305	2,048,990	54.9%	246,508	1,978,387	54.38%	135,393	54.9%	-60.6%	-47.0%	1,377,943	37.9%	-53.0%	-32.8%
AUG	594,349	3,527,032	62.1%	274,442	2,323,432	62.2%	264,985	2,243,372	61.66%	230,014	86.8%	-61.3%	-16.2%	1,607,957	44.2%	-54.4%	-30.8%
SEP	711,996	4,239,028	74.7%	604,037	2,927,469	78.4%	583,223	2,826,596	77.69%	309,701	53.1%	-56.5%	-48.7%	1,917,658	52.7%	-54.8%	-34.5%
OCT	392,752	4,631,779	81.6%	442,830	3,370,299	90.3%	427,571	3,254,167	89.44%	334,899	78.3%	-14.7%	-24.4%	2,252,557	61.9%	-51.4%	-33.2%
NOV	459,147	5,090,926	89.7%	145,549	3,515,848	94.2%	140,534	3,394,701	93.31%	250,106	178.0%	-45.5%	71.8%	2,502,663	68.8%	-50.8%	-28.8%
DEC	\$ 584,308	\$ 5,675,235	100.0%	\$ 217,937	\$ 3,733,785	100.0%	\$ 243,570	3,638,271	100.00%	\$ 358,422	147.2%	-38.7%	64.5%	\$ 2,861,086	78.6%	-49.6%	-23.4%

2009 Monthly RETT Tax Collections



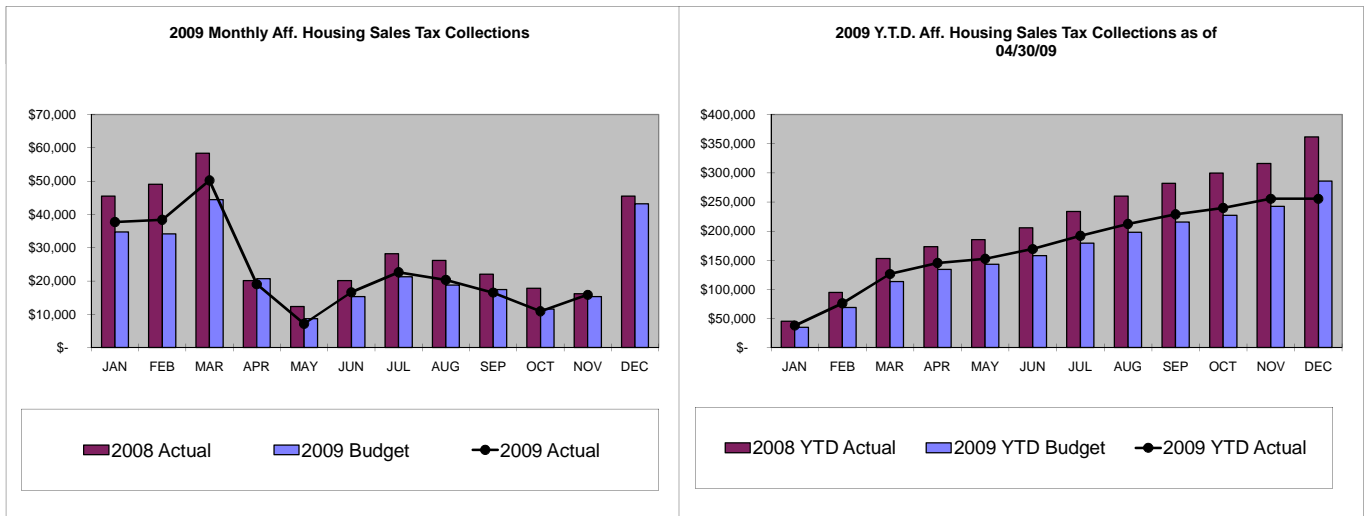
2009 Y.T.D. RETT Collections



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

Sales Period	2008 Collections			2009 Budget			2009 Monthly			2009 Year to Date		
	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% Change from 2008	% of Budget	Actual	% Change from 2008	% of Budget
JAN	\$ 45,479	\$ 45,479	12.6%	\$ 34,776	\$ 34,776	12.2%	\$ 37,720	-17.1%	108.5%	\$ 37,720	-17.1%	13.2%
FEB	49,015	94,494	13.6%	34,123	68,899	11.9%	38,376	-21.7%	112.5%	76,096	-19.5%	26.6%
MAR	58,414	152,907	16.2%	44,438	113,337	15.6%	50,200	-14.1%	113.0%	126,296	-17.4%	44.2%
APR	20,089	172,997	5.6%	20,714	134,051	7.3%	19,034	-5.3%	91.9%	145,330	-16.0%	50.9%
MAY	12,337	185,334	3.4%	8,695	142,746	3.0%	7,133	-42.2%	82.0%	152,462	-17.7%	53.4%
JUN	20,104	205,438	5.6%	15,281	158,027	5.4%	16,637	-17.2%	108.9%	169,100	-17.7%	59.2%
JUL	28,193	233,631	7.8%	21,320	179,347	7.5%	22,635	-19.7%	106.2%	191,735	-17.9%	67.1%
AUG	26,202	259,833	7.3%	18,738	198,085	6.6%	20,323	-22.4%	108.5%	212,058	-18.4%	74.2%
SEP	22,003	281,836	6.1%	17,420	215,505	6.1%	16,506	-25.0%	94.8%	228,564	-18.9%	80.0%
OCT	17,856	299,692	4.9%	11,580	227,085	4.1%	10,922	-38.8%	94.3%	239,486	-20.1%	83.9%
NOV	16,228	315,921	4.5%	15,358	242,443	5.4%	15,868	-2.2%	103.3%	255,354	-19.2%	89.4%
DEC	\$ 45,445	\$ 361,365	12.6%	\$ 43,157	285,600	15.1%	\$ -	n/a	0.0%	\$ 255,354	-29.3%	89.4%

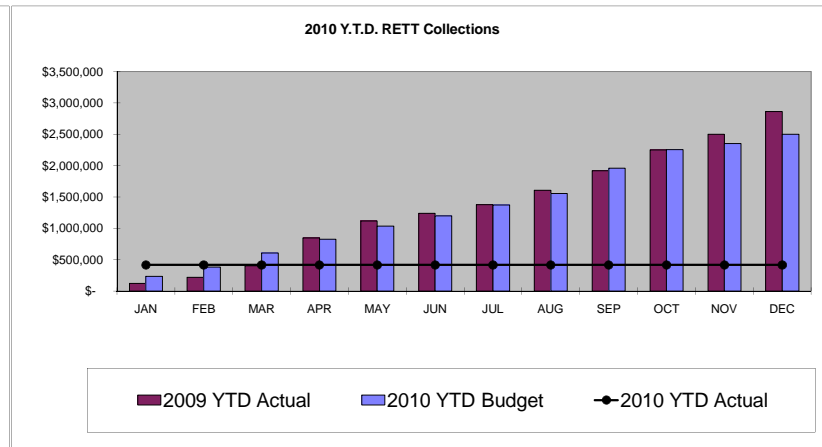
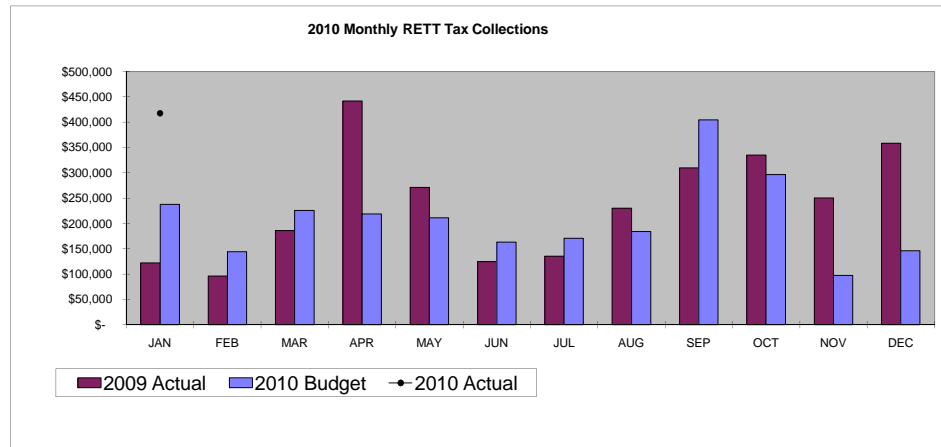
Affordable Housing Sales Tax reflects money distributed to the Town net of the Housing Authority share and is deposited directly into the Affordable Housing Fund.



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

Sales Period	2007 Collections			2009 Collections			2010 Budget			2010 Monthly				2010 Year to Date			
	Tax Collected	Year To Date	Percent of Total	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% of Budget	% Change from 2007	% Change from 2008	Actual	% of Budget	% Change from 2007	% Change from 2009
JAN	\$ 352,958	\$ 352,958	6.2%	\$ 122,238	\$ 122,238	4.3%	\$ 237,814	\$ 237,814	9.51%	\$ 417,439	175.5%	18.3%	241.5%	\$ 417,439	16.7%	18.3%	241.5%
FEB	342,995	695,953	12.3%	96,379	218,617	7.6%	\$ 144,335	382,149	15.29%	-	0.0%	n/a	n/a	417,439	16.7%	-40.0%	90.9%
MAR	271,817	967,770	17.1%	185,714	404,331	14.1%	\$ 225,613	607,762	24.31%	-	0.0%	n/a	n/a	417,439	16.7%	-56.9%	3.2%
APR	564,624	1,532,394	27.0%	442,039	846,370	29.6%	\$ 218,626	826,388	33.06%	-	0.0%	n/a	n/a	417,439	16.7%	-72.8%	-50.7%
MAY	533,680	2,066,074	36.4%	271,393	1,117,763	39.1%	\$ 211,243	1,037,631	41.51%	-	0.0%	n/a	n/a	417,439	16.7%	-79.8%	-62.7%
JUN	522,999	2,589,073	45.6%	124,788	1,242,551	43.4%	\$ 163,352	1,200,983	48.04%	-	0.0%	n/a	n/a	417,439	16.7%	-83.9%	-66.4%
JUL	343,610	2,932,683	51.7%	135,393	1,377,943	48.2%	\$ 170,942	1,371,925	54.88%	-	0.0%	n/a	n/a	417,439	16.7%	-85.8%	-69.7%
AUG	594,349	3,527,032	62.1%	230,014	1,607,957	56.2%	\$ 183,756	1,555,681	62.23%	-	0.0%	n/a	n/a	417,439	16.7%	-88.2%	-74.0%
SEP	711,996	4,239,028	74.7%	309,701	1,917,658	67.0%	\$ 404,440	1,960,121	78.40%	-	0.0%	n/a	n/a	417,439	16.7%	-90.2%	-78.2%
OCT	392,752	4,631,779	81.6%	334,899	2,252,557	78.7%	\$ 296,502	2,256,623	90.26%	-	0.0%	n/a	n/a	417,439	16.7%	-91.0%	-81.5%
NOV	459,147	5,090,926	89.7%	250,106	2,502,663	87.5%	\$ 97,454	2,354,077	94.16%	-	0.0%	n/a	n/a	417,439	16.7%	-91.8%	-83.3%
DEC	\$ 584,308	\$ 5,675,235	100.0%	\$ 358,422	\$ 2,861,086	100.0%	\$ 145,922	2,500,000	100.00%	\$ -	0.0%	n/a	n/a	\$ 417,439	16.7%	-92.6%	-85.4%

January #s are as of 1/20/10



**TOWN OF BRECKENRIDGE
EXCISE TAX FUND
CURRENT YEAR TO PRIOR YEAR COMPARISON
FOR THE 12 MONTHS ENDING DECEMBER 31, 2009**

100 % OF THE FISCAL YEAR HAS ELAPSED

	PRIOR YEAR			2008 vs. 2009 ACTUAL % VARIANCE	CURRENT YEAR					
	YTD ACTUAL	YE TOTAL	% OF YE REC'D/SPENT		YTD ACTUAL	YTD BUDGET	ACTUAL/BUDGET \$ VARIANCE	ACTUAL/BUDGET % VARIANCE	ANNUAL BUDGET	% OF BUDGET REC'D/SPENT
REVENUE DEFAULT										
SALES/ACCOM TAXES DAILIES	161	161	100%	677%	1,090	0	1,090	0%	0	0%
SALES TAX	12,067,380	12,067,380	100%	82%	9,931,781	12,401,703 *	(2,469,922)	80%	12,401,703	80%
ACCOMODATIONS TAX	1,783,019	1,783,019	100%	67%	1,190,853	1,589,664 *	(398,811)	75%	1,589,664	75%
INVESTMENT INCOME	308,060	293,992	105%	15%	47,452	246,805	(199,353)	19%	246,805	19%
TOTAL REVENUE DEFAULT	14,158,620	14,144,552	100%	79%	11,171,176	14,238,172	(3,066,996)	78%	14,238,172	78%
MISCELLANEOUS TAX										
SALES TAX	1,223,687	1,223,687	100%	0%	-3,020	0	(3,020)	0%	0	0%
CIGARETTE TAX	83,994	83,994	100%	64%	53,698	54,999	(1,301)	98%	54,999	98%
TELEPHONE FRANCHISE TAX	30,029	30,029	100%	96%	28,708	30,499	(1,791)	94%	30,499	94%
PUBLIC SERVICE FRANCHISE	464,908	464,908	100%	120%	558,158	398,001	160,157	140%	398,001	140%
CABLEVISION FRANCHISE TAX	135,552	135,552	100%	80%	108,862	105,000	3,862	104%	105,000	104%
REAL ESTATE TRANSFER TAX	3,733,785	3,733,785	100%	77%	2,861,119	3,605,126	(744,007)	79%	3,605,126	79%
TOTAL MISCELLANEOUS TAX	5,671,955	5,671,955	100%	64%	3,607,525	4,193,625	(586,100)	86%	4,193,625	86%
TOTAL FUND REVENUE	19,830,575	19,816,507	100%	75%	14,778,701	18,431,797	(3,653,096)	80%	18,431,797	80%
EXCISE TAX DEBT SERVICE										
OTHER CONTRACTED SERVICES	0	0	0%	0%	0	504	(504)	0%	504	0%
COP FEES	2,225	2,225	100%	94%	2,100	0	2,100	0%	0	0%
2005 COP'S PRINCIPAL	260,000	260,000	100%	106%	275,000	275,000	-	100%	275,000	100%
2005 COP'S INTEREST	289,788	289,788	100%	100%	291,140	291,140	-	100%	291,140	100%
TOTAL EXCISE TAX DEBT SERVICE	552,013	552,013	100%	103%	568,240	566,644	1,596	100%	566,644	100%
TRANSFERS										
TRANSFER TO GENERAL FUND	13,297,081	13,297,081	100%	101%	13,470,000	13,470,000	-	100%	13,470,000	100%
TRANSFER TO GOLF FUND	250,000	250,000	100%	0%	0	0	-	0%	0	0%
TRANSFERS TO CAPITAL FUND	2,516,000	2,516,000	100%	35%	887,000	887,004	(4)	100%	887,004	100%
TRANSFER TO MARKETING	300,000	300,000	100%	145%	435,000	435,000	-	100%	435,000	100%
TRFS TO EMPLOYEE HSG FUND	2,362,441	2,362,441	100%	99%	2,332,918	2,332,920	(2)	100%	2,332,920	100%
TRFS TO FACILITIES FUND	200,000	200,000	100%	0%	0	0	-	0%	0	0%
TRFS TO SPECIAL PROJECTS FUND	2,269,000	2,269,000	100%	44%	1,005,245	1,005,240	5	100%	1,005,240	100%
TOTAL TRANSFERS	21,194,522	21,194,522	100%	86%	18,130,163	18,130,164	(1)	100%	18,130,164	100%
TOTAL FUND EXPENDITURES	21,746,535	21,746,535	100%	86%	18,698,403	18,696,808	1,595	100%	18,696,808	100%
NET REVENUE OVER EXPENDITURES	(1,915,960)	(1,930,028)			(3,919,702)	(265,011)	(3,654,691)		(265,011)	

* 2009 Sales Tax and Accommodation Tax figures are not final. The Accommodation tax collected by the Town in January will be posted to December 2009 as well as the County Tax collections distributed in February. In 2008, these collections resulted in accruals of approximately \$2 million in additional revenue.



MEMORANDUM

TO: Tim Gagen
Kate Boniface
FROM: Lynn Zwaagstra
DATE: January 12, 2010
SUBJECT: Recreation Center New Business Model - Hours

In September 2009, the Recreation Center hours were reduced as part of the Town's approved Tier III expense reductions implemented in response to the economic downturn and Council direction to look at a new sustainable business model for all Town operations. The hour reductions were part of a bigger package of reductions implemented. Negative community feedback has been received concerning some of the hour reductions and Council has asked to review the changes.

On January 12, 2010, Town Council discussed this issue and requested to review some options for reinstating some Recreation Center hours. In addition, Council requested to see associated costs and options for reductions in other areas to offset the cost of reinstating some hours.

Attached is an overview of 5 different models with some alternates for hours of operation. Each model is compared to the base 2010 approved budget and shows an associated cost above what is currently funded. While there are 5 options presented, there are also additional options for pool hour reductions that could be added to each model.

The criteria utilized to select the presented options are outlined here.

- Customer feedback requesting weekend evening hour reinstatement and a focus on expanded hours in the winter.
- Customer participation statistics showing strong participation numbers until at least 8pm daily.
- Recommendation not to shift the dissatisfaction from the service level reduction to a new user group.
- Consistency of hours and ease of understanding to the customer.

Cost Offset

The cost of reinstating Recreation Center operating hours can be offset by reducing pool operating hours as shown in the attached models. A second option to offset the cost would be to reduce the Recreation Center pro shop. This option previously listed as a Tier IV reduction would cut (or reduce) the pro shop expense and revenue line item from the Recreation Center budget. The expense line is budgeted at \$44,000. The associated revenue of \$62,500 would also be eliminated. However, we propose to offset the loss of net revenue by contracting out the pro shop space to a private vendor for retail and/or food and beverage. In addition, depending upon the model chosen, there would be some minor funds leftover, which we would use to continue offering a "mini" pro shop with essential convenience items only. (Examples include tennis balls, racquet restringing service, goggles, and swim diapers.)

The Recreation Department Director will be available to answer questions related to the 4 options proposed. At this time, we seek council direction on the Recreation Center hours and associated finances.

Breckenridge Recreation Center Operating Hour Analysis

Hours Prior to Tier III Reduction

Summer	Winter	5486 annual facility operating hours
Mon-Fri 6am-9pm	Mon-Fri 6am-10pm	
Sat 7am-9pm	Sat 7am-10pm	
Sun 8am-9pm	Sun 8am-10pm	

Hours With Tier III Reduction Implemented September 6, 2009

Mon-Fri 6am-9pm	4888 annual facility operating hours
Sat 7am-6pm	Base 2010 funding level
Sun 10am-6pm	

Base Facility Hours	New Options

Option A - 5044 annual base facility operating hours

Summer	Winter	
Mon-Fri 6am-9pm	Mon-Fri 6am-9pm	
Sat 7am-6pm	Sat 7am-8pm	Additional cost above
Sun 10am-6pm	Sun 8am-8pm	2010 funding level
		\$19,500

Option B - 5070 annual base facility operating hours

Summer	Winter	
Mon-Fri 6am-8pm	Mon-Fri 6am-9pm	
Sat 7am-8pm	Sat 7am-8pm	Additional cost above
Sun 8am-8pm	Sun 8am-8pm	2010 funding level
		\$22,750

Option C - 5148 annual base facility operating hours

Summer and Winter		
Mon-Fri 6am-9pm		
Sat 7am-8pm		Additional cost above
Sun 9am-8pm		2010 funding level
		\$32,500

Option D - 5096 annual base facility operating hours

Summer and Winter		
Mon-Fri 6am-9pm		
Sat 7am-7pm		Additional cost above
Sun 8am-7pm		2010 funding level
		\$26,000

Option E - 5200 annual base facility operating hours

Summer and Winter		
Mon-Fri 6am-9pm		
Sat 7am-8pm		Additional cost above
Sun 8am-8pm		2010 funding level
		\$39,000

Options For Pool Closure to Offset Facility Operating Hour Increases

(Offset increase in base facility operating hours by subtracting pool hours.)

Reduction 1	Pool opens 9am on Saturday year round and 9am Sunday in winter	\$6,400
Reduction 2	Pool opens at 9am on Tuesday and Thursday daily summer	\$7,800
Reduction 3	Pool opens at 9am on Tuesday and Thursday daily year round	\$15,300
Reduction 4	Pool closes 1 hour early on Monday through Friday daily year round	\$12,750
Reduction 5	Pool closes 1 hour early on weekends daily year round	\$5,100
		\$47,350

Savings

*Actual cost will vary slightly depending on

Each of these 5 pool reduction options could be added to the base facility hours at the left. Simply take the cost of the base facility hour option and subtract the "savings" dollar figure of each of the pool hour reductions to obtain your new total cost.

As you can see, the total of all the pool options adds up to more than the cost of any of the base facility hour options to the left. Thus, not all of the pool reductions would be necessary. In addition, as mentioned in the cover memo, a second option is to utilize the expense line of the Rec Center pro shop to offset costs of hour reinstatements.

MEMO

TO: Town Council

FROM: Town Attorney

RE: Proposed Charter Amendments

DATE: January 20, 2010 (for January 26th meeting)

In anticipation of the April regular Town election, the Town Clerk and I want to have a discussion with Council about possible amendments to the Town Charter. In Breckenridge, proposed Charter amendments have typically been initiated by the Council's adoption of an ordinance referring the proposed amendments to the voters. However, Charter amendments are effective only if approved by the voters.

There are three areas of the Charter that Mary Jean and I have focused on for possible amendment:

1. A proposed amendment to the Charter to adopt the state initiative and referendum statutes in place of the current Charter initiative and referendum provisions;
2. A proposed revision to the definition of "elector" in the Charter; and
3. A proposed amendment to allow Town ordinances and other Town documents to be "published" by posting on the Town's website, instead of being published in a local newspaper.

Enclosed with this memo is a draft ordinance setting forth the Charter amendments that we would like for you to consider, as well as draft ballot questions that could be submitted to the voters with respect to each proposed amendment.

Here are my thoughts about each of the proposed Charter amendments.

Adopting State Initiative and Referendum Processes

As you know, the term "initiative" refers to the right of the voters to propose a new Town ordinance, and to require a public vote if the proposed ordinance is not adopted by the Town Council. "Referendum" is the voters' right to require the reconsideration of a Council-adopted ordinance, and to force a vote if the ordinance is not repealed by the Council. Initiative and referendum are core political rights, and are subject to significant protection by the federal and state courts.

The Municipal Home Rule Act of 1971 requires that a Colorado home rule charter “contain procedures for the initiative and referendum of measures.”¹ The Breckenridge Town Charter complies with this law by setting forth provisions describing how the powers of initiative and referendum are to be exercised by Town voters. These provisions have been in the Charter since it was adopted in 1980, and have not been significantly amended in the intervening 30 years.

When the Town Charter was adopted, there was no Colorado statute specifying how initiative and referendum are suppose to work; each municipality, whether statutory or home rule, was left to craft its own rules. This lack of statutory guidance, particularly for statutory (non-home rule) municipalities, caused frustration and uncertainty.

In 1995 the Colorado Municipal League proposed a state law describing in detail the initiative and referendum procedures to be followed by statutory municipalities. The law was crafted with significant input from municipal clerks who are customarily charged with the duty to supervise the initiative and referendum processes. CML’s bill was passed by the Colorado legislature, and signed into law by the Governor. In the past 15 years the statute has been amended on occasion to address problem areas and to make the initiative and referendum processes run more smoothly.

The Colorado Constitution allows home rule municipalities to craft their own initiative and referendum processes; home rule municipalities do not have to follow the state initiative and referendum statutes. The Town adopted its own initiative and referendum rules when the Charter was initially adopted in 1980. Although the initiative and referendum processes provided by the Charter generally follow the same processes as are outlined in the 1995 state law, the Charter is not as thorough as the statute and this has created real world issues for the Town Clerk.

This was recently a problem in connection with the Marijuana Initiative. The state law provides a process for the Town Clerk to hold a hearing to resolve protests that are filed challenging the sufficiency of signatures on initiative and referendum petitions. The Charter has no such protest provision. The lack of a process to resolve signature protests had the potential for being a real problem in the Marijuana Initiative. Fortunately, we were able to resolve the issue at the administrative level. However, in the course of actually using and applying the Charter’s initiative and referendum processes Mary Jean and I came to the conclusion that the Town would probably be better served by using the processes described in the state statute instead of the process currently described in the Charter.

For example, we have identified areas where the statute is more thorough than the Charter, and where using the state statute may forestall possible challenges to the constitutionality of at least one Charter provision. The state law sets a time limit for the circulation of initiative petitions (180 days). The Charter has no time limit. Also, the Charter requires that prior to circulating either an initiative or referendum petition a “petitioner’s committee” comprised of five Town residents must be formed and identified to the Town Clerk. Recent case law suggests to me that the requirement that the petitioner’s committee be comprised

¹ §31-2-212, C.R.S.

only of local residents may be an unconstitutional infringement on the right of initiative and referendum.

For these reasons, we think it makes sense to consider asking the Town voters to replace the Charter's current initiative and referendum provisions by adopting by reference most (but not all) of the 1995 state initiative and referendum statute. We believe that the state law is more comprehensive and complete than the current Charter provisions, and that it would be easier for the Clerk and ballot proponents to understand and follow the state statutory provisions. In addition, by adopting the state initiative and referendum statute the Town would automatically get the benefit of any future amendments that are made to the state law.

However, we do not think the Charter should simply adopt the state initiative and referendum law in toto. There are several key provisions currently provided in the Charter that we feel strongly should be preserved if the state law is to be adopted by the Town. These provisions are described in Section 6.2 of the proposed ordinance, and are as follows:

1. The most important of the current Charter provisions that we think should be kept is the requirement that an initiative petition be signed by at least 15% of the registered electors of the Town, and that a referendum petition be signed by at least 10% of the Town's registered electors. The state statute requires only 5% of the registered electors to either commence initiative or referendum proceedings.² However, the Colorado Constitution³ allows a municipality to require not more than 10% of registered electors to order a referendum, and not more than 15% to propose an initiated measure. The current Charter requirement complies with this constitutional limitation, and appears to have worked well since the Charter was adopted in 1980. We do not believe that lowering the petition requirements to the numbers provided in the state statute is in the Town's best interest because doing so could allow for initiative and referendum in circumstances where there is simply not enough local support to justify the expense of an election. We feel that the number of required signatures currently provided by the Charter should not be changed. The current Town petition requirements are preserved in Sections 6.3(B) and D of the proposed ordinance.

2. The state initiative and referendum statute does not contain a definition of "registered elector." We think this omission should be corrected by adopting by reference the definition of "registered elector" currently contained in the state's Uniform Election Code of 1992. Proposed language doing this is found in Section 6.3(A) of the ordinance. This issue is similar to the separate charter amendment described later in this memo. However, because of the possibility that such a separate amendment might not pass, we think inserting a specific definition of this key term in the Initiative and Referendum portion of the Charter makes good sense.

3. The state law provides that when an initiative petition is found to be sufficient the Council is to consider the proposed ordinance, and if the proposed ordinance is adopted it is to be

² You should note that under the state statute the number of required signatures is to be determined on the date the initiative or referendum petition is initially filed with the Clerk for approval as to form. The Charter requires the number of required signatures to be determined based on the total number of electors registered to vote at the last regular municipal election. The Town Clerk and I suggest keeping the current Charter language.

³ Article 5, Section 1 (9)

presented to the Mayor for a possible veto. Because the Charter ordinance process does not allow for a mayoral veto we think the state law allowing for a veto should be deleted. This is addressed in Section 6.3(B) of the proposed ordinance by omitting the state statutory language referring to a mayoral veto.

4. Importantly, the state law provides that certain kinds of municipal ordinances are simply not subject to referendum. Such ordinances can become effective immediately upon adoption. All other municipal ordinances do not take effect until 30 days after final passage and publication. This 30-day time period is to allow interested parties to circulate and file their referendum petitions.

These provisions of the state law are problematic for the Town in two ways.

First, there is an inconsistency between the state law and the Charter with respect to which categories of ordinances are not subject to referendum. As you will recall from the recent discussion concerning the 2010 Emergency Marijuana Ordinance, not all local government ordinances are subject to the people's right of referendum. The state law exempts from referendum only: (i) ordinances calling for a special election, and (ii) ordinances necessary for the preservation of public peace, health or safety (i.e., the traditional "emergency ordinances"). The Charter on the other hand provides that the following types of Town ordinances are exempt from referendum if adopted by the affirmative vote of five Councilmembers: (i) ordinances appropriating revenues, (ii) ordinances calling a special election, (iii) ordinances necessary for the immediate preservation of public peace, health or safety, and (iv) ordinances authorizing municipal borrowing requiring an election. We suggest that the current Charter provision be maintained, and proposed language is included in Section 6.1(b) of the proposed ordinance.

Second, except for the ordinances that are not subject to referendum as noted above, under the state law all ordinances do not become effective until 30 days after final passage and publication. The Charter currently provides that non-emergency ordinances become effective five days after publication following second reading. We cannot figure out a way to mesh the Town's current effective date provision with the state initiative and referendum statute. For this reason, the proposal is to amend the Charter to adopt the state rule that most ordinances will not become effective until 30 days after final passage and publication. Proposed language is provided in the amendment to Section 5.9 of the Charter on page 3 of the ordinance. Adoption of this amendment will result in a delay of a couple of weeks before most Town ordinances become effective.

Although changing to the state initiative and referendum process will require some adjustments to the way the Town conducts its business, the Town Clerk and I think that on balance it is worth considering.

New Definition of "Registered Elector"

The Charter currently defines "elector" simply as "(a) person registered to vote under the Constitution and Statutes of the State of Colorado." You will notice that this definition does not

require that an elector be a resident of the Town. However, this apparent problem is resolved by the use of the qualifying language “the electors of the Town” throughout the Charter.

It has recently come to our attention that the state’s Uniform Election Code of 1992 contains the following definition of “registered elector”:

A person who has complied with the registration provisions of the Uniform Election Code of 1992 and who resides within the Town. If any provision of this Charter or the ordinances of the Town require the signing of any document by an elector, the person making the signature shall be deemed to be an elector if the person's name and address at the time of signing the document matches the name and address for the person on the registration document at the Summit County Clerk and Recorder's office, and as it appears on the master elector list on file with the Colorado Secretary of State.

The second sentence of the state’s definition addresses a particular problem that the Town Clerk encountered recently in attempting to verify signatures on the Marijuana Initiative petitions – that is, where a person’s address on the petition is different from the address on the state’s and county’s voter registration lists. This is a difficult, practical problem for the Clerk. If the addresses are different how can she verify that the signer is really a registered elector of the Town? Perhaps in the past this problem could have been resolved because everyone knew everyone, and the Clerk could quickly and efficiently determine that a signer is in fact a registered elector, even if the addresses do not match. Recent experience, however, has shown that this approach does not work very well in the current Town of Breckenridge.

As you will see, the approach taken by the state election law greatly simplifies the Clerk’s signature verification process. It does this by providing that if a signer’s address as shown on the petition does not match the state’s and county’s voter lists the signature is simply not valid and cannot be counted. The proposal is to amend the current definition of “elector” to adopt the state statutory language. You can see the proposed Charter amendment in Section 2 of the proposed ordinance. We believe that the approach taken by the state law (that is, by the way, already applied to Town “co-coordinated” elections conducted by the County Clerk) merits consideration.

Publication on the Town’s Web Site Instead of in a Newspaper

The Charter requires that certain Town documents, most notably Town ordinances, be “published.” For example, a regular, non-emergency ordinance must be published in full after first reading, and a notice of adoption (with the full text of any amendments made at second reading) must be published following adoption of the ordinance on second reading.

Currently, the Charter defines “publication” as the act of publishing the Town document in a newspaper of general circulation in the Town. The proposal for your consideration is to amend the Charter definition of “publication” to allow Town documents to be “published” by placing them on the Town’s official website, instead of publishing them in the newspaper. Please look at the amendatory language provided in Section 3 of the ordinance.

State law establishes specific publication requirements for certain types of Town documents (for example, the Municipal Annexation Act requires certain annexation-related publications to occur in a newspaper). I do not think the Town can eliminate the need to publish a document in a newspaper if such form of publication is required by state law. However, for other types of Town documents I can find nothing that would prohibit the Town from replacing the requirement to publish in a newspaper with a requirement that a document be posted on the Town's website instead. In fact, the Town Clerk advises that other Colorado municipalities have already done this.

Identifying each instance where a publication can be done on the Town's website and where a newspaper publication must occur by state law is tricky and will take some time. We have not yet undertaken a comprehensive analysis of this issue. For this reason, the thought is that if the Charter is to be amended to allow publication by posting on the website in certain instances such amendment should have a delayed effective date. This would allow the staff to propose a comprehensive ordinance to the Council describing what kind of Town documents can be posted on the website; which Town documents must still be published in the newspaper; what constitutes "publishing" a document on the Town's website (i.e., how many days must the document appear on the website before it is deemed to have been "published"?); what happens if the website goes down; and a number of other interesting issues.

As you can see, Section 3 of the draft ordinance allows for posting on the Town's website unless a different method of publication is required by applicable law, and requires the Council to adopt an ordinance setting forth the requirements for publication by posting on the Town's website. Section 8 of the ordinance provides that this particular amendment would not become effective until July 1, 2010. We think this would allow adequate time for the Council to adopt the required ordinance dealing with the publication issue.

If the Council decides to put any or all of the proposed Charter amendments on the April 6th ballot, it will be necessary for the Council to adopt an ordinance by the second meeting in February. This is because state law requires a special Notice of Election to be published at least 30 days in advance of the Charter election. Hopefully, beginning the discussion on the proposed Charter amendments next Tuesday will give you adequate time to consider all three proposals.

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

1 ***FOR WORKSESSION ONLY – JAN. 26***

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2010

9
10 AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF
11 THE TOWN OF BRECKENRIDGE, AT THE REGULAR TOWN ELECTION
12 TO BE HELD APRIL 6, 2010, PROPOSED AMENDMENTS TO THE
13 BRECKENRIDGE TOWN CHARTER; SETTING FORTH THE BALLOT
14 TITLE; AND PROVIDING OTHER DETAILS IN CONNECTION WITH THE
15 SUBMISSION OF THE QUESTIONS TO THE ELECTORS

16
17 WHEREAS, the Charter of the Town of Breckenridge, Colorado (the “Charter”) was
18 approved by the electors of the Town on April 1, 1980; and

19
20 WHEREAS, Section 15.10 of the Charter provides that it may be amended at any time in
21 the manner provided by the Colorado Constitution; and

22
23 WHEREAS, Article XX, Section 9, of the Colorado Constitution provides that the
24 General Assembly is to establish procedures for amending home rule charters; and

25
26 WHEREAS, §31-2-210, C.R.S., which is part of “The Municipal Home Rule Act of
27 1971”, provides that proceedings to amend a municipal home rule charter may be initiated by the
28 adoption of an ordinance by the governing body of the municipality submitting the proposed
29 amendment to a vote of the registered electors of the municipality; and

30
31 WHEREAS, Article XX, Section 9, of the Colorado Constitution further provides that no
32 amendment to a home rule charter shall become effective until approved by a majority of the
33 registered electors of such municipality voting thereon; and

34
35 WHEREAS, the Town Council finds and determines that ballot questions concerning
36 proposed amendments to the Charter should be submitted to the registered electors of the Town
37 at the regular Town election to be held on April 6, 2010, all as more full set forth hereafter.

38
39 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
40 BRECKENRIDGE, COLORADO:

41
42 Section 1. At the regular Town election to be held on April 6, 2010 there shall be
43 submitted to the vote of the registered electors of the Town of Breckenridge the question of
44 whether Article VI of the Breckenridge Town Charter, entitled “Initiative and Referendum”, and

1 Section 5.9 of the Breckenridge Town Charter, entitled “Forms of Ordinance”, shall be amended
2 so as to read in their entirety as follows:

3 A. Proposed amendment to Article VI of the Breckenridge Town Charter, entitled
4 “Initiative and Referendum”:

5
6 **ARTICLE VI**
7 **INITIATIVE AND REFERENDUM**
8

9 **Section 6.1 GENERAL AUTHORITY:**

10
11 **(a) Initiative. The electors of the Town shall have the power to propose any**
12 **legislative matter to the Council.**

13
14 **(b) Referendum. The electors of the Town shall have the power to require**
15 **reconsideration by the Council of any ordinance and, if the Council fails to repeal an**
16 **ordinance so reconsidered, to approve or reject it at a Town election, in accordance with**
17 **the provisions of this Article. However, this power of referendum shall not extend to**
18 **ordinances appropriating any revenues or calling a special election, emergency ordinances**
19 **described in Section 5.11, or ordinances that authorize any municipal borrowing requiring**
20 **an election pursuant to Article XI of this Charter.**

21
22 **Section 6.2 INITIATIVE AND REFERENDUM PROCEDURE: Except as provided in**
23 **Section 6.3, the procedures for exercising the initiative and referendum powers reserved to**
24 **the Town’s electors in Section 6.1(a) and Section 6.1(b) shall be as set forth in Article 11 of**
25 **Title 31, C.R.S., as amended from time to time.**

26
27 **Section 6.3 AMENDMENTS TO STATE INITIATIVE AND REFERENDUM**
28 **STATUTES: Article 11 of Title 31, C.R.S., as adopted in Section 6.2, is hereby amended as**
29 **follows:**

30
31 **A. Section 31-11-103, C.R.S., is amended by the inclusion of the following additional**
32 **defintion:**

33
34 **(3.5) “Registered elector” has the meaning provided in Uniform Election Code of**
35 **1992, as amended from time to time.**

36
37 **B. Section 31-11-104(1), C.R.S., is amended so as to read in its entirety as follows:**

38
39 **(1) Any proposed ordinance may be submitted to the Council by filing**
40 **written notice of the proposed ordinance with the Town Clerk and, within**
41 **one hundred eighty days after approval of the petition pursuant to Section**
42 **31-11-106(1), by filing a petition signed by at least fifteen percent of the**
43 **registered electors of the Town on the date of such notice. The proposed**
44 **ordinance may be adopted without alteration by the Council within twenty**
45 **days following the final determination of petition sufficiency. If the proposed**
46 **ordinance is not adopted by the Council, the Council shall forthwith publish**

1 the proposed ordinance as other ordinances are published and shall refer the
2 proposed ordinance, in the form petitioned for, to the registered electors of
3 the Town at a regular or special election held not less than sixty days and not
4 more than one hundred fifty days after the final determination of petition
5 sufficiency, unless otherwise required by the state constitution. The
6 ordinance shall not take effect unless a majority of the registered electors
7 voting on the measure at the election vote in favor of the measure.

8
9 C. Section 31-11-105(1), C.R.S., is amended so as to read in its entirety as follows:

10
11 (1) No ordinance passed by the Council shall take effect before thirty days
12 after its final passage and publication, except as provided in Section 6.1(b) of
13 this Charter.

14
15 D. Section 31-11-105(2), C.R.S., is amended so as to read in its entirety as follows:

16
17 (2) Within thirty days after final publication of the ordinance, a referendum
18 petition protesting against the effect of the ordinance or any part thereof may
19 be filed with the Town Clerk. The petition must be signed during the thirty-
20 day period by at least ten percent of the registered electors of the
21 municipality registered on the date of final publication.

22
23 B. Proposed amendment to Article V, Section 5.9 of the Breckenridge Town Charter:

24
25 Section 5.9 FORMS OF ORDINANCE:

26
27 Every ordinance shall be introduced in written or printed form. The enacting
28 clause of all ordinances shall be: *BE IT ORDAINED BY THE TOWN COUNCIL*
29 *OF THE TOWN OF BRECKENRIDGE, COLORADO.* Except as otherwise
30 provided in this article, all ordinance shall take effective ~~five (5) days after~~
31 ~~publication following final passage~~ thirty days after final publication. Every
32 ordinance introduced shall be deemed to contain a severability clause, whether
33 stated therein or not.

34
35 Section 2. At the regular Town election to be held on April 6, 2010 there shall be
36 submitted to the vote of the registered electors of the Town of Breckenridge the question of
37 whether the definition of “elector” set forth in Section 15.12 of the Breckenridge Town Charter
38 shall be amended so as to read in its entirety as follows:

39 (d) Electors or Registered Electors. ~~A person registered to vote under the~~
40 ~~Constitution and Statutes of the State of Colorado~~ A person who has complied
41 with the registration provisions of the Uniform Election Code of 1992 and
42 who resides within the Town. If any provision of this Charter or the
43 ordinances of the Town require the signing of any document by an elector,
44 the person making the signature shall be deemed to be an elector if the
45 person's name and address at the time of signing the document matches the
46 name and address for the person on the registration document at the Summit

1 County Clerk and Recorder's office, and as it appears on the master elector
2 list on file with the Colorado Secretary of State.
3

4 Section 3. At the regular Town election to be held on April 6, 2010 there shall be
5 submitted to the vote of the registered electors of the Town of Breckenridge the question of
6 whether the definition of "publication" set forth in Section 15.12 of the Breckenridge Town
7 Charter shall be amended effective so as to read in its entirety as follows:

8 (m) Publication. ~~Publishing in a newspaper of general circulation in the Town.~~
9 Posting on the Town's official website, unless a different method of
10 publication is required by applicable law. The Council shall adopt an
11 ordinance setting forth the requirements for publication by posting on the
12 Town's official website.
13

14 Section 4. At the regular Town election to be held on April 6, 2010 the official ballot,
15 including absentee ballots, shall state the substance of the questions to be voted upon and, as so
16 stated, shall constitute the ballot title (including both the title and submission clause), and each
17 registered elector voting at the election shall indicate his or her choice on the questions
18 submitted, which shall be in the following form:

19 Question "A"
20

21 Effective April 6, 2010, shall Article VI of the Breckenridge Town Charter,
22 entitled "Initiative and Referendum" be amended to provide that the procedure for
23 exercising the Town electors' reserved rights of initiative and referendum shall be
24 as provided by Article 11 of Title 31, C.R.S., except that the following provisions
25 of the current Breckenridge Town Charter shall be maintained:
26

- 27 1. A petition signed by at least fifteen percent of the registered electors of the
28 Town shall be required to initiate a legislative matter; and
29 2. A petition signed by at least ten percent of the registered electors of the Town
30 shall be required to require a referendum on a Town ordinance,
31

32 and shall Section 5.9 of the Breckenridge Town Charter be amended to provide
33 that non-emergency Town ordinances take effect thirty days after final passage
34 and publication?
35

36
37 Yes _____ No _____
38
39

1 Question "B"

2
3 Effective April 6, 2010, shall the definition of “elector” set forth in Section
4 15.12 (d) of the Breckenridge Town Charter be amended to provide that an elector
5 is a person who has complied with the registration provisions of the Uniform
6 Election Code of 1992 and who resides within the Town?
7

8
9 Yes _____ No _____
10

11 Question "C"

12
13 Effective July 1, 2010, shall the definition of “publication” set forth in Section
14 15.12(m) of the Breckenridge Town Charter be amended to allow publication of
15 Town laws and notices to be made by posting on the Town’s official website,
16 unless a different method of publication is required by applicable law?
17

18
19 Yes _____ No _____
20

21 Section 5. The Town Council finds and determines that each of the ballot questions set
22 forth in Sections 1, 2, and 3, above, fairly and accurately summarizes the proposed amendments
23 to the Breckenridge Town Charter set forth in such Sections.

24 Section 6. If a majority of all votes cast at the election shall be for a particular question,
25 that particular question shall be deemed passed, and the Breckenridge Town Charter shall be
26 amended accordingly. If a majority of all the votes cast at the election shall be against a
27 particular question, that particular question shall be deemed to have been defeated.

28 Section 7. If either Question “A”, Question “B”, or both “Question A” and “Question
29 B”, as set forth in Section 4 of this ordinance shall pass at the election, the effective date of the
30 applicable amendment to the Breckenridge Town Charter shall be April 6, 2010.

31 Section 8. If Question “C” as set forth in Section 4 of this ordinance shall pass at the
32 election, the effective date of such amendment to the Breckenridge Town Charter shall be July 1,
33 2010.

34 Section 9. Within thirty days of the date of the adoption of this ordinance, the Town
35 Clerk shall cause to be published notice of the election upon the proposed amendments to the
36 Breckenridge Town Charter in accordance with the requirements of §31-2-210(4), C.R.S.

37 Section 10. If any section, subsection, sentence, clause, or phrase of this ordinance is for
38 any reason held to be invalid, such decision shall not affect the validity of the remaining portions
39 of this ordinance. The Town Council hereby declares that it would have passed this ordinance,
40 and each section, subsection, sentence, clause, and phrase of the ordinance, irrespective of the
41 fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared
42 invalid.

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

3 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
4 PUBLISHED IN FULL this ____ day of _____, 2010. A Public Hearing shall be held at the
5 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
6 _____, 2010, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
7 Town.

8
9 TOWN OF BRECKENRIDGE, a Colorado
10 municipal corporation

11
12
13
14 By _____
15 John G. Warner, Mayor

16
17 ATTEST:

18
19
20
21 _____
22 Mary Jean Loufek, CMC,
23 Town Clerk

**TEXT OF CURRENT CHARTER PROVISION
CONCERNING
INITIATIVE AND REFERENDUM**

Section 6.1 GENERAL AUTHORITY:

(a) Initiative. The electors of the Town shall have the power to propose any ordinance to the Council. In the event Council fails to adopt the proposed ordinance without any change in substance, such ordinance shall be submitted to the electors at a Town election for their acceptance or rejection. (Ord. 5, Series 1992, Election 4-7-1992)

(b) Referendum. The electors of the Town shall have the power to require reconsideration by the Council of any ordinance and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a Town election, in accordance with the provisions of this Article. However, this power of referendum shall not extend to ordinances appropriating any revenues or calling a special election, ordinances necessary for the immediate preservation of public peace, health or safety, or ordinances which authorize any municipal borrowing requiring an election pursuant to Article XI of this Charter. (Ord. 5, Series 1992, Election 4-7-1992)

Section 6.2 COMMENCEMENT OF PROCEEDINGS; PETITIONER'S COMMITTEE; AFFIDAVIT:

Any five (5) electors who are residents of the Town may commence initiative proceedings by filing with the Town Clerk an affidavit stating they will constitute the petitioner's committee. Any five (5) electors who are residents of the Town may commence referendum proceedings by filing with the Town Clerk, no later than ten (10) days after final adoption of the ordinance, an affidavit stating they will constitute the petitioner's committee. The affidavit shall provide that the committee shall be responsible for circulating the petition and filing it in proper form. Furthermore, the affidavit shall state the names and addresses of the committee members and specify the address to which all notices to the committee are to be sent. Finally, the affidavit shall set out in full the proposed initiative ordinance or cite the ordinance sought to be reconsidered.

Promptly after the affidavit of the petitioner's committee is filed, the clerk shall issue the appropriate petitioner blanks to the petitioners' committee. (Ord. 7, Series 2002, Election 4-2-2002)

Section 6.3 PETITIONS:

(a) Number of Signatures. Initiative petitions must be signed by electors of the town in number to at least fifteen (15) percent of the total number of electors registered to vote at the last regular municipal election. Referendum

Exhibit "A"

petitions must be signed by electors of the town equal in number to at least ten (10) percent of the total number of electors registered to vote at the last regular municipal election.

(b) Form and Content. All pages of a petition shall be uniform in style and shall be filed as one instrument. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered. (Ord. 7, Series 2002, Election 4-2-2002)

(c) Affidavit of Circulator. Each page of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating the following: that he personally circulated the petition; the number of signatures thereon; that all signatures were affixed in his presence; that he believes them to be genuine signatures of the persons whose names they purport to be; and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(d) Time for Filing Referendum Petitions. Referendum petitions must be filed within thirty (30) days after adoption by the council of the ordinance sought to be reconsidered. (Ord. 7, Series 2002, Election 4-2-2002)

Section 6.4 PROCEDURE AFTER FILING:

(a) Certificate of Clerk. Amendment. Within ten (10) days after the petition is filed, the town clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the details of its defects and promptly send a copy of the certificate to the petitioner's committee by certified mail. A petition certified insufficient for lack of required number of valid signatures may be amended once if the petitioners' committee files a written notice of intention to amend it with the clerk within two (2) days after receiving the copy of his certificate, and files a supplementary petition upon additional forms within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsections (b) and (c) of Section 6.3. Within five (5) days after it is filed, the clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioner's committee by certified mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioner's committee does not elect to amend or request council review under subsection (b) of this section within the time required, the clerk shall promptly present his certificate to the council. The certificate shall be a final determination as to the sufficiency of the petition.

(b) Council Review. If a petition has been certified insufficient and the petitioner's committee does not file notice of intention to amend it or if an

Exhibit "A"

amended petition has been certified insufficient, the committee may, within two (2) days after receiving the copy of such certificate, file a written request that it be reviewed by the council. The council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it. The council's determination shall be final as to the sufficiency of the petition.

Section 6.5 REFERENDUM PETITIONS; SUSPENSION OF EFFECT:

When a referendum petition is filed with the Town clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

1. There is final determination of insufficiency of the petition, or
2. The petitioners' committee withdraws the petition, or
3. The Council repeals the ordinance, or
4. Certification of a favorable vote of the electors on the ordinance.
(Ord. 5, Series 1992, Election 4-7-92)

Section 6.6 ACTION ON PETITIONS:

(a) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the council shall promptly consider the proposed initiative ordinance in the manner approved in Article V or reconsider the referred ordinance by voting its repeal. The council shall have power to change the detailed language of any proposed initiative ordinance and to affix the title thereto, so long as the general character of the measure will not be substantially altered. Repeal of any referred ordinance may be effected only by five (5) votes of the entire council.

(b) Submission to Voters. The vote of the electors on a proposed initiative or referred ordinance shall be held not less than thirty (30) days and not later than ninety (90) days from the date of the final council vote thereon. If no regular town election is to be held within the period prescribed in this subsection, the council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election. The council may at its discretion provide for a special election at an earlier date within the above-prescribed period. Copies of the proposed initiative or referred ordinance shall be made available to the public within a reasonable time before the election and also at the polls at the time of the election.

(c) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the thirtieth (30th) day preceding the day scheduled for a vote of the town. Withdrawal shall be effected by filing with the clerk a request for withdrawal signed by a majority of the petitioners' committee.

Exhibit "A"

With the consent of the majority of the council and upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Section 6.7 SUBMISSION BY COUNCIL:

The council on its own motion shall have the power to submit at a regular or special election any proposed ordinance or any question to a vote of the electors.

Section 6.8 RESULTS OF ELECTION:

(a) Initiative. If a majority of the electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(b) Referendum. If a majority of the electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

1 (c) An ordinance adopted by the electorate may not be amended or repealed for a
2 period of six (6) months after the date of the election at which it was adopted. An ordinance
3 repealed by the electorate may not be re-enacted for a period of six (6) months after the date of the
4 election at which it was repealed; provided, however, that any ordinance may be adopted or
5 amended or repealed at any time by appropriate referendum or initiative procedure in accordance
6 with the provisions of this article, or, if submitted to the electors by the council on its own motion.
7
8

MEMORANDUM

TO: Breckenridge Town Council
FROM: Laurie Best, Community Development Department
DATE: January 19, 2010 (for January 26th meeting)
RE: Policy 24 R-Housing Policy

Staff has been directed by the Council to work on Policy 24 R of the Town Development Code. There is concern that the 10 positive points that may be awarded under this policy for affordable housing might be used to mitigate questionable design or excessive site disturbance. We discussed this policy with the Planning Commission on January 19th and a copy of the report to Planning Commission is included in your packet. In general Planning Commission expressed their concerns about the opportunity for free density (provided through an annexation or development agreement) and 10 positive points in addition to the density. This was viewed as a ‘double incentive’. The Planning Commission also said that if positive points were available they should be used to incentivize lower price points.

Before we actually draft specific language we wanted to meet with Council to discuss this policy, to get your input. The items for discussion include:

- 1) Should positive points under Policy 24R ever be allowed for using ‘free’ density for affordable housing? Is the free density alone enough of an incentive? In the case of annexations, where up to 80% of the project density is brought to the site by the Town, Staff is concerned about the unintended site impacts. This appears to be an issue when there is considerable ‘upzoning’, beyond what was originally contemplated in the LUGs. Staff believes that some incentive is still needed beyond the density, particularly if the project targets lower price points (AMI) or needs some flexibility in order to control costs.
- 2) Is 10 points too many points, in that it offsets too many site related negative points? Would it be preferable to restrict the types of negative points that can be offset? (i.e. site disturbance cannot be mitigated with housing points?) This strategy may not be advisable due to the complexity of tracking specific point assignments but we would be interested in your comments. It also appears that none of the recent projects required all 10 points to achieve a passing point analysis. (see the Planning Commission memo dated January 13, 2010)
- 3) Should a different point assessment (multiple matrixes or multipliers) be used to provide point incentives based on amount of free density versus natural density and price points (i.e. maximum points available for projects that utilize 10% of their own density and hit lower price points and fewer points available for projects that utilize primarily ‘free’ density and higher price points). Staff believes this would be the best alternative, to provide some incentive for quality projects at desired price points that fit the site.

- 4) Should projects that take advantage of the density bonus of 10% in Policy 3A (D) also be allowed positive points under Policy 24R or should this also be considered a 'double incentive'? The density bonus under Policy 3 has worked well as an incentive and the 10% additional density does not seem to result in over-programmed sites. This incentive seems to be working well and developers utilize these points sparingly because of the cost of providing housing. Staff believes that bonuses should still be eligible for positive points and that the focus of this amendment should be the annexations and development agreements that add substantial density to a site.

Summary

Staff looks forward to your feedback regarding these issues. Thank you.

Memo

To: Planning Commission
From: Laurie Best
Date: January 13, 2010 (for PC worksession January 19th)
Re: Housing Policy 24R Amendment

Background

Recently several large affordable housing projects have been approved or submitted that have utilized the 10 positive points that are awarded under Policy 24R to offset significant site disturbance or design concerns. This is not common, but the potential exists primarily in conjunction with annexations or development agreements where the Town is providing significantly more density (for affordable housing) than was contemplated in the original Land Use District.

Both Planning Commission and Town Council have raised this as an issue and have asked staff to draft an amendment to Policy 24R. From conversations with Town Council it appears that the original intent of Policy 24R was to incentive affordable housing but not to allow significant 'upzonings' that also have the benefit of 10 positive points to mitigate questionable design or excessive site disturbance.

Projects that are currently under review are purposely not discussed in this memo but many recent affordable housing projects would not have passes a point analysis without the benefit of positive points even with the 'free' density. However, it does not appear that the full 10 points have been needed to achieve a passing score.

Examples:	Project Size	Affordable Housing 'free' Density	Policy 24 Points	Negative points	Policy	Final Score
Vic's Landing	36 units	24 units	+10	-4 points	Site suitability	+14
Maggie Placer	21 units	17 units	+10	-3 points	Architecture-natural materials	+10
Stan Miller	157 units	105 units	+10	-9 points	Setbacks	+5

There are several issues for consideration including:

1. Is positive 10 points too many points in that it offsets too many site related negative points? It appears that none of the recent projects required all 10 points and that this cap may need to be lowered.
2. Should a different point assessment (matrix) be established based on the size of the project, the amount of natural versus 'free' density that is used for affordable housing and the price points? (i.e. maximum points available for projects that utilize 10% their own density with fewer points available for projects that utilize primarily 'free' density and maximum points available for projects that deliver lower price points)
3. Should positive points under Policy 24R ever be allowed for using 'free' density for affordable housing? Is the density enough of an incentive? In the case of annexations where up to 80% of the project density is brought to the site by the Town, staff is concerned about the "double dipping", and the potential unintended site impacts resulting.(see attached draft-24R (2) g.)
4. Should projects that take advantage of the density bonus of 10% under Policy 3A (D) also be allowed positive points under Policy 24R or should this also be considered "double dipping"? The density bonus under Policy 3 has worked well as an incentive and the addition of 10% density does not seem to result in over programmed sites. Staff believes that bonuses should still be allowed, these projects should still be eligible for the positive points, and that the focus of this policy modification should be annexations and development agreements that are adding substantial density.

Summary

Staff still believes that incentives are necessary to encourage the private sector to contribute affordable housing units. In addition, Policy 24R has resulted in many dispersed units throughout Town as projects need to make up points. Based on the projects that have been approved, it seems that a sliding scale based on natural verses 'free' density and lower price points (bullet 2) might achieve the highest quality projects while still providing some incentive. We will discuss these options with the Commission and will be interested in your feedback and suggestions before we prepare a specific proposal.

Memorandum

To: Town Council
From: Open Space Staff
Re: Hidden Gems Wilderness Proposal
Date: January 20, 2010

In your packet is the latest draft letter to the wilderness coalition regarding the proposed Hidden Gems Wilderness Proposal. Staff has continued to work with members of the wilderness coalition, the Summit Wildfire Council, Summit Fat Tire Society and the International Mountain Bicycling Association while developing the Town of Breckenridge position on the issue.

As we have mentioned before, Town staff has insisted that the legislation crafted around this proposal should include language to grant the community the ability to do all fire mitigation, immediate wildfire response activities, and post fire watershed protection efforts necessary to protect the health and safety of our citizens. Staff is still working with the Forest Service and the USGS to resolve proposed wilderness boundaries with areas that might be necessary to access for watershed protection following a fire.

Staff believes that the mountain biking issues and conflicts with the wilderness proposal in the Upper Blue Valley have been largely resolved. BOSAC members felt that it was important, however, to include a comment about the need to use mechanized equipment to clear trails within the wilderness areas if fires or blow-downs result in large scale downfall.

Once again, staff welcomes any comments or modifications to this letter before we send it on to the wilderness coalition.

~~December 9, 2009~~January 20, 2010

Rep. Jared Polis
Washington, DC Office
501 Cannon HOB
Washington, DC 20515

Hidden Gems Wilderness Coalition
c/o Colorado Environmental Coalition
1536 Wynkoop Street, #5C
Denver, CO 80202

Dear Rep. Polis:

The Town of Breckenridge would like to comment on the latest draft of the Hidden Gems Wilderness Proposal ~~with which staff has been presented,~~ as presented on the website (<http://www.whiteriverwild.org/>).

Formatted: Default Paragraph Font

The Town of Breckenridge generally supports the concept of wilderness and the idea of expanding designated wilderness within Summit County and the White River National Forest. At the same time, we are concerned that , as it stands now, wilderness designation could impede our ability to fight wildfires and protect our watershed in the aftermath of wildfire. These are critical needs, particularly given the potential increased susceptibility of our forests in the wake of the mountain pine beetle infestation. The Town may need the ability to take proactive fire mitigation actions (e.g., firebreaks and other fuels management prescriptions), use roads and mechanical equipment to fight a wildfire, and locate and construct water quality protection structures or ancillary roads within some of the areas proposed as wilderness. Given that this process is dynamic and will take some time, The Town of Breckenridge would like to go on record stating that our elected officials will need to feel comfortable with specific entitlement language written into the wilderness designation legislation that would allow for the necessary proactive fuels mitigation work, immediate emergency wildfire response, and post-fire watershed protection (which may include structures and roads) in order to support the wilderness proposal. Alternatively, we have been working with the Hidden Gems Wilderness Coalition to adjust boundaries to the wilderness proposal to address our concerns. We do feel encouraged by statements from the Coalition that these stipulations and/or boundary adjustments can likely be addressed to our satisfaction, but we will need to withhold our support for the proposal until it is clear that we will have the ability to take necessary actions without cumbersome processes for the safety of our community.

Another issue of interest and concern to the Town has been the impacts of the wilderness designation on the mountain biking experience in the Upper Blue River basin. The most recent concessions to the mountain biking community, as represented through a memo to the Town of Blue River on October 23, 2009, and as presented on the latest version of the maps on the Hidden Gems website, address the Town's biggest concerns with possible losses to mountain bike trail access within the Hoosier Ridge and Tenmile proposed wilderness areas. At the same time, we do feel like it would make sense to wait until

the final White River National Forest Travel Management Plan is released and evaluated before the Hidden Gems Wilderness proposal legislation is introduced. There are other areas in the County where proposed wilderness boundaries and mountain bike access issues have not been completely worked out. The final Travel Management Plan may help resolve these issues. Once again, we would like to reserve final judgement on the topic of mountain bike access until the legislation is introduced and we can evaluate the associated maps.

Lastly, the Town would like for there to be a stipulation in the wilderness legislation that allows the Forest Service to utilize mechanical equipment to clear trees on system routes following large scale natural events, such as fires or a blow-downs. There are a number of very significant trails in our county that fall within the existing or proposed wilderness areas. Given the new situation with the mountain pine beetle infestation, there may need to be exceptions to the rule that only non-mechanized means may be used for trail clearing.

At this point in time, the Town also strongly supports the consideration of either an alternative designation, or companion designations, for either the Hoosier Ridge or Tenmile proposed wilderness areas that would allow for non-motorized recreation (including mountain bikes), and any necessary watershed protection, wildfire emergency response, or proactive wildfire mitigation actions. We believe that alternative designations, or companion designations, have been very successfully implemented in other communities and that they make sense to pursue in our area. In any event, the Town of Breckenridge looks forward to continuing to work with our congressional delegation, the Coalition, Summit Wildfire Council, Summit Fat Tire Society, and the International Mountain Biking Association to reach a solution that protects our natural resources to the greatest degree possible while allowing for public safety and welfare.

Sincerely,

John Warner, Mayor

Cc: U.S. Sen. Mark Udall
U.S. Sen. Michael Bennett
State Sen. Dan Gibbs
State Rep. Christine Scanlan

DRAFT
SUMMIT COUNTY WILDFIRE COUNCIL MINUTES
January 6, 2010

Paul Cada acted as Chair in Bob French's absence.

- I. APPROVAL OF AGENDA: The suggestion was made to move the Hidden Gems discussion to earlier in the agenda. Motion was made and seconded; all approved.
- II. APPROVAL OF DECEMBER 2, 2009 MINUTES: The Council approved the December 2, 2009 meeting minutes.
- III. INTRODUCTION OF NEW CSU EXTENSION DIRECTOR – DAN SCHRODER. Dan Schroder gave a brief introduction of his background and hopes for involvement with the Wildfire Council.
- IV. HIDDEN GEMS: *Prior to the January 6 Wildfire Council meeting, staff distributed a memo reflecting the outcome of the December 18 meeting between Hidden Gems and Wildfire staff to discuss revisions to the proposed wilderness boundaries to accommodate wildfire and watershed concerns (see Attachment A).*

The acting Chair opened the discussion regarding Hidden Gems. The following excerpts of that discussion reflect the concerns of respective council members and staff.

- The Town of Breckenridge would like to wait until they have further information from the USGS watershed study before endorsing the Hidden Gems proposal.
- The Town of Breckenridge asked whether the proposal will include boundary adjustments as well as refined language. Hidden Gems staff replied that the proposal will contain language specific to Summit County stating the authority for pre- and post-fire mitigation.
- The Town of Frisco would like to see a stronger statement with regard to authority, such as “Forest Service will work with local jurisdictions to address local issues and concerns of public safety and protection of structures, critical infrastructure and watersheds in the event of a wildfire”. The Town of Silverthorne and fire districts also support stronger language.
- Lake Dillon Fire District would like the boundary at Ptarmigan A to be pulled back to the WUI – eliminate the 600 foot set-back.
- Red, White & Blue Fire District would like the wilderness boundary at Hoosier Ridge to be pulled back to the WUI (specifically near Bemrose Trail).

Steve Smith stated that Hidden Gems is looking to the BOCC to be the main endorsing body for Summit County. The group was unable to support recommendation to the BOCC at this time, and agreed to hold another meeting of Hidden Gems and Wildfire staff before the next Wildfire Council meeting.

- V. UPDATE OF BRECKENRIDGE FOREST HEALTH AND FUELS REDUCTION PROJECT: The Forest Service is hosting a field trip on Saturday, January 9 meeting at the Gold Hill trailhead. Cary Green stated that they may modify cuts on Peak 7 – may be patch cuts. Although the official comment period has ended, anyone with dire concerns may still submit a comment. The Forest Service hopes to have a decision in June, and may contract work this summer.
- VI. CWPP UPDATES: Wildfire staff plans to have preliminary revisions completed by mid-February, with a draft ready for Council to review by late February or early March. Staff will invite the Wildfire Council to the February staff meeting.
- VII. UPDATE ON WILDFIRE COUNCIL CONSTITUENT ACTIVITIES AND PROJECTS:
- Wildfire Council Grants: 9 of 17 grants from 2009 have been completed, with the rest in the process of submitting receipts. The process for 2010 will be similar.
 - Red, White & Blue: Six communities were recognized on Monday, Jan. 4, for achieving FireWise Community status. One interpretive sign was placed outside the main fire station, with two more to be placed in the spring, and a set of three to be placed near the recreation center in the spring.
 - Copper Mountain Consolidated Metro District is working to get Lewis Ranch homeowners involved in the grant program.
 - USFS gave update on local projects (see Attachment B).
 - Eric Lufgren of Eagle County Wildfire Council reported that multiple projects are going on in the Beaver Creek and Vail WUI. Eagle County is working on biomass utilization with potential facilities in Gypsum and Vail. They may hold a field exercise next summer, and will let us know at the next meeting in case anyone in this group wants to participate.
 - Town of Frisco has completed most of their mitigation work and working with a consultant on a restoration plan.
 - Town of Silverthorne has ongoing work, primarily in the Eagles Nest area.
 - Colorado State Forest Service has completed work on most of the Denver Water Board land in Summit County.
 - Vail Resorts is working on the Breckenridge Ski Area.
 - Dan Gibbs reported that the FLAME Act passed – Good Neighbor policy will be permanent. He is sponsoring two new bills this session: State standards for prescribed fire and Forest Health Special Districts.

- Town of Breckenridge has completed 100 acres of high priority property, and will start work on lower priority areas this year. They also have two potential contracts for wood removal – a mobile pellet mill and a company that will use woodchips and trash to heat the recreation center.
- Red Tail Ranch has completed cutting and is working on restoration.
- Lake Dillon Fire Rescue is having issues on air quality with large-scale burns.
- Cut Above Forestry has nearly completed work on Hamilton Creek.

VIII. NEXT MEETING: Wednesday, March 3, 1:00 – 3:00 in the Buffalo Mountain Room



970-668-4202
fax 970-668-4225

Post Office Box 5660
0037 Peak One Drive / SCR 1005
Frisco, Colorado 80443

Memo

TO: Summit County Wildfire Council
FROM: Stephen Hill, Assistant County Manager
DATE: January 5, 2010
SUBJECT: Hidden Gems

The Wildfire Council considered the Hidden Gems proposal at their November 4th meeting. At the conclusion of this discussion, the Council outlined additional issues that need to be addressed to mitigate wildland fire concerns. These additional issues along with the most recent response from the Hidden Gems staff and staff to the Wildfire Council are outlined below:

WILDFIRE COUNCIL ISSUE #1 FROM NOVEMBER 4TH MEETING: More information is needed regarding:

- a) What exactly is allowed under existing legislation regarding mechanized equipment, pre-fire fuels reduction efforts, fire suppression and post-fire remediation efforts (including construction of sediment capture ponds and roads to access these facilities)?
- b) What has been the experience regarding allowing mechanized equipment in wilderness areas during a fire?

HIDDEN GEMS RESPONSE: Attachment "A" outlines the response to this question from the Hidden Gems proponents. Attachment "A" references the following language from the 1978 Congressional Endangered American Wilderness Act (which included wilderness in the White River Forest):

"Section 4(d)(1) of the Wilderness Act permits any measures necessary to control fire, insect outbreaks, and disease in wilderness areas. This includes the use of mechanized equipment, the building of fire roads, fire towers, fire breaks or fire pre-suppression facilities where necessary and other techniques for fire control. In short, anything necessary for the protection of public health or safety is clearly permissible."

While the above wilderness language provides authority for the USFS to use mechanized equipment in fire and pre-suppression activities, it does not mandate the use of mechanized equipment. Recognizing this, the Hidden Gems proponents have also suggested (see Attachment "A") that, "It might therefore be appropriate to include, for Hidden Gems areas in Summit County, additional legislative language encouraging the Forest Service to be extra attentive to local needs of public safety and protection of structures and infrastructure in the event of wildfire."

WILDFIRE COUNCIL STAFF RESPONSE: The Wildfire Council discussed this at the November 4th meeting. From this discussion on November 4th and other conversations staff has had, it may be fair to conclude that while the legislative language designating Wilderness may allow mechanized equipment before, during and after a fire:

1. There is little or no experience of mechanized equipment being permitted for fuel reduction efforts before a fire.
2. During a fire, the Forest Supervisor must authorize mechanized equipment and the Regional Forester must authorize the use of a bulldozer. Experience varies as to how easily these approvals are received.
3. There is little or no record of approvals being given for allowing mechanized equipment for pre- or post fire remediation.

Recognizing these conclusions and in response to staff and fire department requests, the Hidden Gems proponents have significantly modified the proposed Wilderness boundaries to exclude large areas where pre-fire, fire suppression and post fire remediation activities may occur. These boundary changes and additional discussion are outlined below and are reflected on revised maps that are available at: <http://nativeecosystems.org/gis/map-archive/hg-summit-fire>.

Staff concurs and supports the inclusion of additional language in the Hidden Gems proposal that encourages the Forest Service to be “extra attentive to local needs of public safety and protection of structures and infrastructure in the event of wildfire.”

WILDFIRE COUNCIL ISSUE #2 FROM NOVEMBER 4TH MEETING: In the event existing language is not sufficient to allow necessary access into the proposed wilderness areas, it was agreed by the Hidden Gem proponents to either:

- a) Amend the language designating the Hidden Gems wilderness to clearly permit mechanized equipment, pre-fire fuels reduction efforts, fire suppression and post fire remediation efforts, or
- b) Incorporate a two-tiered approach to wilderness designation. Under this two-tiered scheme, that portion of the wilderness adjacent to private land (possibly 200 to 600’) would have a special designation allowing for appropriate mechanized access (pre, post and during a fire). That portion of the wilderness less proximate to private land (i.e. more than the 200 to 600’ strip in the first tier) would embody all of the typical limitations on wilderness use.

HIDDEN GEMS RESPONSE: See discussion under issue #1 above.

WILDFIRE COUNCIL STAFF RESPONSE: See discussion under issue #1 above.

WILDFIRE COUNCIL ISSUE #3 FROM NOVEMBER 4TH MEETING: Upon a more thorough understanding of items under #1 and #2 above, the Wildfire Council should review the proposed map of the Hidden Gems proposal to insure wildfire issues are appropriately addressed. More specifically the following should be evaluated:

- Hoosier Ridge Area – Need to incorporate Breckenridge’s evaluation of post-fire remediation efforts and where they may need to construct sediment ponds and roads that will provide access to these ponds.
- Hoosier Ridge Area - There are spruce-fir forests which, given their topography and site-specific considerations, also may warrant future fuel reduction efforts.

HIDDEN GEMS RESPONSE: Because the Forest Service is typically reluctant to allow extensive use of motorized and mechanized equipment in designated wilderness, we also

propose selectively moving boundaries to deal with the concerns of the Wildfire Council. We agreed upon the following re-location of boundaries:

Hoosier Ridge proposed wilderness:

- The western boundary placed ½ mile (WUI) from the private property lines for the Town of Blue River and the Breckenridge watershed.

Ptarmigan A proposed wilderness:

- At Hamilton Creek neighborhood use a ½ mile buffer (WUI).
- North of Hamilton Creek, use a 600' setback from private property lines to ensure adequate space for fuel breaks and fire fighting safety.

Acorn Creek proposed wilderness:

- 600' setback to ensure adequate space for fuel breaks and fire fighting safety.
- (The majority of this boundary is the power line, which already is located more than 600' from the private property line.)

Ute Pass proposed wilderness:

- 200' buffer on private property lines. The western boundary of Ute Pass is not forested. The sagebrush areas can be effectively treated for fuel breaks within 200 feet.

Williams Fork:

- 200' buffer on private property lines. The western boundary of Ute Pass is not forested. The sagebrush areas can be effectively treated for fuel breaks within 200 feet.

WILDFIRE COUNCIL STAFF RESPONSE: Staff is encouraged by the willingness of Hidden Gems proponents to work to address Summit County's concerns regarding the risk of catastrophic wildfire. Hidden Gems has worked with staff to adjust the boundaries of the wilderness proposal to exclude areas deemed problematic by the towns and by the firefighting community. As discussion continues between Hidden Gems and the Wildfire Council staff, modifications will continue to evolve contingent upon when and if a bill is introduced. In the event that a bill is introduced, the real work will begin as we evaluate maps and legislative language that potentially could be offered in the form of amendments to address Summit County wildfire concerns.

STAFF FINDINGS:

The Hidden Gems proposal presents a fascinating study of past and future ability to mitigate wildfire issues. On one hand, the Wilderness Act of 1964 states that mechanized equipment may be used for pre- and post wildfire mitigation efforts if approved by the Regional Forest Supervisor; however, we have not found any example of this occurring in the United States. If the Wildfire Council could get a written pre-disaster mitigation document permitting local authority for mitigation and fire suppression in wilderness designated areas, this would help address some of the concerns of the firefighting community, but still does not completely fulfill the firefighting community's desire to have the wilderness boundaries be outside of the .5 mile WUI.

Staff will continue to work with Hidden Gems proponents to help incorporate new information as it becomes available, and encourages Hidden Gems to consider the following:

1. Adjust the proposed wilderness boundaries as additional information becomes available, such as the Breckenridge sponsored USGS study on watershed protection.

2. Include language in the legislation that directs the Forest Service to work with local jurisdictions to address local issues and concerns of public safety and protection of structures, critical infrastructure and watersheds in the event of a wildfire.

HIDDEN GEMS RESPONSE IN REGARD TO ACTIVITIES PERMITTED WITHIN WILDERNESS AREAS

Fire fighting in new wilderness

Section 4(d)(1) of The Wilderness Act of 1964 specifically states that fire fighting, using equipment and techniques allowed elsewhere in the national forest, is allowed in wilderness areas:

"...such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to conditions as the Secretary deems desirable."

In 1978, Congress further clarified that passage from The Wilderness Act. Committee report language accompanying the Endangered American Wilderness Act (which included new wilderness in White River National Forest), more specifically states:

"Section 4(d)(1) of the Wilderness Act permits any measures necessary to control fire, insect outbreaks, and disease in wilderness areas. This includes the use of mechanized equipment, the building of fire roads, fire towers, fire breaks or fire pre--suppression facilities where necessary and other techniques for fire control. In short, anything necessary for the protection of public health or safety is clearly permissible."

In addition, Section 4(c) of The Wilderness Act allows, in certain conditions, activities that would not otherwise be allowed in wilderness:

"...except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area." [emphasis added]

We recommend including in Hidden Gems wilderness legislation, for new Summit County wilderness, either a verbatim restatement of the committee report language above, or a re-affirmation of it by reference to that committee report. We also recommend including language affirming the provisions of sections 4(c) and 4(d)(1) of The Wilderness Act.

Note that all these existing passages provide authority to the Forest Service; they are not mandatory. The passages provide the agency with discretion to undertake such measures, and they specify that those measures must be necessary to effectively manage the area as wilderness.

It might therefore be appropriate to include, for Hidden Gems areas in Summit County, additional legislative language encouraging the Forest Service to be extra attentive to local needs of public safety and protection of structures and infrastructure in the event of wildfire.

Pre-fire treatments; post-fire remediation

We anticipate that the latest boundary adjustments for new proposed wilderness in Summit County provide the space necessary to complete fuels-reduction and forest health projects and to allow for sediment traps and other stabilization measures after a fire

White River National Forest
 January 4, 2010
 Cary Green, EZ TMA
 Timber Sale Projects

Project	County	Acres	% Complete	Status
Straight Creek 09 Salvage	Summit	46	50	Under Contract – Complete by 2010. Operations ongoing.
Iron Springs Salvage	Summit	138	70	Under Contract – Complete by 2010. Operations ongoing.
Blue River Campground Salvage Reoffer	Summit	11	100	Under Contract – Completed in 2009.
Maryland Creek WUI	Summit	44	0%	Under Contract – Complete by 2011- Currently under stop work order, 9 th Circuit Court ruling. Under Roadless Area review by Secretary of Agriculture. Expect work to resume in 2010 after North Summit WUI Environmental Assessment Decision Noticed signed.
Red Tail Ranch WUI	Summit	116	100	Completed in 2009.
Upper Blue Phase I Stewardship	Summit	314	0	Under Contract – complete by 2012. No activity.
Wilderness Stewardship	Summit	1,360	15%	Under Contract – Complete by 2012. 179 acres under stop work order, 9 th Circuit Court ruling. 179 acres Under Roadless Area review by Secretary of Agriculture. Expect work to resume in 2010 after North Summit WUI Environmental Assessment Decision Noticed signed. Operations ongoing in other units. Potential for contractor default.
Keystone Stewardship.	Summit	1,038	35	Under Contract – Complete by 2012. Operations ongoing. Contractor working in Swan Mountain area.
North Summit WUI HFRA EA	Summit	1,095	N/A	2009 – Objection period closed. No objections. Currently at Washington Office for review of roadless area treatments. Expect decision this winter. Once decision is made, contract work in Wilderness and Maryland Creek WUI can resume if no changes to roadless

				entry proposed action is made. Affects Wildernest, Maryland Creek, Eagles Nest, Pebble Creek, Boulder Creek and Sierra Bosque areas.
Forestwide Hazard Tree EA	Pitkin, Eagle, Garfield, Summit	83,835	N/A	2009 – Environmental Analysis complete and Decision Notice signed September 28, 2009. Implementation to begin in 2010 on priority roads/trails.
Lower Blue EA	Summit	4,012	N/A	Decision Notice signed on December 17, 2009. Implementation to begin in 2010.
Breckenridge Fuels and Forest Health HFRA EA	Summit	5,000	N/A	2010 – Planning Ongoing. Public scoping complete. Decision expected spring 2010. Implementation to begin in 2011.
Ophir Mountain EA w/Upper Blue Phase I	Summit	1,500	N/A	2010 – Planning Ongoing. Public scoping this winter 2010. Decision expected summer 2010. Implementation to begin in 2011.
Powerline Protection EA	ALL	20,000 ??	N/A	2010 – Planning Ongoing. Public scoping complete. Decision expected spring 2010. Implementation to begin in 2010.
Keystone Ski Area Vegetation Management	Summit	1,000	N/A	2010 – Planning Ongoing. Public scoping this winter 2010. Decision expected summer 2010. Implementation to begin in 2011.



TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA

Tuesday, January 26, 2010 (Regular Meeting); 7:30 p.m.

- I CALL TO ORDER and ROLL CALL**
- II APPROVAL OF MINUTES – January 12, 2010** **Page 55**
- 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 2010 - PUBLIC HEARINGS*-**
 - 1. Council Bill No.01, Series, 2010- AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH B & D LIMITED PARTNERSHIP (Redevelopment of Old BBC Site)** **Page 60**
- VI NEW BUSINESS**
 - A. FIRST READING OF COUNCIL BILL, SERIES 2010 –**
 - 1. Council Bill No.02, Series 2010- AN ORDINANCE ADOPTING SECTION 6-3A-5 OF THE BRECKENRIDGE TOWN CODE CONCERNING BIAS-MOTIVATED MUNICIPAL OFFENSES** **Page 77**
 - B. RESOLUTIONS, SERIES 2010-**
 - 1. A RESOLUTION APPROVING THE “THIRD AMENDMENT AND SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VISTA POINT” **Page 82**
 - C. OTHER –**
- VII PLANNING MATTERS**
 - A. Planning Commission Decisions of January 19, 2010 **Page 2**
 - B. Town Council Representative Report (Mr. Rossi)
 - C. Gondola Master Plan Call Up Decisions **Page 90**
- VIII REPORT OF TOWN MANAGER AND STAFF***
- IX REPORT OF MAYOR AND COUNCILMEMBERS***
 - A. CAST/MMC (Mayor Warner)
 - B. Breckenridge Open Space Advisory Commission (Mr. Joyce)
 - C. BRC (Ms. McAtamney)
 - D. Summit Combined Housing Authority (Mr. Millisor)
 - E. Breckenridge Heritage Alliance (Mr. Bergeron)
 - F. Sustainability Committee (Mr. Millisor)
- X OTHER MATTERS**
- XI SCHEDULED MEETINGS** **Page 101**
- XII ADJOURNMENT**

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

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JANUARY 12, 2010
PAGE 1**

CALL TO ORDER and ROLL CALL

Mayor Warner called the January 12, 2010 Town Council Meeting to order at 7:34 p.m. The following Council members answered roll call: Mr. Bergeron, Mr. Joyce, Ms. McAtamney, Mr. Mamula, Mr. Millisor, Mr. Rossi, and Mayor Warner.

APPROVAL OF MINUTES – December 8, 2009 Regular Meeting

With changes to the minutes from Mayor Warner submitted prior, he declared that the minutes were approved.

APPROVAL OF AGENDA

Mayor Warner noted the addition of an Executive Session to discuss property acquisition under “Other Matters and that an amended copy of Council Bill No. 39 was handed out. Town Manager Tim Gagen mentioned the addition of Council Bill No. 1, Series 2010 “An Ordinance Approving a Development Agreement with B & D Limited Partnership” under “New Business.” With those changes, the agenda was approved.

COMMUNICATIONS TO COUNCIL

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

Myra Musso commented about the Rec Center hours; followed up on the financials at the Work Session; reiterated need for extended hours during winter; possible solutions were presented; shared input she received from those signing the petition.

John Daisy, Dick Carleton, Mark Burke thanked the Council for the financial support of the Dew Tour. Mr. Carleton asked that Council not support the Dew Tour due to the sponsor village at the base of Peak 8, but encouraged the organizers to create connections; talked with a variety of business owners that did well that week. Mr. Burke asked the Council to consider the great media value.

Robert Silverstone understands times are tough, but asks the Council to consider keeping the Rec Center open until 9 p.m. on Saturdays and Sundays, and feels it is relatively low cost.

B. BRC Director Report- John McMahon thanked Council for the stimulus; have seen good results; his survey shows businesses reported 70% saw a positive impact; of those, 80% same or better sales than last year; ideas for next year include animating Blue River Plaza. The BRC is working on February and March events. The Texas Ski Council visits this month, and will be in the Ullr parade. Blue Ribbon Committee met in December, and the BRC Board endorsed using funds for an RRC survey; 400 voters in Breckenridge were polled; results showed 60% would not support, 40% would if a sales tax increase would be on the ballot in April; RRC’s recommendation is to go slow and put on a future ballot; asked for input on what advice to give to the Blue Ribbon Committee. Mayor Warner asked if RRC had clarification on their statistics; he is encouraged with the high support for the Town to support tourism; if we don’t put it on the ballot, the BRC will be back in the fall for marketing dollars, which is not sustainable. Mr. Bergeron while he supports the increase, he is concerned about rushing into putting this on the April ballot; the mood of the community and the nation is not to increase taxes so would suggest looking at November. Mr. Mamula reported that the business community is hurting now, and felt that April (either 2010 or 2012) would be better than November. Ms. McAtamney is nervous about waiting until November due to a number of reasons; need to go after the votes one by one. Mr. Joyce would like to see what the Blue Ribbon Committee’s plan would be. Mr. Rossi does not support an April ballot as it is hasty; did get called and polled, and he was disappointed that the amusement tax was not included; he would like to be sure that every alternative has been researched. New Director of Sales is Donna Horii with great experience. Happy Ullr.

CONTINUED BUSINESS

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

1. Council Bill No. 38, Series 2009- AN ORDINANCE AMENDING CHAPTER 3H OF TITLE 6 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING PROVISIONS CONCERNING THE MUNICIPAL OFFENSE OF “UNLAWFUL ACTS BY SKIERS”

Tim Berry commented that the second reading of the ordinance incorporating into Town law the penal provisions of the Colorado Skier Safety Act was continued from the December 8, 2009 meeting because of a problem with the newspaper publication of the ordinance after first reading. There were no changes from first reading.

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

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Mr. Mamula moved to approve Council Bill No. 38, Series 2009 as previously read into the record. Mr. Millisor made the second. All were in favor.

2. Council Bill No. 39, Series 2009 - AN ORDINANCE AMENDING SECTION 6-3H-1 AND SECTION 6-3H-6 OF THE BRECKENRIDGE TOWN CODE CONCERNING MARIJUANA-RELATED MUNICIPAL OFFENSES AND THE MUNICIPAL OFFENSE OF POSSESSION OF DRUG ARAPHERNALIA

Tim Berry commented that at the Town Council's last meeting on December 8, 2009 the second reading of Council Bill No. 39 was continued to the January 12, 2010 meeting because of a problem with the newspaper publication of the ordinance following first reading. This ordinance amends the Town Code to reflect the passage of Question 2F, and also adds to the Town Code new municipal offenses related to the public display and consumption of marijuana, and possession of more than one ounce but less than eight ounces of marijuana.

On December 8, 2009 the Council adopted a separate emergency ordinance containing the same substantive provisions as are set forth in Council Bill No. 39. This was done so that the voter-approved changes to the Town's marijuana laws would be in place by January 1, 2010 as directed by Question 2F.

Notwithstanding the adoption of the emergency ordinance the Council needs to take some final action with respect to Council Bill No. 39. Mr. Berry explained that if Council members are still comfortable with the terms of the emergency ordinance, he recommends that Council defeat Council Bill No. 39 tonight at the second reading.

However, as Mr. Berry reported that he heard at the afternoon Work Session that Council would like to consider passing Council Bill No. 39, which could be amended to reflect minor changes and then be adopted on second reading. Mr. Berry then reviewed the changes from first reading including modifying the effective date of Council Bill No. 39 and repealing the emergency ordinance.

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

Mr. Mamula moved to approve Council Bill No. 39, Series 2009 as previously read into the record with the changes distributed by Mr. Berry this evening. Mr. Bergeron made the second. The motion passed with five votes in favor and two against.

3. COUNCIL BILL NO. 40, SERIES 2009- AN ORDINANCE CONCERNING THE CLASSIFICATION OF VIOLATIONS OF TOWN ORDINANCES

Tim Berry commented that this ordinance would make it clear that all Town Code violations are classified as misdemeanors unless otherwise expressly provided in the Code. There were no changes from first reading.

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

Mr. Bergeron moved to approve Council Bill No. 40, Series 2009 as previously read into the record. Mr. Rossi made the second. All were in favor.

4. COUNCIL BILL NO. 41, SERIES 2009- AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH VAIL SUMMIT RESORTS, INC. (PARKING RATIO – GONDOLA LOT MASTER PLAN)

Mr. Berry commented that on December 8, 2009 the Town Council approved on first reading a development agreement with Vail Summit Resorts, Inc. for a reduced amount of parking for the condo-hotel within the Gondola Lots Redevelopment Master Plan. The development agreement would allow parking at a ratio of 1 space per unit, rather than 1.5 spaces as currently required in the Breckenridge Off-Street Parking Regulations. The reduction was based on the mixed-use nature of the development, proximity to transit, walkability, and a traffic and parking study from Felsburg, Holt & Ullevig engineering and transportation consultants that supports the reduced parking ratio. There were no changes 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. 41, Series 2009 as previously read into the record. Ms. McAtamney made the second. All were in favor.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILL, SERIES 2010-

1. Council Bill No. 1, Series 2010 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH B & D LIMITED PARTNERSHIP

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PAGE 3**

Mr. Berry summarized this council bill which authorizes the Town to enter into a development agreement with B & D Limited Partnership. The development agreement provides for certain density adjustments and allowances on the site in return for six commitments on the part of the developer.

Mr. Millisor moved to approve Council Bill No. 1, Series 2010 with a change to Section 1, Paragraph E (iv) to add "Main Street" before the word "sidewalk." Mr. Mamula made the second. All were in favor.

B. RESOLUTIONS, SERIES 2010-

1. A RESOLUTION APPROVING AN AMENDED AND RESTATED ANNEXATION AGREEMENT WITH BRADDOCK HOLDINGS LLC, a COLORADO LIMITED LIABILITY COMPANY, AND SMI LAND, LLC, A COLORADO LIMITED LIABILITY COMPANY

Tim Berry commented that during the December 8, 2009 work session the Town Council discussed proposed modifications to the annexation agreement that was originally approved in 2008 for the Stan Miller and Braddock Holdings property located at the north end of Town.

Mr. Mamula moved to approve A Resolution Approving an Amended and Restated Annexation Agreement with Braddock Holdings LLC, a Colorado Limited Liability Company, and SMI Land, LLC, a Colorado Limited Liability Company. Mr. Joyce made the second. All were in favor.

C. OTHER –

1. Snow Sculpture Burn Permit-

In conjunction with the 2010 International Snow Sculpture Championships, there is a request to have open fire(s) in a 55 gallon drum and/or in a "kiva" stove on Thursday, January 28, 2010 from 7pm-11:30pm and Friday, January 29, 2010 from 7pm to 1am on Saturday, January 30, 2010. Red, White and Blue would approve use of both a 55 gallon drum and a "kiva" stove. The proposed fires would be set up in the event site for International Snow Sculpture Championships which is located in the Tiger Dredge Lot in front of the Riverwalk Center at 150 West Adams.

Mr. Bergeron moved to approve a special permit to allow open fires during the International Snow Sculpture Championships, on Thursday, January 28, 2010 from 7pm-11:30pm and on Friday, January 29, 2010 from 7pm to 1am on Saturday, January 30, 2010. All burning shall comply with the "Open Burning" requirements of Section 307 of the International Fire Code, 2003 Edition. In addition, the applicant shall obtain a bonfire or open burning permit from the Red, White & Blue Fire Department. Ms. McAtamney made the second. All were in favor.

PLANNING MATTERS

A. Planning Commission Decisions of January 5, 2010

The Planning Commission decisions were approved as presented.

B. Report of Planning Commission Liaison

Mr. Rossi reported on a work session on the Bradley residence. There was discussion amongst Commissioners regarding whether the code stretches the requirements in order to obtain a landmarking designation.

C. The Gondola Lots Master Plan Call Up Hearing

The call up hearing on application number PC2009010 was held in accordance with Section 9-1-18-5 of the Town's Development Code. A verbatim tape recording of the proceedings was made and will be maintained as required by law. No attempt is made in these minutes to set forth a verbatim record of the proceedings of this hearing.

During the hearing the Council approved the following modifications to the Point Analysis for the project proposed by the staff: remove all positive points for transit under Policy 25/Relative, and, with the consent of the applicant, increase the number of positive points to be awarded under Policy 24/Relative from +4 to +8 by increasing the amount of employee housing to be provided in connection with the project from 6.51% of the density up to 8.51%. This left the application with a total score of zero on all relevant relative policies.

Also during the hearing the applicant, through Alex Iskenderian, verbally agreed to modify the application as follows:

1. The commercial density for the project will not exceed 30 SFEs.
2. The minimum amount of townhomes density to be constructed as part of the project will be 25 SFEs.
3. South and North Depot Roads will be open and available for public parking, even though it will be a private road owned and maintained by the applicant or applicant's successor.

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The Town Council agreed to the three modifications to the application, and to proceed with the application as modified by the applicant.

At the conclusion of the call up hearing, Mr. Mamula moved to approve the revised point analysis for the application, and to further approve Application No. PC2009010 with the Findings and Conditions set forth on pages 207-211, inclusive, of the January 12, 2010 Town Council Agenda Packet, amended as follows:

1. The commercial density for the project will not exceed 30 SFEs.
2. The minimum amount of townhomes density to be constructed as part of the project will be 25 SFEs.
3. South and North Depot Roads will be open and available for public parking, even though it will be a private road owned and maintained by the applicant or applicant's successor.

The motion further directed the Town Attorney to prepare a written decision reflecting the Council's determination of this application.

Mr. Rossi seconded the motion. A roll call vote was taken. All Council members voted in favor of the motion. The motion was declared to have passed. The hearing concluded at 11:45 p.m.

REPORT OF TOWN MANAGER AND STAFF

No report.

REPORT OF MAYOR AND COUNCILMEMBERS-

- A. CAST/MMC (Mayor Warner) – No report.
- B. Breckenridge Open Space Advisory Commission (Mr. Joyce) – Mr. Joyce reported that they discussed maps and trails.
- C. Breckenridge Resort Chamber (Ms. McAtamney) – Ms. McAtamney reported that Allied Sports would like to sign a three-year agreement; Breck has first right of refusal before Feb. 15; Brett Howard is reaching to the lodging community; also discussed the intellectual rights portion to the annual marketing agreement.
- D. Summit Combined Housing Authority (Mr. Millisor) – No meeting.
- E. Breckenridge Heritage Alliance (Mr. Bergeron) – No meeting.
- F. Sustainability (Mr. Millisor) – Meeting this week.
- G. Fire Wise (Mr. Joyce) – Meeting this week.

OTHER MATTERS

Rob Millisor asked if we could waive the fees for Sanitation District (road cut and BOLT). Tim Gagen will check into if there was a different procedure; he reported that Xcel and other nonprofits have a business license.

Dave Rossi noted that BOSAC is working towards another trail map of which he plans to submit a bid for the design; he has discussed this with Tim Berry.

Tim Gagen reported on the motorized use of Sallie Barber and confirmed the Council's support for prohibiting it in winter and summer, and prohibiting motorized use in winter on Gold Run Road through the Nordic bubble.

At 11:52 p.m. Mr. Bergeron 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. Mr. Rossi seconded the motion.

The Mayor then stated that a motion was made for the Town Council to go into an 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. The property that is the subject of the executive session is a lot in the northerly part of the Town, and two open space tracts. All were in favor of the motion.

At 12:18 a.m., Mr. Rossi moved to come out of executive session. Mr. Millisor seconded the motion. All were in favor of the motion.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss, the meeting was adjourned at 12:18 a.m.
Submitted by Kim DiLallo, Director of Communications.

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JANUARY 12, 2010
PAGE 5**

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 1 (Old BBC Site Development Agreement Ordinance)

DATE: January 19, 2010 (for January 26th meeting)

The second reading of the ordinance to approve the Development Agreement with B & D Limited Partnership concerning the redevelopment of the Old BBC Site is scheduled for your meeting on January 26th.

The only changes are corrections to the legal description of the subject property as shown in the enclosed ordinance and Development Agreement. The original problem was caused when a Word 2007 document was converted to Word 2003. There are no substantive changes to either the ordinance or the Development Agreement.

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

1 *FOR WORKSESSION/SECOND READING – JAN. 26*

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

5
6 COUNCIL BILL NO. 1

7
8 Series 2010

9
10 AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
11 B & D LIMITED PARTNERSHIP
12 (Redevelopment of Old BBC Site)

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

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

19
20 A. B & D Limited Partnership, an Illinois corporation authorized to do business in
21 Colorado (“B & D”), owns the following described real property located in the Town of
22 Breckenridge, Summit County, Colorado:

23
24 Parcel A:

25 Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, Section 31, Township
26 6 South, Range 77 West of the 6th Principal Meridian, situate in the Town of
27 Breckenridge, County of Summit, State of Colorado and more particularly
28 described as follows:

29 Beginning at Corner No. 3 of said Louisa Lode and running S 19E°55'00" W
30 436.07' more or less along lines 3-4 of said Louisa Lode to a point which point is,
31 in fact, the true point of beginning, thence S 19E°55'00" W 730.46' more or less,
32 thence N 70E°05'00" W 200.62' to a point on the easterly right of way of
33 Colorado Highway No. 9, thence N 23E°29'00" E 158.83' along said right of way,
34 then N 25E°40'00" E 238.30' more or less along said right of way, thence N
35 04E°39'30" E 255.60' more or less along said right of way, thence East 250.66'
36 more or less to the true point of beginning.

37 Parcel B:

38 A parcel of land lying within the Columbia Lode M.S. 2515 and the Louisa Lode
39 M.S. 2516, lying wholly within NW-1/4, Section 31, Township 6 South, Range 77
40 West of the 6th Principal Meridian, situate in the Town of Breckenridge, County
41 of Summit, State of Colorado and more particularly described as follows:

1 Beginning at Corner No. 4 of said Louisa Lode, which point is, in fact, the true
2 point of beginning, then N 70E°05'00" W 171.14' to a point on the easterly right
3 of way of Colorado State Highway No. 9, thence Northeasterly 335.00' along the
4 arc of a 1106.00' radius curve to the right whose long chord bears N 14E°48'22" E
5 a distance of 333.72', along said right of way, thence N 23E°29'00" E 4.07' along
6 said right of way, thence S 70E°05'00" E 200.62' to a point on Line 3-4 of said
7 Louisa Lode, thence S 19E°55'00" W 336.46' along said Line 3-4 to the true point
8 of beginning.

9 SAVE AND EXCEPT: A parcel of land lying wholly within the Columbia Lode
10 M.S. 2515 and the Louisa Lode M.S. 2516, Section 31, Township 6 South, Range
11 77 West of the 6th Principal Meridian, situate in the Town of Breckenridge,
12 County of Summit, State of Colorado and more particularly described as follows:

13 Beginning at Corner No. 4 of said Louisa Lode, which point is, in fact, the true
14 point of beginning, thence N 70E°05' W 178.87' to a point in the Easterly Right of
15 Way of Colorado State Highway No. 9, thence Northwesterly 15.90' along the arc
16 of a 1106.00' radius curve to the right whose long chord bears N 00E°14'17" W
17 15.90', thence East 62.19' thence S 77E°13'12" E 127.05' to a point on the Easterly
18 line of said Louisa Lode, thence S 19E°55' W 52.12' along said Easterly line to the
19 true point of beginning.

20 Parcel C:

21 Lot 1, Corkscrew Subdivision Filing No. 1 according to the plat thereof recorded
22 March 22, 1994 at Reception No. 464462.

23 Parcel D:

24 Tract A, Corkscrew Subdivision Filing No. 1 according to the plat thereof
25 recorded March 22, 1994 at Reception No. 464462.

26 (collectively, the "Property").
27

28 B. As owner of the Property, B & D has the right to propose a master plan for the
29 phased development of the Property, to request the reallocation of density among the different
30 Land Use Districts included within the Property, and to enter into agreements with the Town
31 concerning such master plan for the Property and such a density reallocation.
32

33 C. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council
34 has the authority to enter into a development agreement.
35

36 D. Because the negative points associated with the reallocation of density from Land
37 Use District ("LUD") 11 to LUD 4 and the transfer of a single family equivalent ("SFE") of
38 density for a single family residence into LUD 1, in all likelihood, could not be offset with any
39 positive points available for the public commitments proposed by the B & D, the reallocation of
40 density authorized by Section 9-1-19:39.I.(2) of the Town's Development Code does not appear

1 to provide a feasible means for approval of a master plan by the Town’s Planning Commission
2 and, therefore, a development agreement provides the most viable means available for such an
3 approval.
4

5 E. As the commitments encouraged be made in connection with an application for a
6 development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code,
7 B & D proposes: (i) the dedication of a sufficient portion of the Property to allow for a right turn
8 lane on French Street at its intersection with Main Street; (ii) the creation of a park or significant
9 landscaped open space area along Main Street at the southwest corner of the Property; (iii) the
10 rerouting and undergrounding of the Town’s Klack drainage facility within the Property to
11 separate it from the development area; (iv) extension of the Main Street sidewalk as needed to
12 connect with the sidewalk running southerly from the roundabout; (v) preparation of a traffic
13 analysis as part of the master planning process; and (vi) elimination of the large lot with a large
14 building envelop currently allowed on the property and replacement with a smaller lot and
15 disturbance envelope, all as more fully set forth and described in the proposed Development
16 Agreement.
17

18 F. B & D has submitted to the Town a completed application and all required
19 submittals and fees for a development agreement to accomplish those objectives listed above.
20

21 G. A proposed Development Agreement between the Town and B & D has been
22 prepared, a copy of which is marked Exhibit “A”, attached hereto and incorporated herein by
23 reference (“Development Agreement”).
24

25 H. On November 24, 2009 and January 12, 2010 the Town Council had a
26 preliminary discussion of the application and the proposed Development Agreement as required
27 by Section 9-9-10(A) of the Breckenridge Town Code.
28

29 I. The Town Council determined that B & D’s request for a development agreement
30 need not be referred to the Breckenridge Planning Commission for its review and
31 recommendation.
32

33 J. The Town Council has reviewed the Development Agreement.
34

35 K. The approval of the Development Agreement is warranted in light of all relevant
36 circumstances.
37

38 L. The procedures to be used to review and approve a development agreement are
39 provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such
40 Chapter have substantially been met in connection with the approval of the Development
41 Agreement and the adoption of this ordinance.
42

43 Section 2. Approval of Development Agreement. The Development Agreement between
44 the Town and B & D Limited Partnership, an Illinois limited partnership authorized to do
45 business in Colorado (Exhibit “A” hereto) is approved, and the Town Manager is hereby

1 authorized, empowered and directed to execute such agreement for and on behalf of the Town of
2 Breckenridge.

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

10
11 Section 4. Police Power Finding. The Town Council hereby finds, determines and
12 declares that this ordinance is necessary and proper to provide for the safety, preserve the health,
13 promote the prosperity, and improve the order, comfort and convenience of the Town of
14 Breckenridge and the inhabitants thereof.

15
16 Section 5. Authority. The Town Council hereby finds, determines and declares that it has
17 the power to adopt this ordinance pursuant to the authority granted to home rule municipalities
18 by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
19 Charter.

20
21 Section 6. Effective Date. This ordinance shall be published and become effective as
22 provided by Section 5.9 of the Breckenridge Town Charter.

23
24 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
25 PUBLISHED IN FULL this ____ day of _____, 2010. A Public Hearing shall be held at the
26 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
27 _____, 2010, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
28 Town.

29
30 TOWN OF BRECKENRIDGE

31
32
33 By _____
34 John G. Warner, Mayor

35
36 ATTEST:

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

5 APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED
6 PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED
7 STATUTES, AS AMENDED
8

9
10 DEVELOPMENT AGREEMENT
11

12 This Development Agreement (“Agreement”) is made as of the _____ day of
13 _____, 2010 between the TOWN OF BRECKENRIDGE, a municipal
14 corporation of the State of Colorado (the “Town”) and B & D LIMITED PARTNERSHIP, an
15 Illinois limited partnership authorized to do business in Colorado, (the “Developer”).
16

17 Recitals
18

19 A. Developer is the owner of the real property described in Exhibit A attached hereto
20 (“Property”).
21

22 B. As owner of the Property, Developer has the right to propose a master plan for the
23 phased development of the Property, to request the reallocation of density among the different
24 Land Use Districts included within the Property, and to enter into agreements with the Town
25 concerning such master plan for the Property and such a density reallocation.
26

27 C. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council
28 has the authority to enter into a development agreement.
29

30 D. Because the negative points associated with the reallocation of density from Land
31 Use District (“LUD”) 11 to LUD 4 and the transfer of a single family equivalent (“SFE”) of
32 density for a single family residence into LUD 1, in all likelihood, could not be offset with any
33 positive points available for the public commitments proposed by the Developer, the reallocation
34 of density authorized by Section 9-1-19:39.I.(2) of the Town’s Development Code does not
35 appear to provide a feasible means for approval of a master plan by the Town’s Planning
36 Commission and, therefore, a development agreement provides the most viable means available
37 for such an approval.
38

39 E. As the commitments encouraged be made in connection with an application for a
40 development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code,
41 Developer proposes: the elimination of a 3 acre lot with a 1 acre building envelope on a hillside
42 in LUD 4 for a proposed lot of approximately 2 acres with a disturbance envelope of
43 approximately .25 acres, but not greater than .5 acre, on a flatter, less visible portion on the
44 Property; the extension of a sidewalk in the Town right of way from the area immediately
45 adjacent to the proposed development to the existing sidewalk south of the existing roundabout;
46 to obtain and pay for a traffic study of the area of French Street adjacent to the Property as part

1 of the master plan for the Property; the dedication of a sufficient portion of the Property to allow
2 for a right turn lane on French Street at its intersection with Main Street; the creation of a
3 significant landscaped open space area along Main Street at the southwest corner of the Property;
4 and the rerouting and undergrounding of the Town's Klack drainage facility within the Property
5 to separate it from the development area.
6

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

13 Agreement

14
15 1. The Town's Planning Commission is hereby authorized to review and approve,
16 subject to compliance with all other applicable development policies of the Town, an
17 application for a master plan for the Property providing for:
18

19 (a) one (1) SFE of density for a single family residence to be relocated from
20 the large existing Lot 1, Corkscrew Subdivision Filing No. 1, with a large building
21 envelope and located within LUD 4, to a smaller lot, with a smaller disturbance
22 envelope and located in the most northerly portion of the Property within LUD 1;
23

24 (b) the 48,384 square feet of density allowed to be completely above grade
25 within the LUD 11 area of the Property to be allocated or spread between the LUD 11
26 area of the Property and the western portion of the LUD 4 area of the Property, not to
27 include the steeper slopes of the LUD 4 area, all as generally depicted on the Land Use
28 Plan labeled as SP-21L.U.P. attached hereto as Exhibit B; and
29

30 (c) in connection with such approval, for no negative points to be assigned for
31 the location or relocation of such density into LUD's 1 or 4.
32

33 2. Developer acknowledges and agrees that any master plan authorized to be
34 approved by paragraph 1 above: must be based on a land use plan substantially similar in terms
35 of site design and areas of development to what is depicted on Exhibit B; must provide for the
36 LUD 1 and LUD 4 areas of the Property shown as open space on Exhibit B to be designated as
37 private open space in perpetuity; and must include provision for the commitments set forth in
38 paragraph 3 below.

39 3. As commitments to the Town to enter into this Agreement, Developer agrees that
40 the following will be included as a part of a master plan for the Property:

41 (a) elimination of the existing Lot 1, Corkscrew Subdivision, which includes
42 3 acres and a 1 acre building envelope on a hillside in Land Use District 4 visible from
43 Main Street and beyond, and replacement of such Lot with an approximately 2 acre lot

1 containing an approximately .25 acre, but not greater than .5 acre, building envelope on
2 a flatter, less visible portion on the Property;

3 (b) extension of a sidewalk in the Town right of way from the area
4 immediately adjacent to the area of the Property to be developed to the end of the
5 sidewalk south of the existing roundabout; and

6 (c) a traffic study of the area of French Street adjacent to the Property, to be
7 obtained and paid for by Developer;

8 (d) sufficient land to be designated for dedication to the Town for the right
9 turn lane, generally in the location shown on Exhibit B, with such land to be dedicated
10 free and clear of any liens and encumbrances and to be conveyed to the Town in a form
11 that is acceptable to the Town Attorney;

12 (e) an area at the southwest corner of the Property to be designated as public
13 open space in perpetuity, generally in the location shown on Exhibit B, and to be
14 landscaped and maintained in perpetuity by Developer or the owners association for the
15 development, with such area to be committed as public open space by deed, easement or
16 such other means as is acceptable to the Town Attorney; and

17 (f) an easement and all improvements necessary for the relocation of the
18 Klack drainage facility from its current location to a location beginning at the 72”
19 culvert adjacent to the south end of the Property and running along with the southerly
20 and westerly boundaries of the Property to the two (2) 48” culverts adjacent to the
21 westerly boundary of the Property, all as generally shown on Exhibit B, to be provided
22 and made by Developer.

23 2. Except as provided in Section 24-68-105, C.R.S. and except as specifically
24 provided for herein, the execution of this Agreement shall not preclude the current or future
25 application of municipal, state or federal ordinances, laws, rules or regulations to the Property
26 (collectively, “laws”), including, but not limited to, building, fire, plumbing, engineering,
27 electrical and mechanical codes, and the Town’s Development Code, Subdivision Standards and
28 other land use laws, as the same may be in effect from time to time throughout the term of this
29 Agreement. Except to the extent the Town otherwise specifically agrees, any development of
30 the Property which is the subject of this Agreement and the master plan shall be done in
31 compliance with the then-current laws of the Town.
32

33 3. Nothing in this Agreement shall preclude or otherwise limit the lawful authority
34 of the Town to adopt or amend any Town law, including, but not limited to the Town’s: (i)
35 Development Code, (ii) Master Plan, (iii) Land Use Guidelines and (iv) Subdivision Standards.

36 4. This Agreement shall run with title to the land and be binding upon and inure to
37 the benefit of Developer, its successors and assigns.
38

1 5. Prior to any action against the Town for breach of this Agreement, Developer
2 shall give the Town a sixty (60) day written notice of any claim by the Developer of a breach or
3 default by the Town, and the Town shall have the opportunity to cure such alleged default
4 within such time period.
5

6 6. The Town shall not be responsible for and the Developer shall have no remedy
7 against the Town if development of the Properties is prevented or delayed for reasons beyond
8 the control of the Town.
9

10 7. Actual development of the Properties shall require the issuance of such other and
11 further permits and approvals by the Town as may be required from time to time by applicable
12 Town ordinances.
13

14 8. No official or employee of the Town shall be personally responsible for any
15 actual or
16 alleged breach of this Agreement by the Town.
17

18 9. The Developer agrees to indemnify and hold the Town, its officers, employees,
19 insurers, and self-insurance pool, harmless from and against all liability, claims, and demands,
20 on account of injury, loss, or damage, including without limitation claims arising from bodily
21 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of
22 any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if
23 such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole
24 or in part by, the negligence or intentional act or omission of Developer; any subcontractor of
25 Developer, or any officer, employee, representative, or agent of Developer or of any
26 subcontractor of Developer, or which arise out of any worker's compensation claim of any
27 employee of Developer, or of any employee of any subcontractor of Developer; except to the
28 extent such liability, claim or demand arises through the negligence or intentional act or
29 omission of Town, its officers, employees, or agents. Developer agrees to investigate, handle,
30 respond to, and to provide defense for and defend against, any such liability, claims, or demands
31 at the sole expense of the Developer. Developer also agrees to bear all other costs and expenses
32 related thereto, including court costs and attorney's fees.
33

34 10. If any provision of this Agreement shall be invalid, illegal or unenforceable, it
35 shall not affect or impair the validity, legality or enforceability of the remaining provisions of
36 the Agreement.
37

38 11. This Agreement constitutes a vested property right pursuant to Article 68 of Title
39 24,
40 Colorado Revised Statutes, as amended.
41

42 12. No waiver of any provision of this Agreement shall be deemed or constitute a
43 waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless
44 expressly provided for by a written amendment to this Agreement signed by both Town and
45 Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any

1 subsequent default or defaults of the same type. The Town’s failure to exercise any right under
2 this Agreement shall not constitute the approval of any wrongful act by the Developer or the
3 acceptance of any improvements.
4

5 13. This Agreement shall be recorded in the office of the Clerk and Recorder of
6 Summit
7 County, Colorado.
8

9 14. Nothing contained in this Agreement shall constitute a waiver of the Town’s
10 sovereign immunity under any applicable state or federal law.
11

12 15. Personal jurisdiction and venue for any civil action commenced by either party to
13 this
14 Agreement shall be deemed to be proper only if such action is commenced in District Court of
15 Summit County, Colorado. The Developer expressly waives its right to bring such action in or to
16 remove such action to any other court, whether state or federal.
17

18 16. Any notice required or permitted hereunder shall be in writing and shall be
19 sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed
20 as follows:
21

22 If To The Town: Timothy J. Gagen, Town Manager
23 Town of Breckenridge
24 P.O. Box 168
25 Breckenridge, CO 80424
26

27 With A Copy (which
28 shall not constitute
29 notice to the Town) to: Timothy H. Berry, Esq.
30 Town Attorney
31 P.O. Box 2
32 Leadville, CO 80461
33

34 If To The Developer: Jon A. Brownson
35 B & D Limited Partnership
36 P.O. Box 2065
37 Breckenridge, CO 80424
38

39 With A Copy (which
40 shall not constitute
41 notice) to: Stephen C. West, Esq.
42 West, Brown, Huntley & Thompson, P.C.
43 P.O. Box 588
44 Breckenridge, CO 80424

1 Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been
2 given upon delivery. Notices personally delivered shall be deemed to have been given upon
3 delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the
4 Colorado Rules of Civil Procedure for service of civil process.
5

6 17. This Agreement constitutes the entire agreement and understanding between the
7 parties relating to the subject matter of this Agreement and supersedes any prior agreement or
8 understanding relating to such subject matter.
9

10 18. This Agreement shall be interpreted in accordance with the laws of the State of
11 Colorado.
12

13
14
15
16 TOWN OF BRECKENRIDGE

17 Attest:

18
19
20 _____
21 Mary Jean Loufek, CMC
22 Town Clerk
23

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

28 STATE OF COLORADO)
29) ss.
30 COUNTY OF SUMMIT)

31 The foregoing was acknowledged before me this _____ day of _____,
32 2010 by Timothy J. Gagen as Town Manager and Mary Jean Loufek, CMC, of the Town of
33 Breckenridge, a Colorado municipal corporation.

34 Witness my hand and official seal.
35 My commission expires: _____
36

37
38
39 _____
40 Notary Public

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B & D LIMITED PARTNERSHIP
a Illinois limited partnership
authorized to do business in Colorado

By: DSB Holdings, Inc.
an Illinois corporation,
its General Partner

By:

Jon A. Brownson, Vice President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____,
2010 by Jon A. Brownson, Vice President of DSB Holdings, Inc., an Illinois corporation,
General Partner of B & D Limited Partnership, an Illinois limited partnership authorized to do
business in Colorado.

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

Notary Public

Exhibit A

LEGAL DESCRIPTION

The land referred to in herein is located in the County of Summit, State of Colorado, and described as follows:

Parcel A:

A portion of the Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, Section 31, Township 6 South, Range 77 West of the 6th Principal Meridian, situate in the Town of Breckenridge, County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 3 of said Louisa Lode and running S 19E°55'00" W 436.07' more or less along lines 3-4 of said Louisa Lode to a point which point is, in fact, the true point of beginning, thence S 19E°55'00" W 730.46' more or less, thence N 70E°05'00" W 200.62' to a point on the easterly right of way of Colorado Highway No. 9, thence N 23E°29'00" E 158.83' along said right of way, then N 25E°40'00" E 238.30' more or less along said right of way, thence N 04E°39'30" E 255.60' more or less along said right of way, thence East 250.66' more or less to the true point of beginning.

Parcel B:

A parcel of land lying within the Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, lying wholly within NW-1/4, Section 31, Township 6 South, Range 77 West of the 6th Principal Meridian, situate in the Town of Breckenridge, County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 4 of said Louisa Lode, which point is, in fact, the true point of beginning, then N 70E°05'00" W 171.14' to a point on the easterly right of way of Colorado State Highway No. 9, thence Northeasterly 335.00' along the arc of a 1106.00' radius curve to the right whose long chord bears N 14E°48'22" E a distance of 333.72', along said right of way, thence N 23E°29'00" E 4.07' along said right of way, thence S 70E°05'00" E 200.62' to a point on Line 3-4 of said Louisa Lode, thence S 19E°55'00" W 336.46' along said Line 3-4 to the true point of beginning.

SAVE AND EXCEPT: A parcel of land lying wholly within the Columbia Lode M.S. 2515 and the Louisa Lode M.S. 2516, Section 31, Township 6 South, Range 77 West of the 6th Principal Meridian, situate in the Town of Breckenridge, County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 4 of said Louisa Lode, which point is, in fact, the true point of beginning, thence N 70E°05' W 178.87' to a point in the Easterly Right of Way of Colorado State Highway No. 9, thence Northwesterly 15.90' along the arc of a 1106.00' radius curve to the right whose long chord bears N 00E°14'17" W 15.90', thence East 62.19' thence S 77E°13'12" E

127.05' to a point on the Easterly line of said Louisa Lode, thence S 19~~E~~^E55' W 52.12' along said Easterly line to the true point of beginning.

Parcel C:

Lot 1, Corkscrew Subdivision Filing No. 1 according to the plat thereof recorded March 22, 1994 at Reception No. 464462.

Parcel D:

Tract A, Corkscrew Subdivision Filing No. 1 according to the plat thereof recorded March 22, 1994 at Reception No. 464462.

Exhibit B
LAND USE PLAN

[See the Land Use Plan attached hereto]

January 20, 2010

Michael Mosher, Planner
Town of Breckenridge Planning
P.O. Box 168
Breckenridge, CO 80424

R E C E I V E D
JAN 20 2010

TOWN OF BRECKENRIDGE
PLANNING DEPT.

Dear Mike,

We have received the proposal for Redevelopment of the Old BBC Site to be discussed at the January 29, 2010 public hearing. We are strongly opposed to the proposal to place an "Optional Single Family Lot" in the Land Use District #1 in the northern section of the development. Such a change would not be in compliance with the Breckenridge Development Code and would have a negative impact on the community. Policy 8 (Absolute) Ridgeline and Hillside Development of the Breckenridge Development Code states: "The welfare of the town is based to a great extent on the natural beauty of the valley and the scenic backdrop created by forested hillsides and other natural features. Because of the importance of aesthetics to the economic viability of the town, views are crucial and must be preserved."

The Code further states: "Development on a ridgeline or a hillside is prohibited, except when all of the following findings are made by the Planning Commission:

- a. There are no site development alternatives which avoid ridgeline development; and
- b. The proposed development will not have significant adverse impacts because the application includes all reasonable steps necessary to minimize the visual impacts of the development as viewed from an area of concern."

The proposal clearly violates the "a" criteria above since leaving the single family lot in the southeast corner of the development would avoid ridgeline development. The existing lot in the Land Use District #4 area would be behind the proposed townhomes and out of the view of Highway 9. The proposed change also is in opposition to the "b" criteria because a large home on this hillside at the main entrance to town would have an adverse effect on our community. This area in Land Use District #1 currently provides green Open Space at the roundabout to welcome visitors to our town. Our visitors should not be greeted with a big house with glaring lights in this space. The town has nothing to gain from the proposed change but there is great potential to negatively impact the impression visitors will have as they enter our town. In addition, the proposed "Optional Single Family Lot" is on a very steep hillside. Construction there would disturb a large, fragile area of trees and greenery and make erosion difficult to control. The existing lot in the Land Use District #4 area has a gentler slope and would avoid these problems.

We ask that the Town Council leave the entire Land Use District #1 area as Open Space.

Sincerely,



Paul and Diane Olson
306 Royal Tiger Road
Breckenridge
453-2296

Mosher, Mike

From: Gary List [gary@listfamily.net]
Sent: Tuesday, January 19, 2010 11:55 AM
To: Mosher, Mike
Cc: Marilyn List; Bob Girvin; Marc Hogan; Paul and Diane Olson; Paul and Diane Olson
Subject: Proposed development agreement of "Old BBC Site"

I received today the Notice of Public Hearing regarding the above matter.

I strongly disagree with the plan to create the "Optional Single Family Lot" in District #1 by transferring the existing lot from the Land use District #4 location as proposed by this Agreement. As you are well aware the Breckenridge Land Use Guidelines suggest:

- The majority of District 1 should remain in its natural state
- Whenever possible development rights within District #1 should be transferred to a more suitable locations

I firmly do not believe that it is appropriate to make the transfer to the site on the northerly side of the property. Attempting to develop this "new" lot would require extensive and intrusive grading to obtain access. In addition, it appears as the proposed realignment of the exiting trail simply does not preserve the usability of the existing trail and will likely conflict with the drive needed to access the "new single family lot.". Finally, the proposed single family house would be an intrusive development in an area that so far has been maintained in natural state.

I have documented my concerns regarding other portions of this project in a prior email to you.

I will not be able to attend the hearing due to prior commitments. I would ask that you convey my concerns to the hearing.

Gary List
For Omni Partners LLC

PS—Please confirm receipt of this email.

MEMO

TO: Town Council
FROM: Town Attorney
RE: Bias-Motivated Crime Ordinance
DATE: January 15, 2010 (for January 26th meeting)

Enclosed is the revised Bias-Motivated Crime Ordinance.

Several changes were made to the ordinance following your discussion at the January 12th worksession. The changes are marked on the enclosed version of the ordinance, and are as follows:

1. A provision has been added (new 6-3A-5(E)) providing that a charge brought under this ordinance cannot be dismissed or reduced by plea bargain unless the municipal prosecutor represents to the Municipal Judge that the original Bias-Motivated Crime charge cannot be proven.

2. The big fine and mandatory jail sentence are no longer mandated for a first time violator. It will be up to the Municipal Judge to craft an appropriate sentence, including possible counseling. However, a fine of \$999 and a minimum five days in the county jail is required for a second and each subsequent conviction of a violation of this ordinance.

I believe that these changes are responsive to your comments on January 12th. Accordingly, I have asked that this ordinance be scheduled for first reading next Tuesday. I look forward to discussing this ordinance with you then.

1 **FOR WORKSESSION/FIRST READING – JAN. 26**

2
3 Additions To The Ordinance As Reviewed on January 12, 2010 Are
4 Indicated

5
6 COUNCIL BILL NO. ____

7
8 Series 2010

9
10 AN ORDINANCE ADOPTING SECTION 6-3A-5 OF THE BRECKENRIDGE TOWN CODE
11 CONCERNING BIAS-MOTIVATED MUNICIPAL OFFENSES

12
13 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
14 COLORADO:

15
16 Section 1. The Breckenridge Town Code is amended by the addition of a new Section 6-
17 3A-5, to be entitled “Bias-Motivated Municipal Offenses”, which shall read in its entirety as
18 follows:

19 6-3A-5: BIAS-MOTIVATED MUNICIPAL OFFENSES:

20
21 A. The Town Council hereby finds and declares that it is the right of every
22 person, regardless of race, color, ancestry, religion, national origin, physical or
23 mental disability, or sexual orientation to be secure and protected from fear,
24 intimidation, harassment, and physical harm caused by the activities of
25 individuals and groups. The Town Council further finds that the advocacy of
26 unlawful acts against persons or groups because of a person's or group's race,
27 color, ancestry, religion, national origin, physical or mental disability, or sexual
28 orientation for the purposes described in this section poses a threat to public order
29 and safety and should be subject to appropriate sanctions as provided in this
30 section.

31
32 B. A person commits a bias-motivated municipal offense if, with the intent to
33 intimidate or harass another person because of that person's actual or perceived
34 race, color, religion, ancestry, national origin, physical or mental disability, or
35 sexual orientation, he or she:

36
37 (1) by words or conduct, knowingly places another person in fear of imminent
38 lawless action directed at that person or that person's property and such words or
39 conduct are likely to produce bodily injury to that person or damage to that
40 person's property; or

41
42 (2) knowingly causes damage to or destruction of the property of another person.

43
44 C. The criminal penalty provided in this section for the commission of a bias-

1 motivated municipal offense is not intended to and shall not be construed as
2 precluding the victim of such action from seeking any other remedies otherwise
3 available under law.

4
5 D. For purposes of this section:

6
7 (1) “physical or mental disability” refers to a disability as used in the definition of
8 the term “person with a disability” in Section 18-6.5-102(3), C.R.S.

9
10 (2) “sexual orientation” means a person’s actual or perceived orientation toward
11 heterosexuality, homosexuality, bisexuality, or transgender status.

12
13 E. No charge brought under this section shall be dismissed, and a defendant
14 charged with a violation of this section shall not be permitted to plead guilty or
15 nolo contendere to an offense that is not a violation of this section, unless the
16 prosecuting attorney makes a good faith representation to the Municipal Judge on
17 the record that such attorney would not be able to establish a prima facie case that
18 the defendant violated this section if the defendant was brought to trial on the
19 original charge of having violated this section.

20
21 F. It shall be a misdemeanor offense for any person to violate this section. Any
22 person convicted of having violated this section shall be punished as set forth in
23 Chapter 4 of Title 1 of this Code; provided, however, that for a second and each
24 subsequent conviction for violating this section occurring at any time after the
25 date of the previous violation the Municipal Judge shall impose upon such person
26 a fine of \$999 and a minimum sentence of five days imprisonment in the Summit
27 County jail ~~upon any person convicted of having violated this section. No portion~~
28 ~~of the mandatory five day jail sentence may be suspended.~~

29
30 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
31 various secondary codes adopted by reference therein, shall continue in full force and effect.

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

36 Section 4. The Town Council hereby finds, determines and declares that it has the power
37 to adopt this ordinance pursuant to: (i) Section 31-15-103, C.R.S. (concerning municipal police
38 powers); (ii) Section 31-15-401, C.R.S.(concerning municipal police powers); (iii) the authority
39 granted to home rule municipalities by Article XX of the Colorado Constitution; and (iv) the
40 powers contained in the Breckenridge Town Charter.

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

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED
2 PUBLISHED IN FULL this ____ day of _____, 2010. A Public Hearing shall be held at the
3 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
4 _____, 2010, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
5 Town.

6
7 TOWN OF BRECKENRIDGE, a Colorado
8 municipal corporation
9

10
11
12 By _____
13 John G. Warner, Mayor
14

15 ATTEST:

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19 _____
20 Mary Jean Loufek, CMC,
21 Town Clerk
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MEMORANDUM

TO: Breckenridge Town Council
FROM: Laurie Best, Community Development Department
DATE: January 19, 2010 (for January 26th meeting)
RE: Vista Point Housing Covenant Amendment

The attached Resolution has been prepared to formally amend the Restrictive Covenant for Vista Point. The Town of Breckenridge has the authority to amend the covenant in order to make it less restrictive. The primary intent of this amendment is to allow owners the opportunity to recoup expenses for Capital Improvements that they complete after the first five years. This would not be allowed under the current covenant which requires improvements be made within the first five.

When Vista Point, Gibson Heights, and Wellington Neighborhood were developed, the original employee housing covenants all required that improvements be completed within the first five year in order for the owner to recoup the expense when they sell the unit. It became clear that many owners were unable to complete improvements within five years and the Town amended the covenants for Gibson Heights and Wellington Neighborhood in 2007. The Town has also eliminated the five year restriction from our standard covenant going forward.

The amendment for Vista Point was delayed because the definition of permissible improvements that is included in the Vista Point covenant is significantly broader than 1) the Towns standard definition and 2) eligible improvements in Wellington Neighborhood or Gibson Heights. There was concern about extending the non-compliant definition permanently in the covenant. In order that Vista Point owners have the same opportunities for improvements as other deed restricted developments staff is recommending an amendment that allows improvements after 5 years, but only if the improvements are consistent with the Towns then current definitions/policies. Vista Point units will still be subject to the cap on improvements which is 15% of the initial purchase price. This is consistent with other developments, and with the Towns current policies to restrict capital improvements to promote long term affordability. The specific changes are highlighted on the attached 'Third Amendment and Supplement'.

Newer projects also include standard provisions regarding relief in extraordinary conditions and a reference to the Towns Affordable Housing Guidelines. We have also included these provisions in this Third Amendment and Supplement.

Summary

Staff supports this amendment as it will allow owners in Vista Point the same opportunities for improvements that exist in other development and it brings the Vista Point covenant more in line with current covenants. A resolution has been included in your packet and is scheduled for your consideration this evening. Staff will be available to answer any questions.

1 ***FOR WORKSESSION/ADOPTION – JAN. 26***

2
3 A RESOLUTION

4
5 SERIES 2010

6
7 A RESOLUTION APPROVING THE “THIRD AMENDMENT AND SUPPLEMENT
8 TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
9 EASEMENTS FOR VISTA POINT”

10
11 WHEREAS, WSG BRECKENRIDGE, LP, a Delaware limited partnership (“*Declarant*”)
12 executed that certain Declaration of Covenants, Conditions, Restrictions, and Easements for
13 Vista Point, which document is dated April 17, 2002 and was recorded April 18, 2002 under
14 Reception No. 681899 of the records of the Clerk and Recorder of Summit County, Colorado
15 (“*Declaration*”); and

16
17 WHEREAS, the Town and Declarant executed that certain Amendment To Declaration
18 of Covenants, Conditions, Restrictions and Easements For Vista Point, which document is dated
19 January 27, 2003 and was recorded February 3, 2003 under Reception No. 709837 of the records
20 of the Clerk and Recorder of Summit County, Colorado; and

21
22 WHEREAS, the Town and Declarant also executed that certain Second Amendment and
23 Supplement To Declaration of Covenants, Conditions, Restrictions and Easements For Vista
24 Point, which document is dated July 22, 2004 and was recorded July 29, 2004 under Reception
25 No. 762885 of the records of the Clerk and Recorder of Summit County, Colorado; and

26
27 WHEREAS, the Town desires to further amend the Declaration as set forth on the
28 proposed Third Amendment and Supplement to Declaration of Covenants, Conditions,
29 Restrictions and Easements for Vista Point, a copy of which is marked Exhibit “A”, attached
30 hereto and incorporated herein by reference; and

31
32 WHEREAS, Article XVI of the Declaration contain certain covenants which were made
33 for the benefit of the Town, and which may be enforced only by the Town; and

34
35 WHEREAS, Section 16.3 of the Declaration provides that the Town has the sole right to
36 amend Section 16.3 in order to make the section less restrictive; and

37
38 WHEREAS, the proposed amendment to Section 16.3 of the Declaration is less
39 restrictive than the original Section 16.3; and

40
41 WHEREAS, Section 16.5 provides that provisions of Article XVI of the Declaration
42 (other than Section 16.3 that may be amended by the Town as provided in Section 16.3) may be
43 amended without the requirement for approval by the Lot Owners or Mortgagees, so long as the
44 amendment is no more restrictive on either the Lot Owners or the Mortgagees; and

1 WHEREAS, Declarant no longer has any interest in the property that is subject to the
2 Declaration, and requiring the Declarant's consent to the portion of this Third Amendment that
3 amends the provisions of Article XVI of the Declaration other than Section 16.3 would be
4 unreasonable, and an unnecessary burden; and
5

6 WHEREAS, the amendments to the provisions of Article XVI of the Declaration other
7 than Section 16.3 are found and determined to be no more restrictive on either the Lot Owners or
8 the Mortgagees.
9

10 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
11 BRECKENRIDGE, COLORADO, as follows:
12

13 Section 1. The proposed the Third Amendment and Supplement to Declaration of
14 Covenants, Conditions, Restrictions and Easements for Vista Point (Exhibit "A" hereto) is
15 approved, and the Town Manager is hereby authorized to execute such document for and on
16 behalf of the Town of Breckenridge.
17

18 Section 2. The Town Manager's previous execution of: (i) the Amendment To
19 Declaration of Covenants, Conditions, Restrictions and Easements For Vista Point dated January
20 27, 2003 and recorded February 3, 2003 under Reception No. 709837 of the records of the Clerk
21 and Recorder of Summit County, Colorado, and (ii) the Second Amendment and Supplement To
22 Declaration of Covenants, Conditions, Restrictions and Easements For Vista Point dated July 22,
23 2004 and recorded July 29, 2004 under Reception No. 762885 of the records of the Clerk and
24 Recorder of Summit County, Colorado, are hereby ratified, confirmed and approved.
25

26 Section 3. This resolution shall become effective upon its adoption.
27

28 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2010.
29

30 TOWN OF BRECKENRIDGE
31

32
33 By _____
34 John G. Warner, Mayor
35

36 ATTEST:
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40 _____
41 Mary Jean Loufek,
42 CMC, Town Clerk
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1 APPROVED IN FORM

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_____ Date
Town Attorney

1 *DRAFT January 19, 2010 DRAFT*

2
3 **THIRD AMENDMENT AND SUPPLEMENT**
4 **TO**
5 **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND**
6 **EASEMENTS FOR VISTA POINT**
7

8 This Third Amendment and Supplement to Declaration of Covenants, Conditions,
9 Restrictions and Easements For Vista Point (“*Third Amendment*”) is made this ___ day of
10 _____, 2010 by the TOWN OF BRECKENRIDGE, a Colorado municipal
11 corporation (“*Town*”).
12

13 WHEREAS, WSG BRECKENRIDGE, LP, a Delaware limited partnership (“*Declarant*”)
14 executed that certain Declaration of Covenants, Conditions, Restrictions, and Easements for
15 Vista Point, which document is dated April 17, 2002 and was recorded April 18, 2002 under
16 Reception No. 681899 of the records of the Clerk and Recorder of Summit County, Colorado
17 (“*Declaration*”); and
18

19 WHEREAS, the Town and Declarant executed that certain Amendment To Declaration
20 of Covenants, Conditions, Restrictions and Easements For Vista Point, which document is dated
21 January 27, 2003 and was recorded February 3, 2003 under Reception No. 709837 of the records
22 of the Clerk and Recorder of Summit County, Colorado (“*First Amendment*”); and
23

24 WHEREAS, the Town and Declarant also executed that certain Second Amendment and
25 Supplement To Declaration of Covenants, Conditions, Restrictions and Easements For Vista
26 Point, which document is dated July 22, 2004 and was recorded July 29, 2004 under Reception
27 No. 762885 of the records of the Clerk and Recorder of Summit County, Colorado (“*Second*
28 *Amendment*”); and
29

30 WHEREAS, the Town desires to further amend the Declaration as hereafter set forth; and
31

32 WHEREAS, Article XVI of the Declaration contain certain covenants which were made
33 for the benefit of the Town, and which may be enforced only by the Town; and
34

35 WHEREAS, Section 16.3 of the Declaration provides that the Town has the sole right to
36 amend Section 16.3 in order to make the section less restrictive; and
37

38 WHEREAS, the amendment to Section 16.3 of the Declaration is less restrictive than the
39 original Section 16.3; and
40

41 WHEREAS, Section 16.5 provides that provisions of Article XVI of the Declaration
42 (other than Section 16.3 that may be amended by the Town as provided in Section 16.3) may be
43 amended without the requirement for approval by the Lot Owners or Mortgagees, so long as the
44 amendment is no more restrictive on either the Lot Owners or the Mortgagees; and
45

1 WHEREAS, Declarant no longer has any interest in the property that is subject to the
2 Declaration, and requiring the Declarant's consent to the portion of this Third Amendment that
3 amends the provisions of Article XVI of the Declaration other than Section 16.3 would be
4 unreasonable, and an unnecessary burden; and

5
6 WHEREAS, the amendments to the provisions of Article XVI of the Declaration other
7 than Section 16.3 are found and determined to be no more restrictive on either the Lot Owners or
8 the Mortgagees.

9
10 NOW, THEREFORE, the Town declares as follows:

11
12 1. Section 16.3 of the Declaration, entitled "Approved Improvements", is amended so as
13 to read in its entirety as follows:

14
15 Section 16.3 Approved Improvements. "Certificate of Improvement" means a
16 certificate issued by the Town or its designee that certifies the value of any
17 Approved Improvements made to a Deed Restricted Lot. "Approved
18 Improvements" means all those improvements in and to Deed Restricted Lots
19 made during the first five years after the Lot is conveyed to its first owner and that
20 comply with this Declaration and have been approved in advance of installation
21 by the Town or its designee pursuant to guidelines and procedures established by
22 the Town. Approved improvements mean non-luxury items and items that do not
23 constitute normal maintenance, both inside and outside a home. Approved
24 Improvements include, but are not limited to, finishing unfinished interior spaces,
25 plumbing, heating, insulation, new fixtures, system improvements, improvements
26 increasing household energy efficiency, and improvements to and additions of
27 walkways, decks, porches and landscaping. **The Town may also approve**
28 **improvements made in and to Deed Restricted Lots made more than five years**
29 **after the Lot is conveyed to its first owner if such improvements have been**
30 **approved by the Town or its designee in advance of installation, and if such**
31 **improvements are consistent with the Town's then-current Affordable Housing**
32 **Guidelines.** In no event will the Town approve Certificate of Improvement for any
33 one Lot that together exceed 15% of the initial purchase price of the Lot to its first
34 owner. This section is for the benefit of the Town of Breckenridge, and the Town
35 shall have the sole right to make these provisions less restrictive.

36
37 2. Article XVI of the Declaration, entitled "Covenants For Deed Restricted Lots", is
38 amended by the addition of a new Section 16.6, to be entitled "Relief In Extraordinary
39 Circumstances", which shall read in its entirety as follows:

40
41 **Section 16.6 Relief In Extraordinary Circumstances.** The Town's Director of the
42 Department of Community Development ("**Director**") or the Director's designee
43 may grant a variance, exception or waiver from the requirements of this Article
44 XVI based upon the written request of the owner or prospective owner of a Deed
45 Restricted Lot. Such variance, exception or waiver may be granted by the
46 **Director only upon a finding that: (i) the circumstances justifying the granting of**

1 the variance, exception or wavier are unique; (ii) a strict application of this Article
2 would result in an extraordinary hardship; and (iii) the variance, exception or
3 waiver is consistent with the intent and purpose of this Article. No variance,
4 exception or wavier shall be granted by the Director if its effect would be to
5 nullify the intent and purpose of this Article. In granting a variance, exception or
6 wavier of the provisions of this Article the Director may impose specific
7 conditions of approval, and shall fix the duration of the term of such variance,
8 exception or waiver. Any owner or prospective owner of a Deed Restricted Unit
9 who is dissatisfied with the decision of the Director with respect to a request for a
10 variance, exception or waiver from the requirements of this Article may appeal
11 the Director's decision to the Town Council of the Town of Breckenridge by
12 submitting a written letter of appeal to the Town Clerk within ten (10) days of the
13 date of the Director's decision. The Town Council shall make a final
14 determination of such appeal within forty five (45) days after the Town Clerk's
15 receipt of the letter of appeal.

16
17 3. Article XVI of the Declaration, entitled "Covenants For Deed Restricted Lots", is
18 amended by the addition of a new Section 16.7, to be entitled "Town of Breckenridge Affordable
19 Housing Guidelines", which shall read in its entirety as follows:

20
21 Section 16.7 Town of Breckenridge Affordable Housing Guidelines. This Article
22 XVI shall be interpreted in accordance with the Town of Breckenridge Affordable
23 Housing Guidelines ("**Guidelines**"), as amended from time to time by the Town
24 Council following a public hearing; provided, however, that to the extent the
25 Guidelines are inconsistent with this Article, this Article shall control.

26
27 4. Except as expressly amended by the First Amendment, the Second Amendment and
28 this Third Amendment, the Declaration shall continue in full force and effect.

29
30 Executed as of the date first set forth above.

31
32 TOWN OF BRECKENRIDGE, a Colorado
33 municipal corporation

34
35
36
37 By _____
38 Timothy J. Gagen, Town Manager

39
40 ATTEST:

41
42
43
44 _____
45 Mary Jean Loufek, CMC,
46 Town Clerk

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

5 The foregoing instrument was acknowledged before me this ____ day
6 of _____, 2010, by Timothy J. Gagen, Town Manager, and Mary Jean Loufek,
7 CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.
8

9 WITNESS my hand and official seal.

10
11 My commission expires: _____.
12
13

14 _____
15 Notary Public
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MEMO

TO: Town Council

FROM: Town Attorney

RE: Final Decision – Gondola Lots Master Plan Call Up Hearing

DATE: January 19, 2010 (for January 26th meeting)

At the conclusion of the Gondola Lots Master Plan call up hearing on January 12th I was directed to prepare a written decision reflecting the Town Council’s oral decision that was announced at the conclusion of the hearing.

Enclosed please find a proposed form of Decision, together with attached Revised Point Analysis (Exhibit “A”) and revised Findings and Conditions (Exhibit “B”). The revised Point Analysis reflects the Council’s change to the points awarded under Policy 25/R (Transit) and Policy 24/R (Employee Housing), and results in a total net score of zero points. The changes to the Findings and Conditions document are marked (see old Condition 17, and new Conditions 18 and 19). The change to Condition 17 relates to the Town’s management of the parking structures being a topic for the upcoming business negotiations between the Town and VSR. New Conditions 18 and 19 relate to the limitation on commercial density (30 SFEs); the minimum townhouse density (25 SFEs); and North and South Depot Roads being open and available for public parking. I hope that the Decision, Findings and Conditions and Revised Point Analysis accurately reflect your judgment in this matter.

The Decision will be listed on your evening agenda under “Planning Matters.” Because this matter is quasi-judicial in nature, all of the Council’s discussions concerning the matter should be done “on the record” (i.e., at the evening meeting, rather than at the worksession). During the evening meeting the Council can formally discuss and consider the proposed form of Decision and Findings/Conditions. Once the document is in an acceptable form, a suggested for of motion to approve the decision documents is as follows:

“I move that the written Decision prepared by the Town Attorney regarding the Town Council’s call up hearing on Application No. PC2009010, the Class A Development Permit application submitted by Vail Summit Resorts, Inc. for a master plan for the Gondola Lots at 320 North Park Avenue, as set forth in tonight’s agenda packet on pages _____, inclusive, be adopted as the final decision of the Town Council with respect to such application.”

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

1 PROCEEDINGS OF THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
2 COLORADO
3

4 Application No. PC2009010
5

6 Applicant: Vail Summit Resorts, Inc.
7

8 Type of Application: Class A Development Permit
9

10 Project Location: 320 North Park Avenue
11

12 DECISION
13
14

15
16 This matter came before the Town Council of the Town of Breckenridge, Colorado
17 ("**Town Council**") on January 12, 2010.
18

19 Having heard and considered all of the evidence presented both in favor of and in
20 opposition to the Application, the Town Council finds and determines as follows:
21

- 22 1. The Applicant, Vail Summit Resorts, Inc. ("**Applicant**"), seeks approval of a Class A
23 Development Permit for a master plan for the real property commonly known as the
24 "Gondola Lots" located at 320 North Park Avenue in Breckenridge, plus Town owned
25 property generally adjacent to and to the east of the Gondola Lots. The Applicant is the
26 owner of the real property that is the subject of the Application, except the Town owned
27 property for which Applicant was authorized by the Town to propose the master plan.
28 The Applicant has filed a completed application ("**Application**"), and has paid all
29 required application fees.
- 30 2. The Application was originally considered by the Town of Breckenridge Planning
31 Commission ("**Planning Commission**") in accordance with the procedures and
32 requirements of the Town's Development Code (Chapter 1 of Title 9 of the Breckenridge
33 Town Code) ("**Development Code**").
- 34 3. On December 1, 2009 the Planning Commission conditionally approved the Application.
- 35 4. On December 8, 2009 the Planning Commission's decision on the Application was
36 presented to the Town Council as required by Section 9-1-18-1(E)(6) of the Development
37 Code.
- 38 5. On December 8, 2009 the Town Council voted to "call up" the Planning Commission's
39 decision on the Application.

- 1 6. Pursuant to Section 9-1-5 of the Development Code, a call up is the decision of the Town
2 Council to vacate the Planning Commission's decision on an application and to make the
3 final decision on the application itself.
- 4 7. The applicable procedures for a call up hearing to be conducted by the Town Council are
5 set forth in Section 9-1-18-5 of the Development Code. When the Town Council is
6 conducting a call up hearing, it becomes the final decision maker for the Town with
7 respect to an application and, therefore, in connection with a Council call up hearing the
8 provisions of the Development Code dealing with the powers and authority of the
9 Planning Commission apply equally to the Town Council. Thus, when the Town Council
10 is conducting a call up hearing references in the Development Code to the Planning
11 Commission may properly be taken to mean and to apply to the Town Council.
- 12 8. The Town Council's decision to call up the Application operated to vacate the Planning
13 Commission's decision on the Application.
- 14 9. Pursuant to Section 9-1-18-5(A)(1)(c) of the Development Code, a call up hearing on a
15 development permit application is conducted by the Town Council as a de novo hearing.
- 16 10. On January 12, 2010, the Town Council conducted its call up hearing on the Application.
17 The hearing was held at the Town Council's next regularly scheduled meeting following
18 the vote to call up the Application as required by Section 9-1-18-5(A)(1)(b) of the
19 Development Code.
- 20 11. As required by Section 9-1-18-5(A)(1)(b) of the Development Code notice of the Town
21 Council's hearing on the Application was given in the same manner as is required for
22 final hearings on development permit applications held before the Planning Commission.
23 Proof that notice of the hearing was properly given was made a part of the record of the
24 proceedings of the hearing.
- 25 12. The Town Council has jurisdiction over the Application pursuant to the Development
26 Code.
- 27 13. The Applicant was represented at the hearing by its attorney, Stephen C. West, by Alex
28 Iskenderian, Vice President of Vail Resorts Development Company, which is the
29 authorized agent of Applicant, and by other representatives of the Applicant.
- 30 14. At the hearing the Applicant, through its representatives and consultants, appeared and
31 gave testimony and presented evidence in support of the Application. At the hearing other
32 interested parties also appeared and gave testimony concerning the Application. Such
33 testimony and evidence is contained in the record of the proceedings pertaining to the
34 Application.
- 35 15. All of the members of the Town Council are familiar with the property that is the subject
36 of the Application, although no formal site visit was conducted by the Town Council in
37 connection with its consideration of the Application.

- 1 16. All members of the Town Council have carefully considered all of the evidence
2 submitted pertaining to the Application, both oral and written, and the applicable
3 requirements of the Development Code.
- 4 17. Pursuant to Section 9-1-17-6 of the Development Code, in order for the Application to be
5 granted the burden is on the Applicant to demonstrate by competent evidence that the
6 Application satisfies all of the applicable requirements of the Development Code. The
7 Applicant's burden of proof is by a preponderance of the evidence.
- 8 18. An "absolute policy" is defined by Section 9-1-5 of the Development Code as " a policy
9 which, unless irrelevant to the development, must be implemented for a permit to be
10 issued. The [absolute] policies are described in section 9-1-19 of this chapter."
- 11 19. A "relative policy" is defined by Section 9-1-5 of the Development Code as "a policy
12 which need not be implemented by a development, but for which positive, negative, or
13 zero points are allocated based on the features of the proposed development." The
14 relative policies are also described in Section 9-1-19 of the Development Code.
- 15 20. Section 9-1-17-3 of the Development Code provides, in pertinent part, as follows:
16
17 9-1-17-3: ASSIGNMENT OF POINTS:
18
19 All policies are applied to all developments: classes A, B, C, and D. Relative
20 policies are assigned points, and unless provided differently in the policy, a
21 negative score indicates that the policy is implemented and that the proposed
22 development will have a negative impact on the community on the basis of that
23 policy. A score of zero indicates either that the policy is irrelevant to the proposed
24 development or that a negative impact on the basis of the policy is completely
25 mitigated. A positive score indicates that the proposed development implements
26 the policy in such a way that there will be a positive impact on the community
27 (i.e., the community will benefit) on the basis of the policy.
28
29 A point analysis shall be conducted for all policies relevant to an application, and
30 shall be completed prior to the final hearing on the application.
- 31 21. The "point analysis" required to be conducted by Section 9-1-17-3 of the Development
32 Code is the final determination of whether an application implements all applicable
33 "absolute policies" of the Development Code, and is also the final allocation of positive
34 or negative "points" reflecting the extent to which the application complies or does not
35 comply with the relevant "relative policies" of the Development Code.
- 36 22. Prior to the hearing the Town's Department of Community Development ("**Department**")
37 prepared its proposed point analysis on the Application as required by Section 9-1-17-3
38 of the Development Code. The proposed point analysis reflected the Department's best
39 professional judgment as to whether the Application complies with all of the relevant
40 absolute policies of the Development Code, as well as the Department's best professional

- 1 judgment of the manner and degree to which the Application implements all of the
2 relevant relative policies of the Development Code.
- 3 23. As part of the process of making its decision on the Application the Town Council has
4 the authority to accept, reject, or modify the Department’s proposed point analysis.
- 5 24. By motions duly adopted, the Town Council modified the staff’s proposed point analysis
6 for the Application. A copy of the revised Point Analysis for the Application is marked
7 Exhibit “A”, attached hereto and incorporated herein by reference (“**Revised Point**
8 **Analysis**”).
- 9 25. The Town Council finds and determines that that the Revised Point Analysis (**Exhibit**
10 **“A”**) correctly reflects that the Application complies with (i.e., implements) all of the
11 relevant Absolute Policies of the Development Code.
- 12 26. The Town Council further finds and determines that the Revised Point Analysis correctly
13 reflects the Town Council’s considered judgment with respect to the appropriate relative
14 point assignments for each of the applicable relative policies of the Development Code.
- 15 27. The Revised Point Analysis is approved and adopted by the Town Council.
- 16 28. The Revised Point Analysis indicates that the Application implements all relevant
17 absolute policies of the Development Code, and that the Application received a score of
18 zero points with respect to all relevant relative policies of the Development Code.
- 19 29. Section 9-1-18-1(E)(5) of the Development Code provides, in pertinent part, as follows:
20 If the proposed development implements or has no effect on all relevant absolute
21 policies and is allocated zero or [a] net positive number of points for the relative
22 policies, the [Town Council] shall approve the proposed development.
23
- 24 30. Section 9-1-17-7 of the Development Code authorizes the Town Council to impose
25 conditions of approval on a Class A development permit application.
- 26 31. The conditions of approval hereinafter set forth are reasonably necessary in order to
27 adequately protect the public health, safety and welfare, and to ensure that a particular
28 development policy will be implemented in the manner indicated in the Application.
- 29 32. After carefully considering the record in this matter, the Town Council finds and
30 determines that:
- 31 A. the Applicant has met its burden of proof and sufficiently demonstrated that the
32 Application satisfies the applicable requirements of the Development Code; and
- 33 B. the Applicant is entitled to conditional approval of the Application.

1
2 IT IS THEREFORE ORDERED that the application of Vail Summit Resorts, Inc. for a
3 Class A Development Permit for a master plan for the property located at 320 North Park
4 Avenue, Breckenridge, Colorado, as more specifically described in and as limited by the
5 Application, is hereby is GRANTED, with the Findings and subject to the Conditions set forth
6 on the attached Exhibit "B", which is incorporated herein by reference.
7

8 For the purpose of determining the finality of the Town Council's decision on the
9 Application, this Decision supersedes the oral decision on the Application announced at the
10 conclusion of the call-up hearing on January 12, 2010. This Decision is the final decision of the
11 Town Council on the Application for all purposes.
12

13 A copy of this Decision shall be mailed by the Town Clerk to the Applicant at its address
14 as shown on the Application.
15

16 ADOPTED this 26th day of January, 2010.
17

18 TOWN OF BRECKENRIDGE, a Colorado
19 municipal corporation
20

21
22
23 By: _____
24 John G. Warner, Mayor
25

26 ATTEST:
27
28
29

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

Final Hearing Impact Analysis				
Project:	Gondola Lots Redevelopment Master Plan	Positive Points	+20	
PC#:	2009010	Negative Points	- 20	
Date:	12/23/2009			
Staff:	Chris Neubecker			
		Total Allocation:	0	
Items left blank are either not applicable or have no comment				
Sect.	Policy	Range	Points	Comments
1/A	Codes, Correlative Documents & Plat Notes	Complies		
2/A	Land Use Guidelines	Complies		Master Plan
2/R	Land Use Guidelines - Uses	4x(-3/+2)	0	Lodging and commercial uses recommended
2/R	Land Use Guidelines - Relationship To Other Districts	2x(-2/0)	0	
2/R	Land Use Guidelines - Nuisances	3x(-2/0)	0	None anticipated
3/A	Density/Intensity	Complies		93 SFEs of density transfer from Gold Rush Lot. Project shall not exceed 201 SFEs over the entire site.
3/R	Density/ Intensity Guidelines	5x (-2>-20)	0	
4/R	Mass	5x (-2>-20)	0	Standard mass bonuses in place on April 2, 2009 are in effect.
5/A	Architectural Compatibility / Historic Priority Policies	Complies		
5/R	Architectural Compatibility - Aesthetics	3x(-2/+2)	N/A	Will be reviewed during development review for each building. Natural materials are recommended. Brick is proposed as a primary material on the condo-hotel and skier services building, rather than as an accent. No points have been assigned at this time. Points for use of brick and other architectural issues will be reviewed during individual development permits for each building.
5/R	Architectural Compatibility / Conservation District	5x(-5/0)	N/A	
5/R	Architectural Compatibility H.D. / Above Ground Density 12 UPA	(-3>-18)	N/A	
5/R	Architectural Compatibility H.D. / Above Ground Density 10 UPA	(-3>-6)	N/A	
6/A	Building Height	Complies		
6/R	Relative Building Height - General Provisions	1X(-2,+2)		
	For all structures except Single Family and Duplex Units outside the Historic District			
6/R	Building Height Inside H.D. - 23 feet	(-1>-3)		
6/R	Building Height Inside H.D. - 25 feet	(-1>-5)		
6/R	Building Height Outside H.D. / Stories	(-5>-20)	- 20	Buildings up to 5 stories (condo-hotel) proposed.
6/R	Density in roof structure	1x(+1/-1)	N/A	Specific building designs have not yet been submitted.
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)	N/A	Specific building designs have not yet been submitted.
	For all Single Family and Duplex Units outside the Conservation District			
6/R	Density in roof structure	1x(+1/-1)	N/A	
6/R	Broken, interesting roof forms that step down at the edges	1x(+1/-1)	N/A	
6/R	Minimum pitch of eight in twelve (8:12)	1x(0/+1)	N/A	
7/R	Site and Environmental Design - General Provisions	2X(-2/+2)	0	Site is vacant with no significant development constraints.
7/R	Site and Environmental Design / Site Design and Grading	2X(-2/+2)	0	No significant grading is proposed.
7/R	Site and Environmental Design / Site Buffering	4X(-2/+2)	0	Site is in an urban area. No significant buffering is proposed at this time. Landscaping plans will be reviewed at time of development permit, and buffering will be addressed at that time.
7/R	Site and Environmental Design / Retaining Walls	2X(-2/+2)	N/A	No retaining walls are proposed at this time.
7/R	Site and Environmental Design / Driveways and Site Circulation Systems	4X(-2/+2)	0	No significant grading is required for driveways or parking areas.
7/R	Site and Environmental Design / Site Privacy	2X(-1/+1)	0	Site is in an urban area. Minimal privacy is anticipated. Privacy issues will be further reviewed during site specific development permit.
7/R	Site and Environmental Design / Wetlands	2X(0/+2)	0	No wetlands are anticipated to be impacted, other than the Blue River during restoration. Army Corps permits will be required prior to any work within the river or flood plain.
7/R	Site and Environmental Design / Significant Natural Features	2X(-2/+2)	N/A	There are no significant natural features on the site, other than the Blue River. The river has been incorporated into the design of the project, but points (if any) for the river restoration will be assigned during the site specific plans for the river.
8/A	Ridgeline and Hillside Development	Complies		
9/A	Placement of Structures	Complies		
9/R	Placement of Structures - Public Safety	2x(-2/+2)	N/A	Points will be assigned during the development review process for individual developments.
9/R	Placement of Structures - Adverse Effects	3x(-2/0)	N/A	Points will be assigned during the development review process for individual developments.
9/R	Placement of Structures - Public Snow Storage	4x(-2/0)	N/A	Points will be assigned during the development review process for individual developments.
9/R	Placement of Structures - Setbacks	3x(0/-3)	N/A	Points will be assigned during the development review process for individual developments.
12/A	Signs	Complies		
13/A	Snow Removal/Storage	Complies		
13/R	Snow Removal/Storage - Snow Storage Area	4x(-2/+2)	N/A	Points will be assigned during the development review process for individual developments.
14/A	Storage	Complies		
14/R	Storage	2x(-2/0)	N/A	Points will be assigned during the development review process for individual developments.
15/A	Refuse	Complies		
15/R	Refuse - Dumpster enclosure incorporated in principal structure	1x(+1)	N/A	Points will be assigned during the development review process for individual developments.

15/R	Refuse - Rehabilitated historic shed as trash enclosure	1x(+2)	N/A	
15/R	Refuse - Dumpster sharing with neighboring property (on site)	1x(+2)	N/A	Points will be assigned during the development review process for individual developments.
16/A	Internal Circulation	Complies		
16/R	Internal Circulation / Accessibility	3x(-2/+2)	+3	Good network of pedestrian paths, bridges and sidewalks. Walkable plan helps to separate incompatible uses such as pedestrians and buses.
16/R	Internal Circulation - Drive Through Operations	3x(-2/0)	0	None anticipated.
17/A	External Circulation	Complies		
18/A	Parking	Complies		
18/R	Parking - General Requirements	1x(-2/+2)	0	Project meets parking need, per parking study from Felsburg, Holt & Ullevig parking consultants. 1:1 parking ratio for the condo-hotel will be reviewed by Town Council under a separate development agreement.
18/R	Parking-Public View/Usage	2x(-2/+2)	+4	Parking in structures and under buildings. Minimal surface parking on new private streets.
18/R	Parking - Joint Parking Facilities	1x(+1)	+1	Parking structures will be open to public use.
18/R	Parking - Common Driveways	1x(+1)	+1	Shared access with Town Hall and 1st Bank for south parking structure.
18/R	Parking - Downtown Service Area	2x(-2/+2)	0	
19/A	Loading	Complies		
20/R	Recreation Facilities	3x(-2/+2)	N/A	None proposed within master planned area. Private recreation facilities may be included within condo-hotel, and will be reviewed at a later date.
21/R	Open Space - Private Open Space	3x(-2/+2)	N/A	
21/R	Open Space - Public Open Space	3x(0/+2)	N/A	No open space has been identified with this development. Open space requirements will be reviewed during the development review process for individual developments.
22/A	Landscaping	Complies		
22/R	Landscaping	4x(-2/+2)	N/A	No landscaping plan has been supplied with the master plan. Landscaping requirements will be reviewed during the development review process for individual developments.
24/A	Social Community	Complies		
24/R	Social Community - Employee Housing	1x(-10/+10)	+8	Employee housing equal to 8.51% of the density of the project will be provided off-site. Deed restrictions for the employee housing shall be created prior to the recordation of the master plan or master plan notice.
24/R	Social Community - Community Need	3x(0/+2)	+3	Development will address Council Goals for 2008, including transportation enhancements, economic sustainability and environmental sustainability in buildings.
24/R	Social Community - Social Services	4x(-2/+2)	N/A	None proposed.
24/R	Social Community - Meeting and Conference Rooms	3x(0/+2)	0	Conference space planned in hotel building.
24/R	Social Community - Historic Preservation	3x(0/+5)	N/A	None proposed.
24/R	Social Community - Historic Preservation/Restoration - Benefit	+3/6/9/12/15	N/A	None proposed.
25/R	Transit	4x(-2/+2)	0	Relocation and reconstruction of transit building and bus lanes. Increase in bus bays, improved transit service and better pedestrian safety.
26/A	Infrastructure	Complies		
26/R	Infrastructure - Capital Improvements	4x(-2/+2)	0	No significant improvements proposed.
27/A	Drainage	Complies		
27/R	Drainage - Municipal Drainage System	3x(0/+2)	N/A	Final drainage plan will be required prior to development permits for individual buildings.
28/A	Utilities - Power lines	Complies		
29/A	Construction Activities	Complies		
30/A	Air Quality	Complies		
30/R	Air Quality - wood-burning appliance in restaurant/bar	-2	N/A	None proposed at this time.
30/R	Beyond the provisions of Policy 30/A	2x(0/+2)	N/A	None proposed at this time.
31/A	Water Quality	Complies		
31/R	Water Quality - Water Criteria	3x(0/+2)	N/A	No specific enhancements proposed at this time.
32/A	Water Conservation	Complies		
33/R	Energy Conservation - Renewable Energy Sources	3x(0/+2)	N/A	No specific renewable energy sources identified at this time.
33/R	Energy Conservation - Energy Conservation	3x(-2/+2)	N/A	No specific energy conservation efforts identified at this time.
34/A	Hazardous Conditions	Complies		
34/R	Hazardous Conditions - Floodway Improvements	3x(0/+2)	0	
35/A	Subdivision	Complies		
36/A	Temporary Structures	Complies		
37/A	Special Areas	Complies		
37/R	Community Entrance	4x(-2/0)	N/A	
37/R	Individual Sites	3x(-2/+2)	N/A	
37/R	Blue River	2x(0/+2)	0	No commitment has yet been made as to which entity will construct and finance the river improvements.
37/R	Cucumber Gulch/Setbacks	2x(0/+2)	N/A	
37/R	Cucumber Gulch/Impervious Surfaces	1x(0/-2)	N/A	
38/A	Home Occupation	Complies		
39/A	Master Plan	Complies		
40/A	Chalet House	Complies		
41/A	Satellite Earth Station Antennas	Complies		
42/A	Exterior Loudspeakers	Complies		
43/A	Public Art	Complies		
43/R	Public Art	1x(0/+1)	N/A	Some public art anticipated, but not yet identified. Applicant will need more specific plans approved by Public Art Commission.
44/A	Radio Broadcasts	Complies		
45/A	Special Commercial Events	Complies		
46/A	Exterior Lighting	Complies		
47/A	Fences, Gates And Gateway Entrance Monuments	Complies		

TOWN OF BRECKENRIDGE

Gondola Lots Master Plan

Legal Description: Tract A, Block 3, Parkway Center, Lot 1, Block 3, Parkway Center, Lot 1A, Block 4, Parkway Center, Lot 1B, Block 4, Parkway Center, Lot 1-A, Sawmill Station Square, Filing No. 3, Lot 1-B, Sawmill Station Square, Filing No. 3, Lot 1-C, Sawmill Station Square, Filing No. 3, Lot 2-A, Sawmill Station Square, Filing No. 3, Lot 2-B, Sawmill Station Square, Filing No. 3, Lot 3-A, Sawmill Station Square, Filing No. 3, Lot 3-B, Sawmill Station Square, Filing No. 3, Lot 4, Sawmill Station Square, Filing No. 3, Lots 71-74, and Lots 87-90, Bartlett & Shock Addition

PERMIT #2009010

STAFF RECOMMENDATION: Staff recommends the Town Council approve this application with the following findings and conditions.

FINDINGS

1. The proposed project is in accord with the Development Code and does not propose any prohibited use.
2. The project will not have a significant adverse environmental impact or demonstrative negative aesthetic effect.
3. All feasible measures mitigating adverse environmental impacts have been included, and there are no economically feasible alternatives which would have less adverse environmental impact.
4. This approval is based on the staff report dated December 23, 2009 and findings made by the Town Council with respect to the project. Your project was approved based on the proposed design of the project and your acceptance of these terms and conditions imposed.
5. The terms of approval include any representations made by you or your representatives in any writing or plans submitted to the Town of Breckenridge, and at the hearing on the project held on January 12, 2010 as to the nature of the project. In addition to Town Council minutes, the meetings of the Council are tape recorded.
6. If the real property which is the subject of this application is subject to a severed mineral interest, the applicant has provided notice of the initial public hearing on this application to any mineral estate owner and to the Town as required by Section 24-65.5-103, C.R.S.
7. The proposed plan shows that on-street parking is proposed on North Depot Road and South Depot Road. Each of these streets is proposed to be built, owned and maintained by the applicant, Vail Resorts Development Company, or its parent company, Vail Summit Resorts, and not by the Town of Breckenridge. While on-street parking is generally not allowed to count toward the parking supply for a development, parking on private streets not maintained by the Town of Breckenridge has not been previously discussed, approved or denied. The Town Council hereby finds that the creation of a new private street, which will not be maintained by the Town of Breckenridge, and upon which parking has been provided, shall count toward the "Off Street Parking" requirements for this development.

CONDITIONS

1. This permit does not become effective, and the project may not be commenced, unless and until the applicant accepts the preceding findings and following conditions in writing and transmits the acceptance to the Town of Breckenridge.

2. If the terms and conditions of the approval are violated, the Town, in addition to criminal and civil judicial proceedings, may, if appropriate, issue a stop order requiring the cessation of work, revoke this permit, require removal of any improvements made in reliance upon this permit with costs to constitute a lien on the property and/or restoration of the property.
3. The vested period for this master plan expires three (3) years from the date of Town Council approval, on January 12, 2013, in accordance with the vesting provisions of Policy 39 of the Development Code. In addition, if this permit is not signed and returned to the Town within thirty (30) days of the permit mailing date, the permit shall only be valid for eighteen (18) months, rather than three (3) years.
4. The terms and conditions of this permit are in compliance with the statements of the staff and applicant made on the evidentiary forms and policy analysis forms.
5. This permit contains no agreement, consideration, or promise that a certificate of occupancy or certificate of compliance will be issued by the Town. A certificate of occupancy or certificate of compliance will be issued only in accordance with the Town's planning requirements/codes and building codes.
6. This Master Plan is entered into pursuant to Policy 39 (Absolute) of the Breckenridge Development Code (Chapter 1 of Title 9 of the Breckenridge Town Code). Uses specifically approved in this Master Plan shall supersede the Town's Land Use Guidelines and shall serve as an absolute development policy under the Development Code during the vesting period of this Master Plan. The provisions and procedures of the Development Code (including the requirement for a point analysis) shall govern any future site specific development of the property subject to this Master Plan.
7. Approval of a Master Plan is limited to the general acceptability of the land uses proposed and their interrelationships, and shall not be construed to endorse the precise location of uses or engineering feasibility.
8. Concurrently with the issuance of a Development Permit, applicant shall submit a 24"x36" mylar document of the final master plan, including all maps and text, as approved by Town Council at the call-up hearing, and reflecting any changes required. The name of the architect, and signature block signed by property owner of record or agent with power of attorney shall appear on the mylar.
9. Applicant shall record with the Summit County Clerk and Recorder a mylar document reflecting all information in the approved Master Plan. The mylar document shall be in a form and substance acceptable to the Town Attorney, and after recording shall constitute the approved Master Plan for the future development of the property.
10. Prior to the recordation of the master plan or notice of approval of a master plan, Applicant shall execute and record with the Summit County Clerk and Recorder, in a form acceptable to the Town Attorney, the Town's standard employee housing covenant for 22,073 square feet of employee housing within the project (based on the anticipated development of 235,800 square feet, plus ten percent). The covenant, or a separate document, as approved by the Town Attorney, shall provide that upon full build out of the development rights associated with the master plan, if the amount of employee housing restricted as a result of this condition exceeds 8.51 % of the actual built density of the master planned area, the Applicant shall be entitled to a release of deed-restrictions in an amount necessary to bring the restricted square footage to 8.51% of the density built within the master planning area. In addition, if 22,073 square feet is less than 8.51% of the density of the project, Applicant agrees to provide additional employee housing, to ensure that a minimum of 8.51% of the density of the built master planned project is provided as restricted employee housing.
11. Prior to issuance of a development permit for any construction within twenty-five feet (25') of any wetland areas, including, but not limited to, the southwest portion of the round-about at French Street and North Park Avenue, a wetlands delineation study will be required, and a wetlands mitigation plan may be

required if wetlands are impacted. Applicant shall obtain any required federal or state permits relating to wetland impacts, and all construction methods shall follow applicable state and federal standards.

12. The Master Plan approved by this Permit shall not become effective until a development agreement authorizing a reduction in the parking spaces required for the proposed condominium/hotel from one and one-half spaces to one space for each residential unit including one bedroom or more has been approved by the Town Council and executed by Applicant and the Town.
13. The phasing plan shown on Sheet 10 of the Master Plan is illustrative only, and is not part of this master plan approval. Prior to the issuance of any Class A, B or C development permit for any development within the master planning area, Applicant shall submit to and obtain approval from the Town of Breckenridge a Class D development permit for a revised phasing plan, which shall include phasing for the restoration of the Blue River, a hydraulic analysis for the Blue River, and construction of the round-about at Park Avenue and French Street.
14. Prior to recordation of the master plan or a notice of approval of a master plan, applicant shall record a density transfer covenant, in a form acceptable to the Town Attorney, for the transfer of 93 Single Family Equivalents (SFEs) from the Gold Rush Parking Lot (Lot 1, Block 4, Parkway Center) onto the South Gondola Lot (Sawmill Station Square, Filing No. 3).
15. Prior to recordation of the master plan, Applicant shall apply for approval from the Colorado Department of Transportation (CDOT) for such site access permit(s) to and from State Highway 9 (North Park Avenue) as may be required. After such application to CDOT has been submitted, Applicant will diligently pursue approval, and such approval must be obtained from CDOT prior to issuance of any Class A, B or C development permit by the Town for development within the master planning area. If the access plan is not approved by CDOT, revisions to the master plan may be required, which may require re-review of the master plan by the Town of Breckenridge Planning Commission and/or Town Council.
16. Prior to application for a development permit for the South Parking Structure, Applicant must provide written evidence to the Town that any consents required for the relocation of the public access easement described and provided for in the Grant of Public Access Easement recorded December 14, 1990 at Reception No. 397220 of the Summit County, Colorado records have been obtained from the beneficiaries of such public access easement.
17. Prior to issuance of a Class A, B or C site-specific development permit by the Town for any development within the master planning area, a preliminary agreement pertaining to this Master Plan shall have been approved and executed by the Town and the Applicant: (a) identifying the business issues between Applicant and the Town, such as but not limited to property line adjustments, lease rights, shared improvements, ownership, financing mechanisms, cost sharing and maintenance responsibilities, [parking structure management](#) and (b) providing general terms for the resolution of each such issue. If such agreement results in the need for a change to any substantial element of the master plan, an amendment of the master plan may be required and, if the development for which a Class A, B or C site specific development permit is requested will be affected by such amendment, then the amendment will be required prior to the issuance of such Class A, B or C site-specific development permit by the Town.
18. Prior to recordation of the master plan or recordation of a notice of approval of the master plan, Applicant shall revise Sheet #1 of the master plan to indicate that no greater than 30 SFEs of density will be developed as commercial uses. Furthermore, Applicant shall modify Sheet #1 of the master plan to indicate that the townhomes will be a minimum density of 25 SFEs.
19. Prior to recordation of the master plan or recordation of a notice of approval of the master plan, Applicant shall revise Sheet #1 of the master plan to indicate that parking spaces on North Depot Road and South Depot Road will be available to the general public for parking.



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.

JANUARY 2010

Tuesday, January 12; 2:00/7:30pm	First Meeting of the Month
Tuesday, January 26; 3:00/7:30pm	Second Meeting of the Month
Thursday, January 28	CAST MEETING

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