

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JULY 26, 2011**

PAGE 1

CALL TO ORDER and ROLL CALL

Mayor Warner called the July 26, 2011 Town Council Meeting to order at 7:33 p.m. The following members answered roll call: Mr. Bergeron, Mr. Burke, Mr. Dudick, Mr. Mamula, Ms. McAtamney, Mr. Joyce, and Mayor Warner.

APPROVAL OF MINUTES – July 12, 2011 Regular Meeting

Mayor Warner asked if Double Diamond Distillery was the correct name for what he thought was the Breckenridge Distillery. The company is Double Diamond Distillery LLC d/b/a as Double Diamond Distillery. Mr. Dudick stated Mike Shilling is a member of the USAPCC (USA Pro Cycling Challenge) and not a member of the BRC (Breckenridge Resort Chamber). With that correction to the meeting minutes of July 12, Mayor Warner declared they would stand approved as presented.

APPROVAL OF AGENDA

Tim Gagen, Town Manager, stated there are no changes to the agenda.

COMMUNICATIONS TO COUNCIL

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

There were no public comments.

CONTINUED BUSINESS

A. **SECOND READING OF COUNCIL BILL, SERIES 2011 – PUBLIC HEARING**

1. **Council Bill No. 24, Series 2011 - AN ORDINANCE FINDING AND DETERMINING THAT CERTAIN REAL PROPERTY LOCATED IS AN ENCLAVE UNDER APPLICABLE LAW; MAKING CERTAIN OTHER FINDINGS IN ACCORDANCE WITH THE "MUNICIPAL ANNEXATION ACT OF 1965"; AND ANNEXING SUCH REAL PROPERTY TO THE TOWN OF BRECKENRIDGE (Woods Manor Subdivision – 4.5664 ACRES, MORE OR LESS)**

Tim Berry, Town Attorney, explained this ordinance would annex into the Town of Breckenridge, as an enclave, lots one, two, and three of the Woods Manor subdivision. The process to annex an enclave is an abbreviated process and does not require a petition, as is the case with other annexations. Town staff has advised Mr. Berry that this property meets the statutory and constitutional guidelines of an enclave. The Municipal Annexation Act provides that, except for general property taxation, an annexation is effective "upon the effective date of the annexing ordinance." With the recent Charter change, town ordinances are effective 30 days after the conclusion of the 5-day period of publication on the town's web site. If approved this evening this Annexation Ordinance would become effective for all purposes except property taxation on August 31, 2011. It will become effective for property taxation purposes on January 1, 2012. There are no changes from first reading.

Mayor Warner opened a public hearing. There were no comments from the public. He closed the public hearing.

Mr. Dudick moved to approve on second reading Council Bill No. 24, Series 2011 the title of which was previously read into the record. Mr. Mamula seconded the motion. A roll call vote was taken. The motion passed 7-0.

2. **Council Bill No. 25, Series 2011 - AN ORDINANCE PLACING RECENTLY ANNEXED PROPERTY IN LAND USE DISTRICT 30 (Woods Manor Subdivision – 4.5664 ACRES, MORE OR LESS)**

Mr. Berry explained the Municipal Annexation Law requires that an annexed property be placed inside the town limits within 90 days. This ordinance would zone the Woods Manor property into the town's Land Use District 30. The effective date would be August 31, 2011. There are no changes from first reading.

Mayor Warner opened a public hearing. Ms. Sue Carlson, Allaire Timbers 9511 Highway 9, missed the hearing for Council Bill 24, Series 2011. She was offered this time to comment. Ms. Carlson asked for clarification on what defines an enclave. She asked what property annexation made Allaire Timbers an enclave. Mr. Gagen responded the Warriors Mark property, annexed more than three years ago, made the Woods Manor/Allaire Timber property eligible as an enclave annexation. She continued by stating she has received information from Chris Neubecker, Senior Planner, outlining benefits associated with becoming part of the town. She explained she is in negotiations with a potential buyer of the property and now has to explain costs associated with Real Estate Transfer Tax and other taxing requirements. She asked if there was a variance process or if there could be an extension of the effective date of the ordinance. Mr. Berry explained the Town's Charter is very clear about the effective date of annexations. Council does not have the authority to change tax laws. Mayor Warner asked if council would like to reconsider Council Bill 24, Series 2011. Mr. Joyce did not want to reconsider

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JULY 26, 2011**

PAGE 2

Council Bill 24 since Ms. Carlson did not have a signed contract at this time. He was reluctant to postpone action for something that may not happen. Mr. Bergeron asked how much money in Real Estate Transfer Tax would be added to the cost of the property. Mr. Gagen responded 1% of the selling price. Ms. Carlson responded the property could sell for approximately \$2.2 million. Ms. Carlson commented additional taxes could be a deal breaker. Mr. Dudick stated if a potential buyer is on the fence, the effective date of the annexation might be an incentive to close the deal and save approximately \$22,000. It might be a good negotiating tool. Mr. Burke stated he couldn't imagine a buyer of a Bed & Breakfast walking away from purchasing a B&B because of an additional \$22,000. People who are looking to purchase a Bed & Breakfast are usually very passionate about the prospect. Mayor Warner closed by stating the people on council feel it is worthwhile being a part of the Town of Breckenridge. With no further comments from Ms. Carlson or the public, Mayor Warner closed the public hearing.

Mr. Dudick moved to approve on second reading Council Bill No. 25, Series 2011 as previously read into the record. Ms. McAtamney seconded the motion. The motion passed 7-0.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILL, SERIES 2011

None

B. RESOLUTIONS, SERIES 2011

1. A RESOLUTION MAKING CERTAIN FINDINGS OF FACT AND CONCLUSIONS REGARDING THE PROPOSED ANNEXATION TO THE TOWN OF BRECKENRIDGE OF A PARCEL OF LAND (Part of Summit County Road 3 – 0.901 acres, more or less) – PUBLIC HEARING

Mr. Berry stated one of the procedures for annexing property allowed by the Municipal Annexation Law is the submission of an annexation petition. There are multiple steps involved in this process. The first is council's review and determination that the form of the petition is sufficient. Council did this at their June 14 meeting and at that time set a public hearing for tonight to determine if the property is eligible for annexation. The law requires the council to adopt a "Fact Finding Resolution" at the conclusion of the public hearing. This resolution makes specific findings that the property meets all statutory requirements and is therefore eligible for annexation to the town. Mr. Berry explained if council determines the SCR 3 parcel is eligible for annexation, the next steps in the annexation process would be the adoption of the Annexation Ordinance and the adoption of the ordinance placing the annexed property in the appropriate Land Use District. By adopting the Fact Finding Resolution and establishing the property's eligibility for annexation to the town, the council is not agreeing to annex the property. The council will retain its discretion with respect to that question until they consider the actual Annexation Ordinance. The two ordinances will be presented to council at a later date. Mayor Warner clarified the petitioner was Summit County Government. Mr. Burke asked why they made the request. Mr. Gagen clarified that the town made the suggestion to clear up jurisdiction issues. He further stated that currently the town is maintaining the road. Tim Berry presented a map for clarification. Mr. Gagen and Mr. Berry answered questions about obtaining a Special Use Permit from the Forest Service for the abandoned county road area.

Mayor Warner opened a public hearing. Tim Berry stated, for the record, that staff has indicated, based on its review of this matter, that the findings stated on page 49 and page 50 of the council's packet with respect to eligibility, are true. This property does meet the statutory requirements for eligibility. With no comments or questions from the public, Mayor Warner closed the public hearing.

Mr. Bergeron moved to approve a Resolution Making Certain Findings of Fact and Conclusions Regarding the Proposed Annexation to the Town of Breckenridge of a Parcel of Land (Part of Summit County Road 3 – 0.901 acres, more or less). Ms. McAtamney seconded the motion. The motion passed 7-0.

C. OTHER

There was no other business.

PLANNING MATTERS

A. Planning Commission Decisions of July 19, 2011

Mayor Warner asked for comments or concerns in relation to the Planning Commission Decisions of July 19, 2011. Mr. Mamula comment on the Skipper residence remodel (PC#2011044) 895 Four O'clock Road. The property is one half of a duplex. Mr. Mamula acknowledged this circumstance is not a problem due to the fact that the owner of the other half of the duplex has also submitted an application for an exterior remodel and will be using the same materials. Mr. Mamula felt if this wasn't the case, in other situations involving duplexes, this could be a serious issue. He would like the Planning Commission to insure compatibility of adjacent properties. Mr. Neubecker stated they can only review the application at hand. Ms. McAtamney commented without a

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JULY 26, 2011**

PAGE 3

Homeowners' Association some projects miss that level of review. With no request to call this item or any other item up, Mayor Warner declared the Planning Commission Decisions of July 19 would stand approved as presented.

B. Town Council Representative Report

Mayor Warner asked that council discuss having a Town Council liaison to the Planning Commission. Mr. Bergeron asked if there would be any benefit to having council members alternate meetings. Mayor Warner suggested if council members would like to sit in on Planning Commission meetings they should be encouraged to do so. Mayor Warner and Mr. Burke stated they would do this on occasion. It was determined that council would not name a liaison. Mr. Gagen reviewed changes to committee assignments.

REPORT OF TOWN MANAGER AND STAFF

Mr. Gagen had one item to report on. He had been contacted by Habitat for Humanity concerning moving their reuse center to the Quonset hut on the Entrada property. They have requested a letter of support from the town. He further explained the property Habitat will be moving to is out of town limits and the town really has no say in the matter. The owner of the property is donating this land to Habitat for two years. They want to make sure the town is supportive. Mr. Mamula suggested a neutral letter stating the town has no issues with the proposed move.

REPORT OF MAYOR AND COUNCILMEMBERS

- A. **CAST/MMC** (Mayor Warner) – reported during the work session
- B. **Breckenridge Open Space Advisory Commission** (Mr. Dudick) – reported during the work session
- C. **Breckenridge Resort Chamber** (Mr. Burke) - reported during the work session
- D. **Marketing Committee** (Mr. Dudick) – reported during the work session
- E. **Summit Combined Housing Authority** (Mr. Joyce) – reported during the work session
- F. **Breckenridge Heritage Alliance** (Mr. Burke) – reported during the work session
- G. **Water Task Force** (Mr. Mamula) – reported during the work session

OTHER MATTERS

Mr. Bergeron reported people were told by Breck 100 marshals that the public could not use the trails while the Breck 100 was in progress. He also noticed racers not obeying traffic rules. Scott Reid, Trails Planner II, was present and will address these concerns with the organizer and event committee.

Mr. Mamula asked what the plan is to fix problems on trails created by heavy rains. Mr. Reid responded they are working on hazardous issue first, however, if anyone comes upon a problem that isn't being addressed, please let him know and they will get on it. Mr. Mamula brought up a letter from Lou Fishman. In closing Mr. Mamula asked if the town was on track to eliminate 20% of the street lights. He did not recall this during budget talks and has a problem with lights being turned off in neighborhoods where there are children playing. Mr. Burke commented that the Vista Point neighborhood does not have lighting and there are many children out playing. Mr. Perkins was present and commented that he has a map showing 390 street lights that will be taken out of service. There are 2,000 lights in total in town limits. An estimated \$13,000 in energy costs will be saved. Mr. Burke stated this should be a bigger discussion as there are currently some neighborhoods that do not have street lighting. He is not sure it should be presented as a "safety issue". Mayor Warner would like to look at what Public Works is proposing.

Mr. Dudick stated Grand Timber has been having problems getting deeds processed because Real Estate Transfer batches are not getting processed in a timely manner. It makes it difficult for Grand Timber to get their taxes prepared and get funding from their lenders. Mr. Gagen will follow up on the matter.

Mayor Warner asked for council comments on the next Peak 6 meeting. He will not be in attendance on August 9. He would be willing to submit his comments in writing and thinks council should still have the meeting. Mr. Bergeron's concern was the idea of bringing the ski area in at this point in time before council has arrived at its own conclusions. Mr. Burke liked what Mr. Dudick said about including the ski area in discussions. The town and the ski area are partners. Concerns should be put out on the table. Mr. Joyce suggested a joint dinner meeting and if that can't happen then have some sort of forum where there can be discussion. Mr. Gagen stated if council can come up with an important issues list that will cause the ski area to respond.

Mr. Burke asked if the council had come to an agreement as to how revenue from a lift ticket tax would be used. Mayor Warner cited a two pronged approach; perhaps the formation of a "transit/parking authority made up of representatives of the ski area and the town who will oversee the revenue produced by a lift ticket tax by working

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, JULY 26, 2011**

PAGE 4

to create a unified parking and transit system. Mr. Dudick stated an additional use of the revenue produced by the tax could be to support a "garage fund" made up of excess funds acquired through the tax but not needed to support the transit and parking systems. Perhaps the ski area could have access to those excess funds to pay off debt associated with the construction of parking decks and garages. After their debt is paid off, say 15 to 20 years, those funds would then be available for use by the town. Members of council commented they would hate to put a lift ticket tax into effect and have the ski area be the sole beneficiary. Mr. Gagen pointed out that by freeing up revenue streams with revenue from the tax, the town will benefit. Mr. Mamula questioned if there is any room for the ski area to negotiate; they have to be willing to negotiate.

Mayor Warner went back to the Peak 6 topic. He summarized by stating council will have their August 9 meeting. This week, while meeting with ski area representatives, Mayor Warner and Mr. Mamula will invite ski area representatives to the August 9 meeting and subsequently invite ski area representatives to attend a dinner meeting or a special meeting to discuss the council's concerns.

SCHEDULED MEETINGS

Mr. Gagen stated there were no other scheduled meetings other than those listed in the council's packet.

EXECUTIVE SESSION

At 8:48 p.m. Mr. Joyce moved to 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; Paragraph 4(b) of Section 24-6-24-6-402, C.R.S., relating to conferences with the Town Attorney for purposes of receiving legal advice on specific legal questions; Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations; and instructing negotiators; and Paragraph 4(f) of Section 24-6-402, C.R.S., relating to personnel matters. Mr. Mamula made the second.

Mayor Warner stated a motion to go into executive session was made by Mr. Joyce 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; Paragraph 4(b) of Section 24-6-24-6-402, C.R.S., relating to conferences with the Town Attorney for purposes of receiving legal advice on specific legal questions; Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations; and instructing negotiators; and Paragraph 4(f) of Section 24-6-402, C.R.S., relating to personnel matters. Mr. Mamula made the second. He further stated the subject matter of the executive session involves: (1) the potential acquisition of two open space parcels; (2) a potential land exchange involving certain town property; (3) confidential discussions concerning the possible negotiations concerning the development of the town's F-Lot property; (4) the Town Manager's annual evaluation; and (5) a conference with the Town Attorney primarily involving the town's Medical Marijuana Licensing Ordinance, but may also include conferences with the Town Attorney concerning the other subject matter of the executive session or matters protected by the attorney-client privilege that exists between the town and the Town Attorney.

A roll call vote was taken with all members of council voting in favor of the motion.

At 10:47 p.m. Mr. Burke moved to reconvene in the regular Town Council meeting of July 26, 2011. Ms. McAtamney made the second.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 10: 48 p.m.

Submitted by Wanda Creen, Deputy Town Clerk.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor