



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING

Tuesday, July 10, 2012; 7:30 PM

Town Hall Auditorium

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*Report of the 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.

IX REPORT OF MAYOR AND COUNCILMEMBERS

- A. CAST/MMC (MAYOR WARNER)
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)
- C. BRC (MR. BURKE)
- D. MARKETING COMMITTEE (MR. DUDICK)
- E. SUMMIT COMBINED HOUSING AUTHORITY (MS. WOLFE)
- F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER)
- G. WATER TASK FORCE (MR. GALLAGHER)
- H. LANDFILL TASK FORCE (MS. WOLFE)

X OTHER MATTERS

XI SCHEDULED MEETINGS

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XII ADJOURNMENT

*Report of the 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.

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CALL TO ORDER/ROLL CALL

The following members answered roll call: Mr. Brewer, Mr. Burke, Mr. Dudick, Mr. Gallagher, Ms. McAtamney, Ms. Wolfe, and Mayor Warner.

APPROVAL OF MINUTES - JUNE 12, 2012

Mayor Warner declared the minutes would stand as submitted.

APPROVAL OF AGENDA

Mr. Gagen added under First Readings Council Bill No. 21 - a Development Agreement related to the Breckenridge Outdoor Education Center, and under Other Matters and Executive Session for the purpose of negotiation positions for a possible acquisition item.

COMMUNICATIONS TO COUNCIL

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

Dan McCrery, President of the Summit Nordic Ski Club thanked the Council for the Gold Run Nordic Center; stated the wax room is the key to how a ski club functions; and, thanked them for allowing the Summit Ski Club sign outside. Mr. McCrery mentioned the donated materials from the Breckenridge Building Center for the hot box; they are picking up members each year; the Bill Koch learn-to-ski program; the number of qualifiers for the Junior Nationals has doubled; and three skiers are rated nationally in the top 20. The Council discussed the Bill Koch league; that parents need to car pool, as there is no after-school bus transportation from the Elementary Schools; the school busses have the Breckenridge Recreation Center on their route; the Gold Run Nordic Center is more convenient because it is closer to town than in other municipalities; \$60.00 includes rentals, a locker, and Nordic pass; and, the program competes with the best athletic programs in the County, with more contact with coaches.

Mr. McCrery introduced Grant Miller as the project manager for the Wellington Neighborhood. Mr. Miller guaranteed the dust has been alleviated near the construction site, and stated they are trying to fast-track the project to keep the dust down and eliminate the disturbance to the neighbors. He stated if they stay on schedule the asphalt will be completed by the end of the summer. Mr. Gagen stated the Town needs to share in the responsibility for the dust, as the Town's contractors were not doing dust mitigation as they were supposed to, and Public Works has taken care of the issue.

A group of local students ages 7 to 12 years addressed the Council regarding the use of plastic bags and bottles. Maira McAtamney read a prepared statement about how plastic seems good, but is not, and plastic bags are a good example of it; one trillion bags are used; plastic bags are not easily recycled; nearly every one that gets in the ocean is eaten by an animal; asked the council to ban them; stated China and San Francisco have banned them; Ireland has put a fee on their bags and reduced use by 90%; and, that we are a little town, but can make a difference too. Anna Rose Craig read a prepared statement against plastic bags stating we spend hundreds of thousands of dollars shipping tap water, while other places in the world have no water; oil is used to make plastic bottles, and uses CO₂; in 2008 the world used 12,000 billion bottles of water; and, that Breckenridge is a small town and probably isn't ready, but every step counts. Miss Craig asked where does it go, when it goes away? Mack explained the different posters the group was holding. Mayor Warner stated the Council hears you, wants to move in that direction, and plastic bags are on the Town Council Top 10 list.

CONTINUED BUSINESS

A. SECOND READING OF COUNCILS BILLS, SERIES 2012 - PUBLIC HEARINGS

1. Council Bill No. 15, Series 2012- AN ORDINANCE APPROVING A LEASE WITH THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (Part Of Town's Public Works Facility)

Mayor Warner read the title into the minutes. Tim Berry, Town Attorney stated Town staff continues to negotiate with County staff to revise lease, and the staff recommends continuing the matter to the first meeting in July.

Ms. McAtamney moved to continue Council Bill No. 15, Series 2012- AN ORDINANCE APPROVING A LEASE WITH THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (Part Of Town's Public Works Facility). Ms. Wolfe seconded the motion. The motion passed 7-0.

2. Council Bill No. 16, Series 2012- AN ORDINANCE AMENDING ARTICLE F OF CHAPTER 3

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OF THE BRECKENRIDGE TOWN CODE CONCERNING MUNICIPAL OFFENSES RELATING TO ALCOHOL, CIGARETTES AND AMUSEMENT ESTABLISHMENTS

Mayor Warner read the title into the minutes. Mr. Berry stated the Ordinance makes several technical amendments to a housekeeping ordinance; and, there are no changes to ordinance from first reading. Mayor Warner opened the public hearing, there were no comments and the public hearing was closed.

Mr. Gallagher moved to approve Council Bill No. 16, Series 2012- AN ORDINANCE AMENDING ARTICLE F OF CHAPTER 3 OF THE BRECKENRIDGE TOWN CODE CONCERNING MUNICIPAL OFFENSES RELATING TO ALCOHOL, CIGARETTES AND AMUSEMENT ESTABLISHMENTS. Ms. McAtamney seconded the motion. The motion passed 7-0.

3. Council Bill No. 17, Series 2012- AN ORDINANCE AMENDING SECTION 5-5-5 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE ISSUANCE OF A SPECIAL PERMIT AUTHORIZING OPEN BURNING WITHIN THE TOWN

Mayor Warner read the title into the minutes. Mr. Berry stated the Town Code authorizes the Town Council to issue a special open burning permit, which they have issued periodically, and the ordinance changes to the process to the Town Manager approving open burning permits instead of the Town Council. He stated there are no changes since the first reading. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed.

Mr. Brewer moved to approve Council Bill No. 17, Series 2012- AN ORDINANCE AMENDING SECTION 5-5-5 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE ISSUANCE OF A SPECIAL PERMIT AUTHORIZING OPEN BURNING WITHIN THE TOWN. Ms. McAtamney seconded the motion. The motion passed 7-0.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2012

1. Council Bill No. 18, Series 2012, AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE", CONCERNING AIR QUALITY

Mayor Warner read the title into the minutes. Chris Neubecker, Senior Planner stated this Ordinance makes two primary changes to current Development Code policies on Air Quality which is to eliminate negative points for wood fire ovens, such as pizza ovens, and to allow for replacement of older wood-burning fireplaces with cleaner burning EPA Phase II wood-burning fireplaces. He stated is staff has recommended approval of this ordinance, and there are a few changes to clarify various items that are allowed.

Mr. Burke moved to approve Council Bill No. 18, Series 2012, AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BRECKENRIDGE DEVELOPMENT CODE", CONCERNING AIR QUALITY. Mr. Gallagher seconded the motion. The motion passed 7-0.

2. Council Bill No. 20, Series 2012, AN ORDINANCE AUTHORIZING THE EXECUTION OF A FOURTH AMENDMENT TO LEASE WITH BRECKENRIDGE VILLAGE APARTMENTS, LLC, A COLORADO LIMITED LIABILITY COMPANY (PINEWOOD)

Mayor Warner read the title into the minutes. Mr. Gagen stated the Town entered into a lease with Breckenridge Village Apartments in 1999 and others over time; this agreement provides a \$60,000 loan for refinance of the entire project, the terms of the loan, and possession after the debt term; the loan is advance of the permanent financing from HUD, and requires two readings from Council. Mr. Berry stated the Council should refer to the updated version handed out after the work session.

Mr. Dudick moved to approve Council Bill No. 20, Series 2012, AN ORDINANCE AUTHORIZING THE EXECUTION OF A FOURTH AMENDMENT TO LEASE WITH BRECKENRIDGE VILLAGE APARTMENTS, LLC, A COLORADO LIMITED LIABILITY COMPANY (PINEWOOD) the version distributed after the work session. Ms. Wolfe seconded the motion. The motion passed 7-0.

Mr. Gagen stated this money comes from the housing fund, where there are sufficient funds, and the money will be repaid into that fund which is part of the sustainable housing project.

3. Council Bill No. 21, Series 2012, AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH THE BRECKENRIDGE OUTDOOR EDUCATION CENTER, a Colorado nonprofit corporation (Lower Level-The Maggie Building)

Mayor Warner read the title into the minutes. Mr. Berry stated this ordinance follows up the discussion at the work session regarding the development agreement put forth by the BOEC; the ordinance has been finalized; waives application fees; and, will have some minor change between the first and second readings.

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Ms. Wolfe moved to approve Council Bill No. 21, Series 2012, AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH THE BRECKENRIDGE OUTDOOR EDUCATION CENTER, a Colorado nonprofit corporation (Lower Level-The Maggie Building). Ms. McAtamney seconded the motion. The motion passed 7-0.

4. Council Bill No. 22, Series 2012-AN ORDINANCE AUTHORIZING THE MAYOR TO IMPOSE NECESSARY FIRE RESTRICTIONS IN TIME OF EXTREME FIRE HAZARD; DECLARING AN EMERGENCY; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE OF THIS ORDINANCE

Mayor Warner read the title into the minutes. Mr. Berry stated this creates a special procedure for the Mayor to declare fire restrictions in the event of a fire emergency; a version changing the proclamation to a declaration has been handed out after the work session; it is drafted as an emergency ordinance, so there will only be one reading; the ordinance will be published on the website; the ordinance will be effective immediately; and, if adopted will be banned by the declaration which will be read later in the agenda. Shannon Haynes, Breckenridge Chief of Police made herself available for questions. There were none.

Mr. Dudick moved to approve Council Bill No. 22, Series 2012-AN ORDINANCE AUTHORIZING THE MAYOR TO IMPOSE NECESSARY FIRE RESTRICTIONS IN TIME OF EXTREME FIRE HAZARD; DECLARING AN EMERGENCY; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE OF THIS ORDINANCE in the form handed out after the work session. Ms. McAtamney seconded the motion. The motion passed 7-0.

B. RESOLUTIONS, SERIES 2012

1. A RESOLUTION APPROVING AN AMENDED ANNEXATION AGREEMENT WITH MAGGIE PLACER, LLC, A COLORADO LIMITED LIABILITY COMPANY (MAGGIE PLACER ANNEXATION)

Mayor Warner read the title into the minutes. Laurie Best, Planner III stated the amended annexation agreement replaces the current agreement in effect; reduces the total units to 20, where a percentage are market units; requires the use of local labor and suppliers for construction; extends the agreement to 2014; commences work prior to June 2013; and, changes #6 from 90% to 10% down payment.

Ms. McAtamney moved to approve A RESOLUTION APPROVING AN AMENDED ANNEXATION AGREEMENT WITH MAGGIE PLACER, LLC, A COLORADO LIMITED LIABILITY COMPANY (MAGGIE PLACER ANNEXATION) as changed after the work session. Mr. Gallagher seconded the motion. The motion passed 7-0.

2. A RESOLUTION ADOPTED PURSUANT TO SECTION 6-3C-11(F) OF THE BRECKENRIDGE TOWN CODE PROHIBITING THE POSSESSION, USE, DISCHARGE OR EXPLOSION OF "PERMISSIBLE FIREWORKS" WITHIN THE TOWN OF BRECKENRIDGE BETWEEN JULY 3, 2012 AND JULY 5, 2012; AND PROVIDING A PENALTY FOR THE VIOLATION OF SUCH PROHIBITION

Mayor Warner read the title into the minutes. Mr. Berry stated the Town firework ordinance is based on the state statute which defines fireworks and permissible fireworks; we ban fireworks, and allow permissible fireworks for those three days each year; and, given the current conditions, the Police Department staff recommends the Council suspend the use this year between July 3 and July 5 to avoid the possibility of a wildfire. Mr. Burke stated they need to clarify the dates. Mr. Gagen mentioned they will simply say they are banned this year, and not be specific about the dates since the other 362 days of the year, fireworks are banned.

Mr. Gallagher moved to approve A RESOLUTION ADOPTED PURSUANT TO SECTION 6-3C-11(F) OF THE BRECKENRIDGE TOWN CODE PROHIBITING THE POSSESSION, USE, DISCHARGE OR EXPLOSION OF "PERMISSIBLE FIREWORKS" WITHIN THE TOWN OF BRECKENRIDGE BETWEEN JULY 3, 2012 AND JULY 5, 2012; AND PROVIDING A PENALTY FOR THE VIOLATION OF SUCH PROHIBITION. Ms. McAtamney seconded the motion. The motion passed 7-0.

C. OTHER

1. A MAYORAL PROCLAMATION DECLARING THAT CONDITIONS OF EXTREME FIRE HAZARD EXIST WITHIN THE TOWN OF BRECKENRIDGE; AND IMPOSING TEMPORARY RESTRICTIONS TO REDUCE THE CHANCE OF WILDFIRE

Mayor Warner read the title of the declaration. Mr. Berry stated this is the declaration from Ordinance No. 22 which has just been adopted by council; a change was added to page 2 lines 5&6 that smoking is not allowed at the outdoor premises of the golf course, where it is already not allowed inside; the declaration does not require any formal council approval.

Mayor Warner read the three page declarative statement, as handed out by the Town Attorney after the work session.

Mayor Warner entered the declaration with the Council and Town Manager present, and notification was given.

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PLANNING MATTERS

A. PLANNING COMMISSION DECISIONS - JUNE 19, 2012

With no request to call an item off the consent calendar, Mayor Warner declared the Planning Commission Decisions would stand approved as presented.

B. PLANNING COMMISSION REPORT (MR. GALLAGHER)

No report.

REPORT OF TOWN MANAGER AND STAFF

Mr. Gagen mentioned as a follow up to the retreat the meeting norms have been posted on the wall in Council Chambers next to the vision plan. Mr. Gagen and Mr. Gallagher discussed the increased number of calls due to the smoke from the Lake County/Leadville fire; Fire Department responses do not have protocol with the Town Manager, so the Council was not informed as it would be with a Breckenridge Police Department response; and, Mr. Gallagher will discuss with Lori Miller, Red, White, and Blue Fire Chief about future notification. The Council discussed the time delay with Summit County alerts, which can be up to half an hour, and allows for the County to release the most accurate information; and, that people should be calling 911, because dispatchers will have the best updated information. Shannon Haynes, Breckenridge Police Chief mentioned several ways that citizens and the Council can find information regarding wildfires including twitter news station and a website that gives information on every wildfire in the nation. Mr. Gagen stated in the future he will get information out as soon as possible to Council members.

REPORT OF MAYOR AND COUNCILMEMBERS

A. CAST/MMC (MAYOR WARNER)

Mayor Warner reported on the Colorado Municipal League (CML) conference including a meeting with David Agnew, Director of Intergovernmental Affairs, in which he discussed forest health, wildfire danger, I-70 congestion, the health of the economy, and, what the Federal Government could be doing. He mentioned he attempted to contact Marty Getz regarding the Entrada property but he was unavailable, and will speak with him on Friday, July 6, 2012.

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)

Mr. Brewer reported that he could not make the meeting but the committee made a field visit to cucumber gulch. Mr. Gagen mentioned there has been some contact with Doug Tomlinson of Country Boy mines, which uses part of the road which winds through town and mine property, and the issue of continued trespassing on his property of both Firecracker 50 competitors test-running the route, and other local traffic; and, his second issue with the bermed road which he claims is blocking his access. Mr. Gagen stated that all appropriate parties have been notified of the issue; the Town has agreed to put up better signs; the Town will not change the road; Mr. Tomlinson will need to address legal access through the proper channels; and, the Council may receive calls regarding this issue. Ms. McAtamney mentioned that the trespassing by locals has been in the social areas of the neighborhood, and she has sent letters to residents to mind the trespassing signs.

C. BRC (MR. BURKE) – No report.

D. MARKETING COMMITTEE (MR. DUDICK) – No report.

E. SUMMIT COMBINED HOUSING AUTHORITY (MS. WOLFE)

Ms. Wolfe reported on a discussion of the Non-Profit unit led by the Town of Breckenridge to gain grants on housing projects; streamlining the process; taking advantage of foreclosures; allowing Town Managers to be part of the committee; the optimism in the housing market in general; how the title companies are busy; the inventory being bought up; construction is picking up; vacant land transactions are up; and other towns have seen more movement on affordable housing projects; and the \$13 million target for the housing investment fund in Colorado, which will be used a mortgage insurance.

F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER)

Mr. Brewer reported on his update from Larissa O'Neil on the good momentum of the Wakefield-Sawmill project; the Alliance has stopped charging \$3.00 at venues due a drop of 40% in the number of visitors, since the fee was a deterrent for many people; and, the museums will be free with a donation box. Mr. Burke mentioned that when they charged, people would stay and look around; and, before they began charging, a visitor counted as someone who would just walk in, peak and walk out. Mr. Brewer mentioned Kingdom Days numbers were down by 40%; the Alliance will work with the BRC to publicize the event better next year; and, they will try to figure out with help from the BRC why the numbers

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were down. He added the inaugural Theobald Award event will be on Friday, August 10 at the Barney Ford Museum.

G. WATER TASK FORCE (MR. GALLAGHER)

No report.

H. LANDFILL TASK FORCE (MS. WOLFE)

Ms. Wolfe reported she was updated by James Phelps, Assistant Director of Public Works. She mentioned the pay as you throw discussion; that haulers are skeptical of how it will work financially; the program is definitely the best driver for recycling and diversion; the concern of how to get tourists and guests to participate; the concern of multi-family dwellings; discussion was strong and positive; that the crux of the issue is to start putting a business model and numbers to the plan to see the costs and impact at the landfill; and, Mr. Phelps volunteered to be on a that committee. Mr. Burke gave Ms. Wolfe a contact he met at the CML conference about using trash for energy production. Mr. Gagen stated the County has done some research on those topics, and the Hospital looked at burning wood.

OTHER MATTERS

1. Mark Truckey, Assistant Director of Community Development discussed his memo which outlined the latest information on plastic bags; the issue has been tackled with the SustainableBreck business group; the hope that in a year to a year and a half Breckenridge could be plastic bag free; the commitment to incentivize the program; and, an outline of options for the Council to consider at this time. He stated they are at the start of the discussion of this issue; and, the task force has done some research on the elimination of plastic bags. Mayor Warner stated the options to consider are on page 194. Mr. Truckey recommended an incentive type of approach; and asked the Council where they are on this issue. The Council discussed realizing the goal by coming up with a plan by the end of 2012; a phased approach with large grocery stores first; a fee for paper bags to pay for the administrative costs of the program; that a voluntary program does not seem to work; methods to fill the room with people that are passionate about it, by putting the issue as a first reading that would bring people to the Town Council meeting, both for and against the issue; a ban by December and work backwards to see what people are really thinking; starting a movement that creates national attention; celebrating the movement with marketing in social media; that we do not do it here, simply because we do not do it here; utilizing resources like the children that presented earlier to gain momentum; the movie "Bag it" is very compelling; that this change is a no-brainer; there are issues to be discussed including retailers, vacationers that do not show up with cloth bags, and, restaurant take-out; people forget their bag when they arrive at City Market, and if you charge for the bag, they would think again; families on vacation in Breckenridge buy carts full of food, not just one bag; need to get to Homeowners' Associations, restaurateurs, and lodging people to weigh in during a work session; need to approach the community for their input like they did with the rodeo; determining the phasing in of the change; the lodging companies will need to assist in educating their guests that may not be aware the first time they visit Breckenridge; need to provide lodging companies with inexpensive alternatives for their guests; a grass roots movement will be a lot stronger if have a partner in the community; children provide a powerful message when are simply asking for their lives, themselves and the earth; they need viable alternatives to what peoples' habits are; this is an opportunity to brand Breckenridge with a reusable take-home bag to remind them of their vacation; consider the unintended consequences of the program, citing that when the citizens heard the implementation of the solar panels they became engaged; and, should also include a movement against single-use water bottles, since the water is not as good as the water that comes out of our own taps here in Breckenridge. Mayor Warner summed it up stating the Council wants to get something done by the end of the year; they should engage the public with the goal in mind that we do want to eliminate plastic bags; and, the public will help to shape the goal and the process to get to the goal. Mr. Gagen stated the Town has a sustainability committee which has representatives in these sectors; the committee is identifying the issues, and working to get those people engaged in the conversation; the group is excited about taking this on; and, that they should utilize this group to get the issue back in front of the Council. Mr. Truckey added some mechanisms for community engagement are the Business Task Force, community talks, and online surveys. The Council agreed to let Mr. Truckey and the task force reach out to different sectors.
2. Mr. Burke mentioned a few people came with concerns with behavior of cyclists on the recreation path from Breckenridge to Frisco, in which cyclists are rude to walkers, and asked to clarify if the path is a recreation path meant for everyone. Mr. Gagen stated the recreation path is not patrolled, and that signs could be added to show the rules. Mr. Burke mentioned the issue with his email being hacked; his concerns that the hackers may have gained access to everything; and, inquired if the Council members could have Town email addresses. Mr. Gagen mentioned if they use Town email they are open to public record.
Mr. Brewer asked if there was drone training. Chief Haynes said they had a demonstration at the Police

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Department.

Mayor Warner mentioned the Breckenridge Ski Resort mixer day trip to the Fun Park is June 28 from 3:30 until 6:00 p.m.

3. EXECUTIVE SESSION

Mr. Gallagher moved to go into executive session pursuant to: (i) Paragraph 4(a) of Section 24-6-402, C.R.S., relating to the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; and (ii) Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations; and instructing negotiators. Mr. Burke made the second. All roll call was taken and all were in favor of the motion for item (i), 6-1 in favor of the motion for item (ii) with Mr. Dudick voting against due to a conflict of interest. Mr. Dudick left the meeting at 9:30 p.m. prior to the discussion of the development agreement. Mr. Gallagher moved to adjourn the executive session at 10:04 pm. Ms. Wolfe made the second.

SCHEDULED MEETINGS

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 10:04 pm.

Submitted by Cathy Boland, Accounting Coordinator

ATTEST:

Laura Kennedy, Town Clerk

John Warner, Mayor

Memorandum

TO: Town Council
FROM: Tom Daugherty, Public Works Director
DATE: July 3, 2012
RE: PW Yard Lease

Attached is the lease for the Public Works Yard to the County. The revisions include language that commits the County to developing the CR 450 property as attainable housing as discussed previously with the Council.

Of note, is the language in section 1.8 "Term" where it obligates the Town to find a suitable replacement for the County if the Town wants to terminate this lease prior to the 99 year term. We discussed this briefly at a previous meeting and is now part of the lease language.

The other changes that have been made are to clarify the language and format changes.

Staff will be present to answer any questions.

1 ***FOR WORKSESSION/SECOND READING – JULY 10***

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

4
5 COUNCIL BILL NO. 15

6
7 Series 2012

8
9 AN ORDINANCE APPROVING A LEASE WITH THE BOARD OF COUNTY
10 COMMISSIONERS OF SUMMIT COUNTY, COLORADO
11 (Part of Town’s Public Works Facility)

12
13 WHEREAS, the Town of Breckenridge owns the real property commonly known as “the
14 Town of Breckenridge Public Works Facility” located at 1095 Airport Road, Breckenridge,
15 Colorado (“**Public Works Facility**”); and

16
17 WHEREAS, a portion of the Public Works Facility is suitable for use by the Board of
18 County Commissioners of Summit County, Colorado (“**County**”) as the location of the County’s
19 Road & Bridge equipment and material storage facility; and

20
21 WHEREAS, the Town is willing to lease a portion of the Public Works Facility to the
22 County for use as the County’s Road & Bridge equipment and material storage facility; and

23
24 WHEREAS, a proposed Lease between the Town and the County has been prepared by
25 the Town Attorney and reviewed by the Town Council; and

26
27 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

28
29 The council may lease, for such time as council shall determine, any real or
30 personal property to or from any person, firm, corporation, public and private,
31 governmental or otherwise.

32
33 and;

34
35 WHEREAS, the term of the proposed Lease with the County exceeds one year in length;
36 and

37
38 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
39 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

40
41 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
42 BRECKENRIDGE, COLORADO:

1 Section 1. The proposed Lease between the Town and the Board of County
2 Commissioners of Summit County, Colorado, a copy of which is marked **Exhibit “A”**, attached
3 hereto and incorporated herein by reference, is approved, and the Town Manager is authorized,
4 empowered, and directed to execute such Lease for and on behalf of the Town of Breckenridge.

5
6 Section 2. The Town Council finds, determines, and declares that it has the power to
7 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX
8 of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

9
10 Section 3. This ordinance shall be published and become effective as provided by
11 Section 5.9 of the Breckenridge Town Charter.

12
13 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
14 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
15 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
16 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal
17 Building of the Town.

18
19 TOWN OF BRECKENRIDGE, a Colorado
20 municipal corporation

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

26
27 ATTEST:

28
29
30
31 _____
32 Town Clerk

1 ***DRAFT July 3, 2012 DRAFT***

2
3 **LEASE**

4
5 THIS LEASE (“**Lease**”) is dated _____, 2012 and is between the
6 TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and the BOARD
7 OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (“**County**”). The
8 Town and the County are sometimes referred to individually as a “**Party**”, and together as the
9 “**Parties.**”

10
11 **ARTICLE 1 - BASIC LEASE PROVISIONS**

12 1.1 **Intent and Purpose.** The purpose of this Lease is provide land for the relocation
13 of the County’s Road & Bridge equipment and material storage facility from its current location
14 at 143 County Road 450 in unincorporated Summit County, Colorado (“**County Road 450**
15 **Property**”) to the Leased Premises, and to partially implement the Parties’ Memorandum of
16 Understanding dated November 30, 2011 (“**MOU**”).

17 1.2 **Definition of “Public Works Facility.”** The “Public Works Facility” as
18 described in this Lease is located at 1095 Airport Road, Breckenridge, Colorado, and consists (or
19 will consist) of:

20 (a) the Town’s new Public Works Administration Building to be constructed
21 by the Town as provided in Section 1.3;

22 (b) the Town’s current Public Works Administration Building that will be
23 remodeled by Town for County’s use as the County’s new Public Works Building as provided in
24 Section 1.5, and constitutes the Leased Premises under this Lease; and

25 (c) the Common Area as described in Section 1.5.

26 1.3 **Town’s New Public Works Administration Building.** To replace its current
27 Public Works Administration Building the Town will plan, design, and construct a new Public
28 Works Administration Building at the Public Works Facility (“**Town’s New Public Works**
29 **Administration Building**”). The Town will determine the location, size, and design of Town’s
30 New Public Works Administration Building. The Town’s New Public Works Administration
31 Building will be completed in time for the County to take possession of the Leased Premises in
32 accordance with this Lease.

33 1.4 **Leased Premises.** In consideration of County’s payment of the sums due to Town
34 under this Lease, and the keeping of the other promises, covenants, and conditions required of
35 County by this Lease, Town leases to County, and County leases from Town, for the term and
36 upon the conditions of this Lease, the real property described and depicted on the attached
37 **Exhibit “A”** (“**Leased Premises**”). The Leased Premises will be used for the location of the

1 County's Public Works Building ("**County's Public Works Building**") and, if constructed by
2 the County as provided in Section 6.2, the Additional Building.

3 1.5 **Preparation of Leased Premises For Use By County.** In order to expedite and
4 reduce conflict on the site, the Town will, at its cost, remodel the Leased Premises for the
5 County's use as the County's Public Works Building so that it functions as an equipment storage
6 space similar to the other equipment storage buildings currently on the Public Works Facility.
7 This work will generally include demolishing the existing office finish, placing bay doors in each
8 bay, replacing the existing boiler with radiant heating, replacing a portion of the concrete floor
9 with a sloped floor and drains, and relocating the electric outlets to the outside walls. All
10 required work will be completed by the Town to the reasonable satisfaction of the County not
11 later than May 1, 2013.

12 1.6 **Common Area.** As part of this Lease County also has the right to use the
13 common area of the Public Works Facility ("**Common Area**"), subject to this Lease and the
14 Town's rules concerning the use of such area. County has no interest in, or right to use or
15 occupy, any portion of the Public Works Facility except for the Leased Premises and the
16 Common Area.

17 1.7 **Use of Leased Premises.** The Leased Premises will be used by County only for
18 the location and operation of the County's Road & Bridge equipment and material storage
19 facility, and for directly related public works uses. County will not use the Leased Premises for
20 any other purpose without Town's prior written consent.

21 1.8 **Term.**

22 (a) The term of this Lease ("**Term**") begins when the County takes possession
23 of the Leased Premises following the completion of the remodeling of the Leased Premises by
24 Town as described in Section 1.5 and ends, unless sooner terminated as hereafter provided, at
25 11:59 P.M., local time, on _____, 2111. The Parties may execute an amendment to this
26 Lease confirming the date of commencement of this Lease. Prior to the expiration of the Term,
27 the Town and County will negotiate in good faith to attempt to reach agreement on the possible
28 extension of the Term, or to enter into a new lease for the Leased Premises; provided, however,
29 that nothing in this Lease obligates either Party to agree to an extension of the Term, or to enter a
30 new lease for the Leased Premises.

31 (b) Notwithstanding the stated Term of this Lease, either the Town or the
32 County may terminate this Lease upon not less than one year's advance written notice to the
33 other Party. The County may unilaterally terminate this Lease without liability for breach. The
34 Town may terminate the Lease if it has made a suitable replacement facility available for County
35 equipment and materials storage pursuant to the terms of a replacement lease the terms of which
36 being the same as this Lease except that the Term shall only be the balance of the Term of this
37 Lease. The replacement facility provided by Town must be similarly situated, sized, constructed
38 and otherwise useable for the County's purposes contemplated hereunder. The Parties shall
39 conduct good faith negotiations prior to either providing the other with notice of termination,
40

1 and, to facilitate such negotiations, the effective date of the one year's advance written notice of
2 termination required hereunder shall commence thirty (30) days after such negotiations are
3 determined to be completed by either Party or as otherwise agreed by the Parties.
4

5 **1.9 Surrender of Leased Premises.**

6 (a) Upon the expiration or earlier termination of this Lease by the County,
7 County will surrender the Leased Premises to Town broom clean and in good condition, ordinary
8 wear and tear excepted. Not later than the last day of the Term, County will remove its personal
9 property and fixtures (including, but not limited to, trade fixtures) from the Leased Premises. The
10 cost of such removal will be borne by County, and County will repair all injury or damage done
11 to the Leased Premises in connection with the installation or removal of County's personal
12 property and trade fixtures. All of County's fixtures (including, but not limited to, trade fixtures)
13 that are so attached to the Leased Premises that they cannot be removed without material injury
14 to the Leased Premises will, at Town's option, become the property of Town upon installation
15 and remain with the Leased Premises upon surrender.

16 (b) Town may retain or dispose of any personal property, fixtures (including,
17 but not limited to, trade fixtures), alterations, or improvements left remaining by County at or
18 upon the Leased Premises following the expiration or earlier termination of this Lease by the
19 County, and Town is not accountable to County for any damages for the loss or destruction
20 thereof, or for any part of the proceeds of sale, if any, realized by Town. County waives all
21 claims against Town for any damages suffered by County resulting from Town's retention or
22 disposition of such personal property, fixtures (including, but not limited to, trade fixtures),
23 alterations or improvements. County is liable to Town for Town's costs for storing, removing
24 and disposing of any such personal property, fixtures (including trade fixtures), or alterations.

25 **ARTICLE 2 – RENT, SECURITY AND OTHER CONSIDERATION**

26 2.1 **Rent.** There is no periodic rent to be paid by the County for the lease of the
27 Leased Premises. However, County will pay to Town as and when due any amount required to
28 be paid by County under this Lease.

29 2.2 **Interest on Past Due Amounts.** County will pay interest to Town on any sum
30 due to Town under this Lease that is 30 days or more past due at the rate of 12% per annum from
31 the date due until the date such payment is fully paid.

32 **2.3 Due Date, Place and Manner of Payments.**

33 (a) All sums payable to Town under this Lease are due 30 days after County's
34 receipt of Town's properly documented invoice. County will notify Town of any objection
35 within 14 days of the invoice date, identifying the reasons for such objection in writing, and
36 timely paying that portion of the invoice not in dispute. Invoices will be considered acceptable to
37 County if no such objections are made. If objections to an invoice are made by the County, the
38 dispute will be resolved in accordance with Article 13.

1 (b) Sums due to the Town will be paid to:

2 Town of Breckenridge
3 Clerk & Finance Division
4 Attn: Accounts Receivable
5 P. O. Box 168
6 Breckenridge, CO 80424
7

8 or at such other place as the Town Manager of the Town of Breckenridge (“**Town Manager**”)
9 may hereafter designate by written notice provided to County in accordance with Section 16.1 of
10 this Lease.

11 2.4 **Additional Consideration To Be Received By Town.** As additional
12 consideration to be received by Town under this Lease County covenants and agrees with the
13 Town that once the County takes possession of the Leased Premises pursuant to this Lease the
14 County Road 450 Property will be jointly redeveloped with the Town as an attainable housing
15 site. The Parties agree to act expeditiously and in good faith to arrive at mutually agreeable
16 terms, conditions, and schedules for the redevelopment of the County Road 450 Property.

17 **ARTICLE 3 - TOWN’S DISCLAIMERS AND EXCULPATORY PROVISIONS**

18 3.1 **Delay In Delivery of Possession of Leased Premises.** Town is not liable to
19 County for any delay in delivery of possession of the Leased Premises to County.

20 3.2 **Town’s Non-liability.** As a material part of the consideration to be received by
21 Town under this Lease, County assumes all risk of damage to property or injury to persons in or
22 upon the Leased Premises from any cause other than Town’s gross negligence or intentional
23 wrongful act, and County waives all claims in respect thereof against Town.

24 3.3 **Limitation of Remedies.** Town is not liable for any indirect, special, or
25 consequential damages, including, but not limited to, loss of anticipated profits, revenue or
26 savings, business interruption, or any similar claim arising from the Town’s breach of this Lease,
27 even if Town has been advised of the possibility of such damages. This limitation applies
28 notwithstanding the failure of an essential purpose of any limited remedy.

29 **ARTICLE 4 - COUNTY’S AFFIRMATIVE OBLIGATIONS**

30 4.1 **Damages to Leased Premises and Public Works Facility.** County will pay for
31 any damage to the Leased Premises caused by County or resulting from County’s use of the
32 Leased Premises pursuant to this Lease. County will also pay for any damage to other portions of
33 the Public Works Facility caused by County’s negligence or intentional wrongful act. County
34 will pay for any such damage within 30 days of receipt of notice from the Town.

35 4.2 **Taxes.** Because both Town and Country are tax-exempt entities under Colorado
36 law, the parties anticipate that the Leased Premises will be tax-exempt throughout the Term.

1 However, if any taxes are lawfully assessed against the Leased Premises as a result of County's
2 use of the Leased Premises County will pay such taxes before they become delinquent.

3 4.3 **Signs.** County will not post, place, affix, erect, or display any sign within or
4 outside of the Leased Premises without Town's prior approval. In considering County's request
5 to place a sign within or outside of the Leased Premises, Town acts in its capacity as landlord of
6 the Leased Premises, and not in its governmental capacity. Town may remove any sign placed
7 within or outside of the Leased Premises in violation of the portions of this Section. County will
8 maintain all signs located within or outside of the Leased Premises in good, clean, and attractive
9 condition. County will remove all signs placed by it within or outside of the Leased Premises at
10 the expiration or earlier termination of this Lease, and repair any damage or injury caused
11 thereby. If not so removed by County, the Town may remove such sign(s) at County's expense.

12 4.4 **Inspection and Entry.** Town and Town's authorized representatives may enter
13 the Leased Premises at all times during reasonable hours to inspect the Leased Premises. County
14 further agrees that the Town may go upon the Leased Premises at all times and:

15 (a) perform any work therein that may be necessary to comply with any laws,
16 ordinances, rules or regulations of any public authority or that the Town may deem necessary to
17 prevent waste or deterioration of the Leased Premises;

18 (b) post any notice provided for by law; or

19 (c) otherwise protect any and all rights of Town,

20 all without any liability to County for damages.

21 Nothing in this Section implies or creates any duty on the part of the Town to do any
22 work that under any provision of this Lease the County may be required to do, nor will it
23 constitute a waiver of County's default in failing to do such work. No reasonable exercise by the
24 Town of any rights herein reserved will entitle the County to any damage or compensation of any
25 kind from Town for any injury, loss, damage, or inconvenience occasioned thereby, or to any
26 abatement of rent.

27 4.5 **Compliance With Laws.** County, at its sole cost and expense, will comply with
28 all laws, ordinances, orders, and regulations of all governmental authorities with respect to the
29 use of the Leased Premises. A judgment of any court or the admission of County in any action or
30 proceeding against County, whether Town is a party thereto or not, that County has violated any
31 law, ordinance, requirement or order in the use of the Leased Premises will be conclusive of the
32 fact as between Town and County.

33

1 **ARTICLE 5 - UTILITIES AND MAINTENANCE**

2 **5.1 Utilities.**

3 (a) Town will provide water, gas, and electricity for County's use at the
4 Leased Premises if any of such utilities are not separately metered,

5 (b) For any utility service that is not separately metered the Parties will agree
6 on a formula whereby the County will pay its pro rata share of the cost of the unmetered utilities
7 used or consumed by it at the Leased Premises.

8 (c) County, at its cost, may elect to install meters for any utility service used
9 by it at the Leased Premises. County will contract (in its own name) and pay for any utilities
10 provided to the Leased Premises that are separately metered.

11 (d) County will contract (in its own name) and pay for any telephone, cable
12 television, and internet services used by County at the Leased Premises.

13 **5.2 Facility Maintenance Fee.** County will pay its pro rata share of the total cost of
14 maintenance, upkeep, repair, and replacement of the Common Area (exclusive of costs
15 attributable only to the Town's new Public Works Administration Building and other facilities
16 used exclusively by the Town). County's pro rata share will be based on the square footage of
17 the Leased Premises compared to the square footage of the Town's New Public Works
18 Administration Building and any other facilities at the Public Works Facility used exclusively by
19 the Town. Town will bill County on a regular basis, monthly or quarterly, at its discretion.

20 **5.3 Maintenance and Snow Plowing.**

21 (a) **County's Maintenance Duties.** County will provide, at its expense, all
22 required maintenance and upkeep of the Leased Premises.

23 (b) **Maintenance of the Common Area.** Town will provide, at its expense
24 all required cleaning and maintenance of the Common Area. Town will bill County, and County
25 will pay to Town, for County's pro rata share on a regular basis. County's pro rata share will be
26 determined in accordance with Section 5.2.

27 (c) **Snow Removal.** Town will provide all snow plowing, and snow and ice
28 removal for the Public Works Facility.

29 **5.4 Sand Piles.** The Parties will jointly share the use of the "sand pile" that is located
30 at the Public Works Facility. With respect to the sand piles, it is agreed that:

31 (a) each Party will purchase and pay for their own sand that will be stored in
32 the sand pile;

33 (b) the Parties will not share in the cost of purchasing sand; and

1 (c) the Parties will be responsible for accounting for their respective usage of
2 sand stored at the sand pile.

3 **ARTICLE 6 - COUNTY'S NEGATIVE OBLIGATIONS**

4 **6.1 Alterations and Improvements.**

5 (a) "Alteration" means:

6 (i) any further modification of or change to the County Public Works
7 Building after Town completes the initial remodeling of the County's Public Works
8 Building as described in Section 1.5;

9 (ii) the construction of the Additional Building as described in Section 6.2;
10 and

11 (iii) any other alteration, addition, substitution, installation, change, and
12 improvement to the Leased Premises.

13 (b) County is responsible for constructing and paying for all Alterations.

14 (c) County will not make any Alteration to the Leased Premises without the
15 prior written consent of Town, which consent may be granted, withheld, or conditionally
16 approved in Town's sole, absolute, and subjective discretion.

17 (d) The exterior of any Alteration must be architecturally compatible with the
18 New Town Public Works Administration Building, it being the Parties' intention that all of the
19 buildings located (and to be located) at the Public Works Facility during the Term will have the
20 same general appearance.

21 (e) County will provide Town with plans for the construction or installation of
22 any proposed Alteration at least 60 days prior to the planned commencement of construction.
23 County will also provide any supplemental information requested by Town. County will not
24 make any Alteration that has not been approved by Town.

25 (f) The following will be conditions of Town's consent to the construction of
26 any alteration to the Leased Premises by County:

27 (i) The work will be performed and completed:

28 (A) in accord with the submitted plans and specifications;

29 (B) in a workmanlike manner.

1 (C) in compliance with the Town’s building and technical codes, and
2 may be inspected by the Town’s Building Official to determine compliance with
3 the applicable codes.

4 (D) in compliance with all applicable laws, rules, regulations,
5 ordinances, and other requirements of governmental authorities.

6 (E) using new materials, unless otherwise agreed by Town; and

7 (F) with due diligence.

8 (ii) County will only use workers and contractors of whom Town approves.

9 (iii) County will modify plans and specifications because of reasonable
10 conditions set by Town after reviewing the plans and specifications.

11 (iv) County’s contractors will carry builders risk insurance in an amount then
12 customarily carried by prudent contractors, and workers’ compensation insurance for its
13 employees complying with applicable law.

14 (v) Upon request County will give Town evidence that it complied with any
15 condition set by Town.

16 (g) Any Alteration made by County to the Leased Premises will become the
17 property of the Town; will be considered as part of the Leased Premises; and will not be
18 removed from the Leased Premises by County upon the expiration or earlier termination of this
19 Lease unless removal is ordered by the Town.

20 (h) County will not make any Alteration without first having submitted the
21 proposed Alteration to the Town for review in accordance with the Town’s “Public Project”
22 process described in the Town’s Development Code.

23 6.2 **Additional Building.** In addition to the County Public Works Building, the
24 County may construct one additional building at the Leased Premises (“**Additional Building**”)
25 on a site of a maximum size of 50 feet deep by 60 feet wide. If the County desires to construct
26 the Additional Building, then:

27 (a) the site of the Additional Building must be acceptable to the Town
28 (currently expected to be adjacent to the County Public Works Building).

29 (b) the County will pay to plan, design, and construct the Additional Building.

30 (c) Section 6.1 will apply to the construction of the Additional Building.

1 (d) if the County constructs the Additional Building, all provisions of this
2 Lease (unless otherwise indicated) apply to both the Additional Building and the County Public
3 Works Building.

4 (e) in order to expedite and reduce conflict on the site, the Town will, upon
5 County's request and at no charge to the County, manage the project and construct the
6 Additional Building as part of its contract to build the New Town Public Works Administration
7 Building. If the County requests the Town to manage and construct the Additional Building, the
8 following provisions apply:

9 (i) the County and the Town will work together to negotiate a price that is
10 acceptable to the County with the Town's contractor; and

11 (ii) the Town will make payment to the contractor for the costs of the
12 Additional Building;

13 (iii) the County will reimburse the Town within 30 days for any costs paid to
14 the contractor for the Additional Building; and

15 (iv) The contractor will provide separate billing to the Town for the Additional
16 Building to account for the costs of the Additional Building.

17 (f) if the Additional Building is built, it will become the property of the
18 Town; will be considered as part of the Leased Premises; and will not be removed from the
19 Leased Premises by County upon the expiration or earlier termination of this Lease unless
20 removal is ordered by the Town.

21 6.3 Assignment and Subletting.

22 (a) County will not assign, sublet, license, pledge, encumber, or allow any
23 other person or entity to occupy or use any or all of the Leased Premises without first obtaining
24 Town's prior written consent. Any assignment, sublease, license, pledge, or encumbrance
25 without Town's prior written consent is voidable by Town and, at Town's election, will
26 constitute a default under this Lease. No consent by Town to any of the above acts will constitute
27 a further waiver of the provisions of this Section.

28 (b) If Town consents to an assignment, sublease, or license County may be
29 required, as a condition of granting consent, to pay Town's reasonable costs incurred in
30 considering the proposed assignment, sublease, or license including, but not limited to, legal fees
31 and credit checks.

32 6.4 **Waste or Nuisance.** County will not commit or permit to be committed any waste
33 upon the Leased Premises. County will not commit or permit to be committed upon the Leased
34 Premises any public or private nuisance, or any other act or thing prohibited by law.

35 **ARTICLE 7 - COUNTY'S PAYMENT TO TOWN IN LIEU OF RENT**

1 (b) provide that the insurance cannot be cancelled or materially changed in the
2 scope or amount of coverage unless 15 days' advance notice is given to the Town.

3 8.6 **Evidence of Insurance.** Prior to the commencement of this Lease, and on each
4 subsequent renewal or replacement of the required insurance policies during the Term, County
5 will give to Town a certificate of insurance evidencing compliance with the requirements of this
6 Section. All required insurance policies will be renewed or replaced and maintained by the
7 County throughout the Term to assure continuous coverage. If County fails to give the required
8 insurance certificate within 10 days after notice or demand for it, such action will constitute a
9 default under this Lease, and the Town may then proceed as provided in Article 12 of this Lease,
10 and/or Town may obtain and pay for that insurance and receive reimbursement from the County,
11 together with interest thereon at the rate of 12% per annum.

12 **ARTICLE 9 - INDEMNIFICATION**

13 9.1 **Indemnification by County.** To the extent permitted by law, and subject to any
14 applicable limits of the Act, County will indemnify and defend the Town, its officers, employees,
15 insurers, and self-insurance pool from all liability, claims, and demands, on account of injury,
16 loss, or damage, including, without limitation, claims arising from bodily injury, personal injury,
17 sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever,
18 arising out of or in any manner connected with this Lease or County's use or possession of the
19 Leased Premises pursuant to this Lease, except to the extent that such liability, claim, or demand
20 arises through the gross negligence or intentional wrongful act of the Town, its officers,
21 employees, or agents, or Town's breach of this Lease. If indemnification is required under this
22 Section, County will investigate, handle, respond to, and to provide defense for and defend
23 against, any such liability, claims, or demands at its expense, and bear all other costs and
24 expenses related thereto, including court costs and attorney fees.

25 9.2 **Survival.** The obligations of this Article 9 will survive the expiration or earlier
26 termination of this Lease.

27 **ARTICLE 10 - EMINENT DOMAIN**

28 10.1 **Eminent Domain.**

29 (a) **Definitions.** The terms "**eminent domain**," "**condemnation**," and
30 "**taken**" and related terms as used in this Section include any taking for public or quasi-public
31 use and private purchases in place of condemnation by any authority authorized by applicable
32 law to exercise the power of eminent domain.

33 (b) **Entire Taking.** If the entire Leased Premises are taken by eminent
34 domain, this Lease will automatically end on the earlier of:

35 (i) the date title vests; or

1 (ii) the date County is dispossessed by the condemning authority.

2 (c) **Partial Taking.** If the taking of a part of the Leased Premises materially
3 interferes with County’s ability to continue its business operations in substantially the same
4 manner then County may terminate this Lease on the earlier of:

5 (i) the date when title vests;

6 (ii) the date County is dispossessed by the condemning authority; or

7 (iii) 60 days following notice to County of the date when vesting or
8 dispossession is to occur.

9 If the taking of a part of the Leased Premises does not materially interfere with County’s ability
10 to continue its business operations in substantially the same manner, then this Lease will
11 terminate only as to part of the Leased Premises taken.

12
13 (d) **Awards and Damages.** Any compensation or damages paid by a
14 condemning authority will be divided between the Town and County as follows:

15 (i) County is entitled to that portion of the compensation or damages that
16 represents the amount of County’s moving expenses, business dislocation damages,
17 County’s personal property and fixtures, and the unamortized costs of leasehold
18 improvements paid for by County; and

19 (ii) the balance of such compensation or damages belongs to the Town.

20 **ARTICLE 11 - HAZARDOUS MATERIALS**

21 11.1 **Hazardous Materials - Defined.** As used in this Section, the term “**Hazardous**
22 **Materials**” means any chemical, material, substance or waste:

23 (a) exposure to which is prohibited, limited, or regulated by any federal, state,
24 county, regional or local authority, or other governmental authority of any nature; or

25 (b) that, even if not so regulated, may or could pose a hazard to the health or
26 safety of the occupants of the Public Works Facility, including, without limitation, any
27 petroleum, crude oil (any fraction thereof), natural gas, natural gas liquids, and those substances
28 defined as “hazardous substances”, “hazardous materials”, “hazardous wastes” or other similar
29 designations in the Comprehensive Environmental Response, Compensation and Liability Act of
30 1980, as amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act,
31 49 U.S.C. Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules,
32 regulations, and precautions.

33 11.2 **Hazardous Materials - Prohibited.** County will fully comply with all statutes,
34 laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by

1 any federal, state, local, or other governmental agency with respect to the use, generation,
2 storage, or disposal of Hazardous Materials. County will not cause, or allow anyone else to
3 cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about the
4 Leased Premises without the prior written consent of Town, which consent may be revoked at
5 any time. County's indemnification of Town pursuant to this Lease extends to all liability,
6 including all foreseeable and unforeseeable consequential damages, directly or indirectly arising
7 out of the use, generation, storage, or disposal of Hazardous Materials at the Leased Premises by
8 County, or any person claiming under County, including, without limitation, the cost of any
9 required or necessary repair, cleanup, or detoxification and the preparation of any closure or
10 other required plans, whether such action is required or necessary prior to or following the
11 termination of this Lease, to the full extent that such action is attributable, directly or indirectly,
12 to the use, generation, storage, or disposal of Hazardous Materials by County or any person
13 claiming under County; provided, however, the written consent by Town to the use, generation,
14 storage, or disposal of Hazardous Materials will excuse County from County's obligation of
15 indemnification. In the event County is in breach of the covenants herein, after notice to County
16 and the expiration of the earlier of:

17 (a) the cure period provided in Section 12.1(c); or

18 (b) the cure period permitted under applicable law, regulation, or order,

19 then Town may, in its sole discretion, declare a default under this Lease and/or cause the Leased
20 Premises to be freed from the Hazardous Material and the cost thereof will be deemed additional
21 rent hereunder and will immediately be due and payable from County. The obligations of County
22 under this Section will survive the expiration or earlier termination of this Lease.

23 **ARTICLE 12 - DEFAULT**

24 12.1 **Default by County.** The occurrence of any one or more of the following events
25 will constitute a default and breach of the Lease by County:

26 (a) The vacating or abandonment of the Leased Premises by County;

27 (b) The failure by County to make any payment due from County hereunder
28 as and when due, if such failure continues for a period of 10 days after service of written notice
29 thereof by Town to County;

30 (c) The failure by County to observe or perform any of the other covenants,
31 conditions, or provisions of this Lease to be observed or performed by the County, or to obey
32 rules promulgated by Town, within 10 days after service of written notice thereof by the Town to
33 the County. In the event of a non-monetary default that is not capable of being corrected within
34 10 days, County will not be default if it commences correcting the default within 10 days of
35 service of a demand for compliance notice and thereafter corrects the default with due diligence;
36 or

1 (d) The filing by or against County of a petition to have County adjudged
2 bankrupt.

3 12.2 **Exceptions to Cure Periods.** The cure period provided in Section 12.1(c) does
4 not apply to:

5 (a) Emergencies; or

6 (b) County's failure to maintain the insurance required by Article 8.

7 12.3 **Town's Remedies Upon Default.** If the County is in default under this Lease,
8 Town has all of the remedies provided for in such circumstances by Colorado law; provided,
9 however, the Town will comply with dispute resolution provisions of Article 13. Town's
10 exercise of any of its remedies or its receipt of County's keys will be not an acceptance of
11 County's surrender of the Leased Premises. A surrender must be agreed to in writing and signed
12 by both parties.

13 12.4 **Default by Town.** Town will be in default under this Lease if Town fails to
14 comply with any of the terms, provisions, or covenants of this Lease within 10 days following
15 service of written notice thereof by County. In the event of a non-monetary default that is not
16 capable of being corrected within 10 days, Town will not be default if Town commences
17 correcting the default within 10 days of receipt of notification thereof and thereafter corrects the
18 default with due diligence.

19 12.5 **County's Remedies Upon Default.** If the Town is in default under this Lease,
20 County has all of the remedies provided for in such circumstances by Colorado law; provided,
21 however, the County will comply with dispute resolution provisions of Article 13.

22 **ARTICLE 13 - DISPUTE RESOLUTION**

23 13.1 **Negotiation.** The Parties will attempt in good faith to resolve any dispute arising
24 out of or relating to this Lease not resolved promptly by negotiations between persons who have
25 authority to settle the controversy ("**Executives**"). Any Party may give the other Party written
26 notice of any dispute not resolved in the normal course of business. Within five days after receipt
27 of said notice Executives of the Parties to the dispute will meet at a mutually acceptable time and
28 place, and thereafter as often as they reasonably deem necessary, to exchange relevant
29 information and to attempt to resolve the dispute. If the matter has not been resolved within ten
30 days of the notice of dispute, or if the Parties fail to meet within five days, any Party to the
31 dispute may initiate mediation of the controversy as provided in Section 13.2.

32 13.2 **Mediation.** If the dispute has not been resolved by negotiation as provided above,
33 the Parties will endeavor to settle the dispute by mediation with a neutral third Party. If the
34 Parties encounter difficulty in agreeing on a neutral third Party, they may each appoint a neutral
35 third Party, such third Parties to appoint a neutral third Party to mediate. Each Party will pay
36 their own attorneys' fees incurred in connection with mediation.

1 13.3 **Judicial Action.** Any dispute arising out of or relating to this Lease or the breach,
2 termination or validity hereof, which has not been resolved by the methods set forth above within
3 30 days of the initiation of mediation, may be finally resolved by appropriate judicial action
4 commenced in a court of competent jurisdiction. The Parties agree to exclusive venue in the
5 courts of Summit County, Colorado with respect to any dispute arising out of or relating to this
6 Agreement. **BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO**
7 **ENFORCE, INTERPRET, OR CONSTRUE THIS LEASE.**

8 13.4 **Attorneys’ Fees** If any action is brought in a court of law by either Party to this
9 Agreement concerning the enforcement, interpretation or construction of this Agreement, the
10 prevailing Party, either at trial or upon appeal, will be entitled to reasonable attorneys’ fees, as
11 well as costs, including expert witness’ fees, incurred in the prosecution or defense of such
12 action.

13 13.5 **Equitable Relief.** Nothing in this Article prevents a Party from seeking to obtain
14 from a court of competent jurisdiction a temporary restraining order, preliminary injunction,
15 permanent injunction, or other appropriate form of equitable relief, to enforce the provisions of
16 this Lease if such action is authorized by applicable law.

17 **ARTICLE 14 - NO DISTURBANCE**

18 14.1 **Quiet Enjoyment.** Subject to the terms and conditions of this Lease, Town
19 covenants that so long as the amounts due to Town under this Lease are paid as and when due,
20 and there is no default in any of the other covenants, conditions, or provisions of this Lease to be
21 performed, observed or kept by County, the County will peaceably and quietly hold and enjoy
22 the Leased Premises for the entire Term.

23 **ARTICLE 15 - TOWN’S RULES**

24 15.1 **Rules.** County will faithfully observe and comply with any rules and regulations
25 promulgated by Town with respect to the Leased Premises. The Town’s rules and regulations
26 must be reasonable, and may not unilaterally change or significantly alter the material terms and
27 conditions of this Lease. The rules and regulations, and any amendments thereto, will be binding
28 upon the County upon delivery to County.

29 **ARTICLE 16 - MISCELLANEOUS**

30 16.1 **Notices.** All notices required or permitted under this Lease must be given by
31 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial
32 carrier delivery, or by telecopies, directed as follows:

33 If intended for Town to:
34
35 Town of Breckenridge
36 P.O. Box 168

1 150 Ski Hill Road
2 Breckenridge, Colorado 80424
3 Attn: Town Manager
4 Telecopier number: (970)547-3104
5 Telephone number: (970)453-2251
6

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

8
9 Timothy H. Berry, Esq.
10 Timothy H. Berry, P.C.
11 131 West 5th Street
12 P. O. Box 2
13 Leadville, Colorado 80461
14 Telecopier number: (719)486-3039
15 Telephone number: (719)486-1889
16

17 If intended for County to:

18
19 Board of County Commissioners
20 P.O. Box 68
21 Breckenridge, Colorado 80424
22 Attn: Gary Martinez, County Manager
23 Telephone number: (970)453-3401
24 Telecopier number: (970)453-3535
25

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

27
28 Jeff Huntley, Esq.
29 Summit County Attorney
30 P.O. Box 68
31 Breckenridge, Colorado 80424
32 Telephone number: (970)453-3407
33 Telecopier number: (970)454-3535
34

35 Any notice delivered by mail in accordance with this Section will be effective on the
36 third business day after the same is deposited in any post office or postal box regularly
37 maintained by the United States postal service. Any notice delivered by telecopier in accordance
38 with this Section will be effective upon receipt if concurrently with sending by telecopier receipt
39 is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt
40 requested, on the same day to the intended recipient. Any notice delivered by hand or
41 commercial carrier will be effective upon actual receipt. Either Party, by notice given as
42 provided above, may change the address to which future notices may be sent. The provisions of
43 this Section do not apply to any notice or demand that is required to be served in a particular
44 manner by applicable law; and any such notice or demand must be served as required by law

1 notwithstanding the provisions of this Section. E-mail is not a valid way to give notice under this
2 Lease.

3
4 16.2 **“Day” Defined.** Unless otherwise indicated, the term “day” means a calendar
5 (and not a business) day.

6
7 16.3 **“Will” or “Will Not” Defined.** “Will” or “will not” indicates a mandatory
8 obligation to act or to refrain from acting as specifically indicated in the context of the sentence
9 in which such word is used.

10 16.4 **Complete Agreement.** It is understood and agreed that this Lease contains the
11 complete and final expression of the agreement between the Parties, and there are no promises,
12 representations, or inducements except as are herein provided. All negotiations, considerations,
13 representations, and understandings between the Parties related to this Lease are contained
14 herein.

15 16.5 **Amendment.** This Lease may not be modified except by a written amendment
16 signed by both the Town and County. Oral modifications of this Lease are not permitted.

17 16.6 **Captions.** The headings of the sections and subsection contained in this Lease are
18 for convenience only and do not define, limit, or construe the contents of the articles, sections
19 and paragraphs.

20 16.7 **Waiver.** The failure of either Party to exercise any of such Party’s rights under
21 this Lease is not a waiver of those rights. A Party waives only those rights specified in writing
22 and signed by the Party waiving such rights.

23 16.8 **Severability.** If any provision of this Lease is held to be invalid, illegal, or
24 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions
25 contained in this Lease and the application hereof will not in any way be affected or impaired
26 thereby.

27 16.9 **Force Majeure.** Neither Party will be liable to the other for any failure, delay, or
28 interruption in the performance of any of the terms, covenants, or conditions of this Lease due to
29 causes beyond the control of that Party including, without limitation, strikes, boycotts, labor
30 dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of
31 superior governmental authority, weather conditions, floods, riots, rebellion, terrorism, sabotage
32 or any other circumstance for which such Party is not responsible or that is not in its power to
33 control.

34 16.10 **Advances by Town For County.** If County fails to do anything required to be
35 done by it under the terms of this Lease (other than a failure to make the payments to Town
36 herein required) the Town may, at its sole option, but without any obligation to do so, do or
37 perform such act or thing on behalf of County, and in doing so the Town will not be deemed to
38 be a volunteer; provided, however, that before exercising its rights under this Section Town must

1 give notice to County as provided in Section 16.1, and afford the County not less than five days
2 from the giving of such notice within which to do or perform the act required by County. Upon
3 notification to County of the costs incurred by the Town County will promptly pay to Town the
4 full amount of costs and/or expenses incurred by Town pursuant to this Section, together with
5 interest thereon at the rate of 12% per annum.

6 16.11 **Governmental Immunity.** Both the Town and the County are relying on, and do
7 not waive or intend to waive by any provision of this Lease, the monetary limitations (presently
8 \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and
9 protections provided by the Act, as from time to time amended, or any other limitation, right,
10 immunity or protection otherwise available to Town or the County, or their respective elected
11 officials, officers, or employees.

12 16.12 **No Adverse Construction Based On Authorship.** Each Party had the
13 opportunity to participate in the drafting of this Lease. This Lease is not to be construed against
14 either Party by virtue of such Party having drafted this Lease.

15 16.13 **Town's Consent.** Except as otherwise expressly provided to the contrary in this
16 Lease, wherever in this Lease it is provided that some act requires the Town's prior consent, such
17 consent will not be unreasonably withheld by Town.

18 16.14 **Third Parties.** There are no third Party beneficiaries of this Lease.

19 16.15 **Lease Not To Be Recorded.** This Lease **MAY NOT BE RECORDED** with the
20 Clerk and Recorder of Summit County, Colorado.

21 16.16 **Time of Essence.** Time is of the essence of this Lease.

22 16.17 **Governing Laws.** The laws of the State of Colorado will govern the
23 interpretation, validity, performance, and enforcement of this Lease.

24 16.18 **Non-Discrimination; Compliance with Applicable Laws.** County:

25 (a) will not discriminate against any employee or applicant for employment to
26 work at the Leased Premises because of race, color, creed, sex, sexual orientation, religion,
27 national origin, or disability;

28 (b) will insure that applicants who are to work at the Leased Premises are
29 employed and that employees are treated during employment without regard to their race, color,
30 creed, sex, sexual orientation, religion, national origin, or disability;

31 (c) will in all solicitations or advertisements for employees to be engaged in
32 the performance of work at the Leased Premises state that all qualified applicants will receive
33 consideration for employment without regard to race, color, creed, sex, sexual orientation,
34 religion, national original or disability; and

1 (d) will comply with all applicable federal, state, and local laws, rules and
2 regulations. Without limiting the generality of the foregoing, County will comply with the
3 applicable provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public
4 Law 101-336), and all applicable regulations and rules promulgated thereunder by any regulatory
5 agency. The indemnification and termination provisions of this Lease apply to County's failure
6 to comply with all applicable laws or regulations.

7 16.19 **No Partnership.** The Town is not a partner, associate, or joint venturer of the
8 County in the conduct of County's business at the Leased Premises. County is an independent
9 contractor without the right or authority to impose tort or contractual liability upon the Town.

10 16.20 **Binding Effect.** The covenants, conditions, and obligations herein contained
11 extend to, bind, and inure to the benefit of, not only the Parties hereto, but their respective
12 successors and permitted assigns.

13 16.21 **Annual Appropriation.**

14 (a) Town's financial obligations under this Lease are subject to an annual
15 appropriation being made by the Town Council of the Town of Breckenridge, Colorado in an
16 amount sufficient to allow Town to perform its obligations under this Lease. If sufficient funds
17 are not appropriated for such purpose, this Lease may be terminated by either Party without
18 penalty; provided, however, all sums due to the County under this Lease up to date of
19 termination will be budgeted, appropriated, and paid by Town. Town's financial obligations
20 under this Lease do not constitute a general obligation indebtedness or multiple year direct or
21 indirect debt or other financial obligation whatsoever within the meaning of the Constitution or
22 laws of the State of Colorado.

23 (b) County's financial obligations under this Lease are subject to an annual
24 appropriation being made by the Board of County Commissioners of Summit County, Colorado
25 in an amount sufficient to allow County to perform its obligations under this Lease. If sufficient
26 funds are not appropriated for such purpose, this Lease may be terminated by either Party
27 without penalty; provided, however, all sums due to the Town under this Lease up to date of
28 termination will be budgeted, appropriated, and paid by County. County's financial obligations
29 hereunder do not constitute a general obligation indebtedness or multiple year direct or indirect
30 debt or other financial obligation whatsoever within the meaning of the Constitution or laws of
31 the State of Colorado.

32 16.22 **Conflict With MOU.** If there is any conflict between the terms and provisions of
33 this Lease and the MOU, the terms and provisions of this Lease will control.

34 16.23 **Incorporation of Exhibit.** The attached **Exhibit "A"** is incorporated herein by
35 reference.

36
37 TOWN OF BRECKENRIDGE, a Colorado

PUBLIC WORKS FACILITY LEASE

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municipal corporation

By _____
Timothy J. Gagen, Town Manager

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ATTEST:

Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By: _____
Chair

ATTEST:

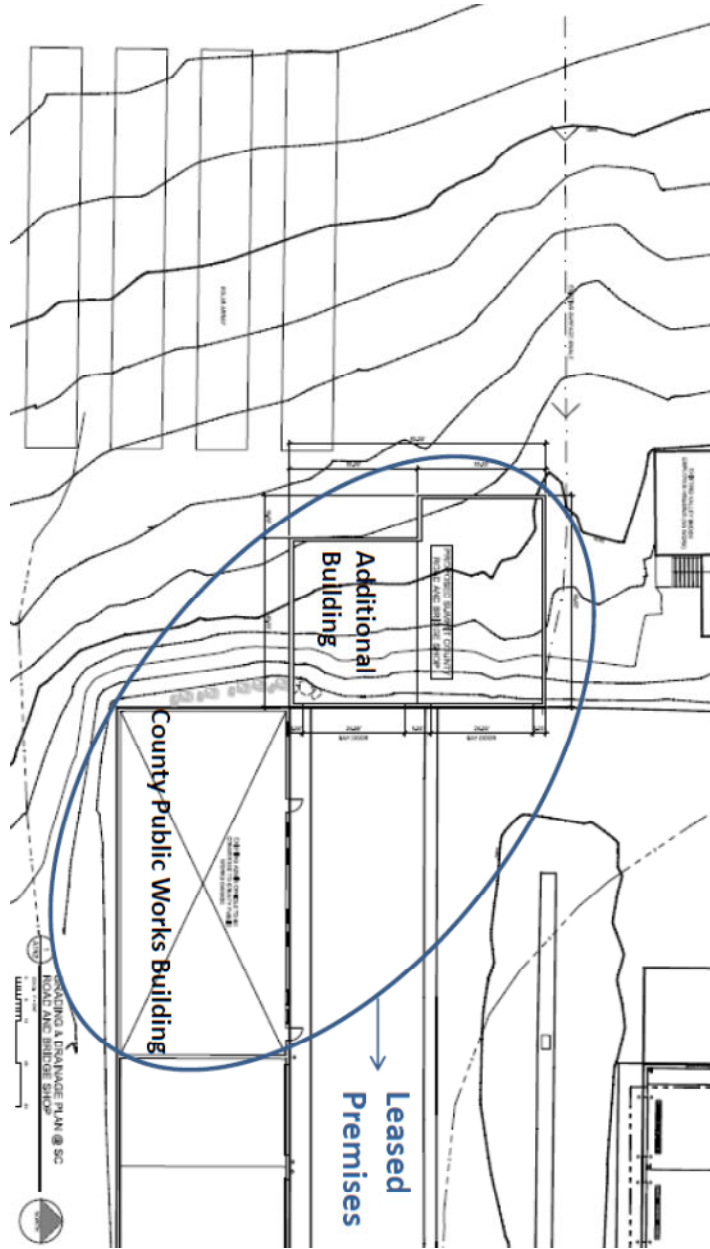
Kathleen Neel, Clerk and Recorder, and ex-officio
clerk to the Board of County Commissioners

1500-69 Lease (06-15-12)(Blacklined)

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Exhibit "A"

DESCRIPTION AND DEPICTION OF LEASED PREMISES



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MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 18 (Air Quality Ordinance)
DATE: July 3, 2012 (for July 10th meeting)

The second reading of the ordinance amending Absolute Policy 30 of the Development Code concerning air quality is scheduled for your meeting on July 10th. There are no changes proposed to ordinance from first reading.

1 **FOR WORKSESSION/SECOND READING – JULY 10**

2
3 **NO CHANGE FROM FIRST READING**

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

7
8 COUNCIL BILL NO. 18

9
10 Series 2012

11
12 AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE
13 TOWN CODE, KNOWN AS THE “BRECKENRIDGE DEVELOPMENT CODE”,
14 CONCERNING AIR QUALITY

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

18
19 Section 1. The definition of “Wood burning Cooking Appliance” in Section 9-1-5 of the
20 Breckenridge Town Code is amended to read in its entirety as follows:

21
WOOD BURNING COOKING
APPLIANCE:

Any cooking appliance that utilizes the burning
of wood for fuel, **including, but not limited
to, a wood smoker. A wood-fired oven is not
classified as a wood burning cooking
appliance.**

22
23 Section 2. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of
24 the following definitions:

25
WOOD SMOKER:

**Any cooking appliance that utilizes the
burning of wood with the intent of
producing smoke and relatively low cooking
temperatures (usually below 400 degrees
Fahrenheit) in order to cook and infuse
flavor into foods (usually meats and other
types of barbeque) at relatively low
temperatures.**

WOOD-FIRED OVEN:

**A cooking appliance that utilizes the
burning of hardwoods and/or fruitwoods
with the intent of cooking pizzas and other
foods quickly and at very high temperatures
(usually above 500 degrees Fahrenheit).**

1
2 Section 3. Section 9-1-19-30A (ABSOLUTE) AIR QUALITY of the Breckenridge
3 Town Code is amended to read in its entirety as follows:
4

5 **30. (ABSOLUTE) AIR QUALITY (30/A):** Due to the effects of unregulated wood
6 burning appliances on the air quality of Breckenridge as the Town continues to
7 grow, it is necessary to place limitations on the number of new wood burning
8 appliances in order to protect the quality of our air. In order to retain the quality of
9 air present in Breckenridge the following Policy shall apply. Those projects that
10 wish to provide additional fireplaces or stoves over and above those allowed here
11 shall do so through the use of gas, electricity, or similar means.
12

13 A. The number of wood burning appliances that may be installed in any
14 project constructed or remodeled within the Town is hereby limited to
15 the following:
16

17 (1) Single-Family Residential: One wood burning appliance per dwelling unit. No
18 wood burning appliances shall be allowed in any accessory apartments.
19

20 (2) Duplex And Townhouse Residential: One wood burning appliance per
21 dwelling unit; provided, that each unit has one thousand five hundred (1,500)
22 square feet or more of internal heated floor area. No wood burning appliances
23 shall be allowed in units with less than one thousand five hundred (1,500)
24 square feet of internal heated floor area.
25

26 (3) Multi-Unit Residential: One wood burning appliance per floor located in a
27 lobby or common area containing greater than one thousand (1,000) square
28 feet, with a maximum of two (2) per individual building. No such wood
29 burning appliances shall be allowed in dwelling units.
30

31 (4) Restaurant Or Bar: One wood burning appliance per restaurant or bar, or
32 restaurant/bar combined.
33

34 B. The installation of coal-burning appliances is prohibited.
35

36 C. The installation of a wood burning appliance which does not meet or
37 exceed any applicable emission standards promulgated by the United
38 States Environmental Protection Agency is prohibited.
39

40 D. The installation of a wood burning cooking appliance, **wood smoker,**
41 **or wood-fired oven** is prohibited except in a restaurant or
42 restaurant/bar combined; and not more than: **(i) one wood burning**
43 **cooking appliance, (ii) one wood smoker, and (iii) one wood-fired**
44 **oven** **is are** permitted per restaurant or restaurant/bar combined.
45

1 E. No development shall cause directly or indirectly, either by itself or
2 incrementally, a violation of the ambient air quality standards for the
3 region as established from time to time by the Colorado Department of
4 Health.

5
6 **F. Exceptions: Notwithstanding subsection A of this policy, if an**
7 **existing wood burning appliance is proposed to be replaced with a**
8 **new wood burning appliance that meets or exceeds the**
9 **Environmental Protection Agency phase II emissions standards,**
10 **the replacement wood burning appliance may be allowed even**
11 **though wood burning appliances would not otherwise be allowed**
12 **for new construction at the property, and even though the**
13 **property would contain more wood burning appliances than**
14 **allowed by subsection A of this policy.**
15

16 Section 4. Section 9-1-19-30R (RELATIVE) AIR QUALITY of the Breckenridge Town
17 Code is amended to read in its entirety as follows:

18
19 **30. (RELATIVE) AIR QUALITY (30/R):**
20

21 A. Where wood burning appliances are permitted:

22
23 It is encouraged that all developments install alternative methods of
24 heating, rather than wood burning appliances. To encourage the use of
25 alternative methods of heating, the following point analysis shall be
26 utilized to evaluate how well a proposal meets this Policy:

27
28 0 The installation of a wood burning appliance; or gas
29 fireplace.

30
31 -2 The installation of a wood burning cooking appliance **or**
32 **wood smoker** in a restaurant or restaurant/bar combined.

33
34 **0 The installation of a wood-fired oven in a restaurant or**
35 **restaurant/bar combined.**
36

37 2 x (0/+2)

38 B. Beyond the provisions of Policy 30 (Absolute) of this
39 Section, other measures which are likely to reserve or enhance the
40 quality of the air are encouraged. Measures which are effective
41 over the long-term are preferred.

42 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the
43 various secondary codes adopted by reference therein, shall continue in full force and effect.
44

45 Section 6. The Town Council hereby finds, determines and declares that it has the power
46 to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act,

1 Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal
2 zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv)
3 Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to
4 home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers
5 contained in the Breckenridge Town Charter.
6

7 Section 7. The Town Council hereby finds, determines and declares that it has the power
8 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
9 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.
10

11 Section 8. This ordinance shall be published and become effective as provided by
12 Section 5.9 of the Breckenridge Town Charter.
13

14 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
15 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
16 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
17 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
18 Town.
19

20 TOWN OF BRECKENRIDGE, a Colorado
21 municipal corporation
22

23
24
25 By _____
26 John G. Warner, Mayor
27

28 ATTEST:
29
30
31

32 _____
33 Town Clerk
34
35
36



MEMORANDUM

To: Mayor & Town Council
From: Tim Gagen, Town Manager
Date: April 17, 2012
Subject: *4th Amendment to Lease Agreement - Pinewood*

In 1995, the Town entered into a land lease agreement with Breckenridge Village Apartments, LLC (Corum) to provide land for the development of the Pinewood Village affordable rental project. This lease agreement provided the framework for the financing arrangements for Pinewood, including the land lease payments back to the Town for the use of the land. Recently, Corum has seen the opportunity to refinance their existing debt on the project with HUD and greatly accelerate the timing of when the Town's lease payments will begin.

The Town has expressed an interest in participating in the refinancing to enhance the approval of the larger refinancing through HUD. The proposed role for the Town would be to provide \$600,000 toward the refinancing with an interest rate of 3.70% and a term of 35 years which mirrors the proposed HUD refinancing terms. This refinancing will allow the financial pro forma of the project to begin paying the Town its land lease in 2012 instead of the original pro forma at 2024. The refinancing pro forma also shows that debt service for our loan beginning in 2012. In addition to accelerating the land lease payments, the Town will be earning 3.7% on our money loaned which is significantly greater than our current investment interest. Attached are the pro formas without refinancing and with refinancing, which show the change in land lease timing.

In reviewing how to best document the loan by the Town, it was decided to use the existing lease agreement template and amend it to reflect the loan as opposed to creating a new separate agreement. To be consistent with the lease, the loan repayment is referred to as "annual minimum rent" in the amendment. The Town Attorney and Staff have worked with Corum to develop the amendment to the lease and are comfortable with the proposed amendment. If Council is also comfortable with the proposed amendment, we recommend consideration under the first reading at the regular meeting as this change needs to be done by ordinance.

1 **FOR WORKSESSION/SECOND READING – JULY 10**

2
3 **NO CHANGE FROM FIRST READING**

4
5 COUNCIL BILL NO. 20

6
7 Series 2012

8
9 AN ORDINANCE AUTHORIZING THE EXECUTION OF A FOURTH AMENDMENT TO
10 LEASE WITH BRECKENRIDGE VILLAGE APARTMENTS, LLC, A COLORADO
11 LIMITED LIABILITY COMPANY
12

13 WHEREAS, the Town and Breckenridge Village Apartments, LLC, a Colorado limited
14 liability company (“**BVA**”), entered into that certain Lease dated June 14, 1995 (“**Original**
15 **Lease**”), whereby the Town leased to BVA, and BVA leased from the Town, that certain real
16 property known as Lot 5, Block 1, Parkway Center Subdivision, Town of Breckenridge, County of
17 Summit and State of Colorado, for the construction and operation by BVA of an affordable housing
18 project known as “Pinewood Village”; and
19

20 WHEREAS, Section 20.9 of the Lease provides that the Lease may be amended by written
21 agreement executed by the parties; and
22

23 WHEREAS, the Original Lease has been amended by that certain Amendment to Lease
24 dated November 20, 1995, (the “**First Amendment**”), that certain Second Amendment to Lease
25 dated February 28, 1996, (the “**Second Amendment**”), and that certain Third Amendment to
26 Lease dated June 3, 1996, (the “**Third Amendment**”), and

27 WHEREAS, the Town and BVA desire to further amend the Lease as set forth in the
28 proposed “Fourth Amendment To Lease”, a copy of which is marked **Exhibit “A”**, attached hereto
29 and incorporated herein by reference; and
30

31 WHEREAS, the Town Council has reviewed the proposed Fourth Amendment to Lease,
32 and finds and determines that its approval would be in the best interest of the Town and its citizens.
33

34 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
35 BRECKENRIDGE, COLORADO:
36

37 Section 1. The Fourth Amendment to Lease between the Town and Breckenridge Village
38 Apartments, LLC, a Colorado limited liability company (**Exhibit “A”** hereto) is approved, and the
39 Town Manager is authorized, empowered, and directed to execute such document for and on behalf
40 of the Town of Breckenridge.
41

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

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

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (the "Fourth Amendment") is made and entered into to be effective the 30th day of June, 2012, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation, ("Landlord") and BRECKENRIDGE VILLAGE APARTMENTS, LLC, a Colorado limited liability company, ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Lease dated June 14, 1995, (the "Original Lease") pursuant to which Landlord leased to Tenant, subject to the terms, conditions and restrictions provided in the Original Lease, the Property as more particularly described therein, and

WHEREAS, the Original Lease has been amended by that certain Amendment to Lease dated November 20, 1995, (the "First Amendment"), that certain Second Amendment to Lease dated February 28, 1996, (the "Second Amendment"), and that certain Third Amendment to Lease dated June 3, 1996, (the "Third Amendment"), and

WHEREAS, the Original Lease, as amended by the First Amendment, Second Amendment and Third Amendment is herein collectively referred to as the "Lease", and

WHEREAS, Tenant is entitled to a Preferred Return on Tenant's Invested Equity, which has an accrued and unpaid balance ("Tenants Accrued Return"), as of the date of this Fourth Amendment, of One Million Four Hundred Eighty-Seven Thousand One Hundred Six and 00/100th Dollars, (\$1,487,106.00), and

WHEREAS, Landlord desires to prepay to Tenant a portion of the future Preferred Return on Tenant's Invested Equity, in advance of its payment from Operation Proceeds or Disposition Proceed from the Property, and

WHEREAS, Landlord and Tenant desire to provide for the payment of a minimum rent to Landlord, and

WHEREAS, Tenant has the present intent to refinance the existing financing on the Property and is pursuing such refinancing in good faith in a commercially reasonable manner, and

WHEREAS, it is¹ the expectation of both Landlord and Tenant that any refinancing on the Property will be sufficient to pay in full ~~the balance of the future Preferred Return on Tenant's Invested Equity~~² **Tenants Accrued Return, and**³

WHEREAS, if any refinancing is insufficient to pay Tenants Accrued Return in full, such balance, shall be subordinate in priority to the payment to Landlord of the minimum annual rent, set forth herein⁴, and

WHEREAS, Landlord and Tenant desire to amend the Lease pursuant to this Fourth Amendment to reflect such agreements.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the undersigned hereby amend the Lease and otherwise provide as follows:

1. Landlord Advance to Tenant. Contemporaneously with the execution of this Fourth Amendment, Landlord shall pay to Tenant the sum of Six Hundred Thousand and 00/100th Dollars (\$600,000.00), as an advance against the future Preferred Return on Tenant's Invested Equity.

2. Operation Proceeds. The definition of Operation Proceeds set forth as Section 1.30 is deleted and the following is substituted in lieu thereof:

"1.30 "Operation Proceeds" shall mean all proceeds received from the operation of the Project less (i) the Annual Minimum Rent, (ii) the Preferred Return, and (iii) all costs and expenses of the Project, including without limitation, debt service, taxes, insurance, management fees and all other operational and maintenance expenses."

3. Rent Payable to Landlord. The first sentence of Section 6.1 of the Original Lease is hereby deleted and the following is substituted in lieu thereof:

"6.1 Rent. During the Term, Tenant shall pay to Landlord the Annual Minimum Rent. In addition, to the extent Operation Proceeds are available, Tenant shall pay to Landlord an amount equal to the Operation Proceeds, multiplied by the Landlord's Interest. The "Annual Minimum Rent" shall mean and refer to an annual amount of Thirty Thousand Five Hundred Ninety-Seven and 24/100th Dollars (\$30,597.24)¹, payable solely from "Surplus Cash" as defined in and set forth in financing currently encumbering the Property or any Refinancing. To the extent Surplus Cash is not available, no Annual Minimum Rent shall be payable and all such deferred amounts of Annual Minimum Rent shall be payable out of future Surplus Cash next available. The Annual Minimum Rent shall terminate Thirty-Five (35) years after the date hereof."

4. Payment of Tenant's Accrued Return. Landlord and Tenant agree that, subject to the payment of the Annual Minimum Rent, the Tenant's Accrued Return shall be payable from Operation Proceeds and Disposition Proceeds.

5. No Further Amendments. Except as amended above, the remaining terms, conditions and restrictions of the Lease shall remain unmodified and in full force and effect. No

¹ The Annual Minimum Rental is calculated as follows: \$600,000 [Landlord's prepayment of a portion of the future Preferred Return on Tenant's Invested Equity] fully amortized at an interest rate of 3.7% [agreed interest on prepayment] for a period of 35 years [term of repayment] = \$30,597.24 (rounded). The entire unpaid balance of the Annual Minimum Rental (both principal and interest) may be paid to Landlord by Tenant at anytime without penalty.

further amendment, alteration or modification of the Lease shall be valid unless made in writing and executed by Landlord and Tenant.

6. Conflicts. If any provision of this Fourth Amendment is in conflict with the provisions of the Lease, then the terms and conditions of this Fourth Amendment shall control.

7. Counterparts. This Fourth Amendment or other agreements between the parties may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Each counterpart may be delivered by facsimile transmission, or in electronic format via email as a “.pdf” file, and said facsimile and/or electronically transmitted signature shall be deemed to have the same force and effect as an original signature counterpart. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

8. Defined Terms. The terms in this Fourth Amendment which are capitalized but not defined in this Fourth Amendment shall have the same meanings which are given to such terms in the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment as of the date first set forth above.

Tenant:

BRECKENRIDGE VILLAGE APARTMENTS,
LLC, a Colorado limited liability company

By: CORUM BRECKENRIDGE EQUITIES,
LLC, a Colorado limited liability company,
Manager

By: _____

Name: _____

Title: _____

Attest:

Landlord:

TOWN OF BRECKENRIDGE

By: _____

Name: _____

By: _____

Name: _____

Title: _____

Title: _____

Document comparison by Workshare Professional on Friday, June 22, 2012 1:10:04 PM

Input:	
Document 1 ID	PowerDocs://DOCS/3131907/8
Description	DOCS-#3131907-v8-Corum_- _Pinewood_Village_Fourth_Amendment_to_Lease
Document 2 ID	PowerDocs://DOCS/3131907/9
Description	DOCS-#3131907-v9-Corum_- _Pinewood_Village_Fourth_Amendment_to_Lease
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Legend:	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	3
Deletions	1
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	4

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 21 (BOEC Development Agreement)

DATE: July 3, 2012 (for July 10th meeting)

The second reading of the ordinance approving the proposed Development Agreement with the Breckenridge Outdoor Education Center for the lower level of The Maggie Building is scheduled for your meeting on July 10th. There are no changes proposed to ordinance from first reading.

However, there are several proposed amendments to the Development Agreement itself. The changes are marked on the copy of the Development Agreement that is enclosed with this memo.

The important changes to the Development Agreement are as follows:

1. A waiver of the application fee for the Development Agreement itself, as well as a wavier of the application fee for the development permit that will be required of the BOEC in order to actually construct the improvements that are described in the Development Agreement. (see Recital E(ii) and §4)

2. A wavier of the requirement that the BOEC provide additional off-street parking as would normally be required under the Town's Off-Street Parking Regulations. The special findings required to support such a waiver have been included in the ordinance. (see Recital E(iii) and §5).

3. Authorization for the Town to go into the leased property and remove the BOEC's improvements when the Lease ends if, for any reason, the BOEC fails or refuses to do this. Please note that the Town does not have to take this action, but I felt that the Town should have this "self help" remedy available to it in order to make sure that the Town's temporarily transferred density is no longer used once the BOEC lease ceases to exist. (see §2(e))

4. A commitment by the Town to provide density for the BOEC's improvements described in the agreement. The density will be handled by a temporary transfer of density from Town-owned property to the lower level of the Maggie Building. The density will revert to the Town when the BOEC's Lease for the property expires or is sooner terminated. (see §3).

Staff has inquired whether the Town Council also intends to waive the Summit County Housing Authority impact fee for the BOEC project. The Town's administrative regulations concerning the Housing Authority fee list several specific types of developments that the Town

has determined should not be required to pay the impact fee. None of the specifically enumerated exemptions would apply to the BOEC project. However, Section 12(E) of the Town's regulations contains the following additional exemption authorization:

E. Other Exemptions. The Town Council may grant additional exemptions and waivers of the Impact Fee when deemed to be in the public interest due to special circumstances or unique situations, including, but not limited to, when a proposed development provides alternative employee housing mitigation not otherwise addressed by these policies.

If the Town Council determines that it wants to waive the Housing Authority Impact Fee for the BOEC project pursuant to Section 12(E), the Development Agreement will need to be amended. To waive the impact fee, Section 4 of the Development Agreement needs to be amended by the addition of the following sentence at the end of the section:

Further, the Town finds and determines that the waiver of the Summit County Housing Authority impact fee for the Improvements would be in the public interest due to the special or unique circumstances described in Recital E of this Agreement, and on such basis the Town waives the Summit County Housing Authority impact fee for the Improvements.

I will not be at the meeting on Tuesday, but I'm sure that the staff or the BOEC's attorney can adequately address any issues with the Development Agreement that may come up.

1 ***FOR WORKSESSION/SECOND READING – JULY 10***

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

4
5 COUNCIL BILL NO. 21

6
7 Series 2012

8
9 AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
10 THE BRECKENRIDGE OUTDOOR EDUCATION CENTER, a Colorado nonprofit
11 corporation
12 (Lower Level – The Maggie Building)

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. The Breckenridge Outdoor Education Center, a Colorado nonprofit corporation
21 (“**BOEC**”), is the tenant of a portion of Lot 1, The Village at Breckenridge Subdivision, Town of
22 Breckenridge, Summit County, Colorado (“**Premises**”) pursuant to a Lease Agreement
23 (“**Lease**”) with The Village at Breckenridge Acquisition Corp. (“**Owner**”), the owner of such
24 property. The Lease provides for a term of up to 25 years for no rent.

25
26 B. Under the Lease, BOEC has the right to request the temporary allocation of density to
27 the Property, and to enter into a development agreement with the Town providing for such
28 density allocation to allow for the expansion of the Premises.

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

32
33 D. Because the Town’s Development Code (Chapter 1 of Title 9 the Breckenridge
34 Town Code) does not provide a means for approval by the Town’s Planning Commission of the
35 addition of density to the Property to accommodate the expansion of the Premises proposed by
36 the BOEC, a development agreement provides the only means available for such an approval.

37
38 E. Because the BOEC is a non-profit provider of services to disabled individuals with a
39 significant relationship with the Town, and because the Owner provides the Premises to BOEC
40 for no rent, the Town is willing to waive the commitments encouraged be made in connection
41 with an application for a development agreement in accordance with Section 9-9-4 of the
42 Breckenridge Town Code.

43
44 F. Under the Lease BOEC has the obligation to remove the improvements constituting
the expansion of the Premises (“**Improvements**”) at the end of the term of the Lease, provided

1 that BOEC is not required to remove Improvements if the Lease is terminated by Owner without
2 cause during the first 5 years of the term.

3
4 G. The BOEC has submitted to the Town a completed application for a development
5 agreement.

6
7 H. The BOEC has requested that the Town waive the normal application fee for the
8 proposed development agreement. The Town Council finds and determines that Section 9-10-7
9 of the Breckenridge Town Code can properly be applied to the BOEC's application for a
10 development agreement, and that the waiver of the application fee for the proposed development
11 agreement is justified and is consistent with the intent of Chapter 10 of Title 9 of the
12 Breckenridge Town Code.

13
14 I. A proposed development agreement between the Town and BOEC has been prepared,
15 a copy of which is marked **Exhibit "A"**, attached hereto and incorporated herein by reference
16 ("**Development Agreement**").

17
18 J. The Town Council had a preliminary discussion of the BOEC's application and the
19 proposed Development Agreement as required by Section 9-9-10(A) of the Breckenridge Town
20 Code.

21
22 K. The Town Council determined that BOEC's request for a development agreement
23 need not be referred to the Breckenridge Planning Commission for its review and
24 recommendation.

25
26 L. The Town Council has reviewed the Development Agreement.

27
28 M. The approval of the Development Agreement is warranted in light of all relevant
29 circumstances.

30
31 N. The procedures to be used to review and approve a development agreement are
32 provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such
33 Chapter have substantially been met or waived in connection with the approval of the
34 Development Agreement and the adoption of this ordinance.

35
36 Section 2. Approval of Development Agreement. The Development Agreement between
37 the Town and the Breckenridge Outdoor Education Center, a Colorado nonprofit corporation
38 (**Exhibit "A"** hereto) is approved, and the Town Manager is authorized, empowered, and
39 directed to execute such agreement for and on behalf of the Town of Breckenridge.

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

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

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

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

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk

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

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made as of the ____ day of _____, 2012 between the TOWN OF BRECKENRIDGE, a municipal corporation of the State of Colorado (the “Town”) and BRECKENRIDGE OUTDOOR EDUCATION CENTER, a Colorado nonprofit corporation (the “BOEC”).

Recitals

A. BOEC is the tenant of that portion of Lot 1, The Village at Breckenridge Subdivision, Town of Breckenridge, Summit County, Colorado (“Property”) depicted on Exhibit A attached hereto (“Premises”) pursuant to a Lease Agreement dated _____, 2012 (“Lease”) with The Village at Breckenridge Acquisition Corp., the owner of the Property (“Owner”), which Lease provides for a term of up to 25 years for no rent.

B. Under the Lease, BOEC has the right to request the temporary allocation of density to the Property and to enter into this Agreement with the Town providing for such density allocation to allow for the expansion of the Premises.

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

D. Because the Town’s Development Code does not provide a means for approval by the Town’s Planning Commission of the addition of density to the Property to accommodate the expansion of the Premises proposed by the BOEC, a development agreement provides the only means available for such an approval.

E. Because the BOEC is a non-profit provider of services to disabled individuals with a significant relationship with the Town and because the Owner provides the Premises to BOEC for no rent, the Town is willing to waive: (i) the commitments encouraged be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code; (ii) any fees that would be required in connection with either the application for this Agreement or such application as may be required under the Development Code for approval of the Improvements described below; and (iii) any requirement for additional parking as provided for in the Town’s Off-Street Parking Regulations.

F. Under the Lease BOEC has the obligation to remove the improvements constituting the expansion of the Premises (“Improvements”) at the end of the term of the Lease, provided that BOEC is not required to remove Improvements if the Lease is terminated by Owner without cause during the first 5 years of the term.

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

Agreement

1. The Town's Planning Commission is hereby authorized to review and approve, subject to compliance with all other applicable development policies of the Town, an application for expansion of the Premises providing for up to an additional 1,000 square feet of density with no negative points to be assigned for the addition of such density to the Property.

2. a. The additional density may only be added to the Premises and used by the BOEC, provided, however, that, if BOEC fails to remove the Improvements upon termination or expiration of the term of the Lease, other than upon termination by Owner without cause during the first 5 years of the term of the Lease, the Owner will not be required to remove the Improvements and may use the area added to the Premises by BOEC.

b. BOEC agrees that it is obligated to remove the Improvements upon termination or expiration of the term of the Lease, other than upon termination by Owner without cause during the first 5 years of the term of the Lease, and further agrees that its failure to remove the Improvements will constitute a breach of the terms of this Agreement.

c. If the Lease is terminated by Owner without cause during the first 5 years of the term of the Lease, the area added to the Premises by BOEC's construction of the Improvements may not be used for any purpose without the prior written consent of Town, which may be withheld, granted or granted with conditions by the Town in its sole discretion. If no other use is permitted by the Town for the space added to the Premises by BOEC's construction of the Improvements, then Owner will be required to isolate the space and keep it vacant.

d. Under no circumstances may the additional density be added to the allowable density of the Property or used by the Owner in connection with any future development or redevelopment of the Property.

e. If the Lease is terminated and the Improvements are not removed by BOEC within sixty (60) days of written notice from the Town that the Improvements must be removed, then the Town may: (i) enter upon the Property to carry out the removal of the Improvements and the return of the Premises to the condition they were in prior to the installation of the Improvements, as BOEC is required to do under the Lease; (ii) seek specific performance against the BOEC to cause it to remove the Improvements pursuant to the terms of the Lease; or (iii) seek damages against BOEC arising out of its failure to remove the Improvements.

3. To the extent that the Town determines that it is necessary to make a temporary transfer of density to add additional density to the Property in such amount as the Improvements

Deleted: entitling the Town to the remedies of specific performance and damages against BOEC.

cause the Property to be over the currently allowable density, the Town will make a temporary transfer of such density from other property owned by it to the Property.

4. The Town hereby waives any and all fees that are required in connection with the application for this Agreement under Section 9-9-4 of the Breckenridge Town Code and in connection with such development and building permit applications as may be required under the Development Code or Town Code for the Improvements to be constructed.

5. The BOEC has requested the Town to waive the requirement that it provide additional off-street parking for the Improvements as would normally be required by the Town's "Off Street Parking Ordinance", Chapter 3 of Title 9 of the Breckenridge Town Code. Pursuant to Section 9-3-16 of the Off Street Parking Ordinance, the Town Council finds and determines as follows:

A. Waving the off-street parking requirement for the Improvements will not be detrimental to the public health, safety, or welfare or injurious to other property;

B. The conditions upon which the waiver request is based are unique to the property for which the relief is sought and are not applicable generally to other property;

C. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, distinguished from a mere inconvenience, if the strict letter of these regulations is carried out; and

D. The relief sought will not in any manner vary the provisions of the Development Code, Town Master Plan or other Town law, except that those documents may be amended in the manner prescribed by law.

Based upon such findings, the Town waives any requirement for any additional parking that might otherwise have been required for the Improvements under the Town's Off-Street Parking Ordinance.

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

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

8. This Agreement shall run with title to the land and be binding upon and inure to the benefit of BOEC, its successors and assigns.

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

10. The Town shall not be responsible for and the BOEC shall have no remedy against the Town if expansion of the Premises is prevented or delayed for reasons beyond the control of the Town.

11. Actual expansion of the Premises shall require the issuance of such other and further permits and approvals by the Town as may be required from time to time by applicable Town ordinances.

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

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

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

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

16. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and BOEC; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under

this Agreement shall not constitute the approval of any wrongful act by the BOEC or the acceptance of any improvements.

17. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado.

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

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

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

If To The Town: Timothy J. Gagen, Town Manager
Town of Breckenridge
P.O. Box 168
Breckenridge, CO 80424

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

If To The BOEC: Director
Breckenridge Outdoor Education Center
P.O. Box 697
Breckenridge, CO 80424

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

Deleted: ¶

21. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter.

22. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

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[SEPARATE SIGNATURE PAGES TO FOLLOW]

TOWN OF BRECKENRIDGE

Attest:

Town Clerk

By: _____
Timothy J. Gagen, Town Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this ____ day of _____,
2012 by Timothy J. Gagen as Town Manager and _____ as Town Clerk of
the Town of Breckenridge, a Colorado municipal corporation.

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

Notary Public

BRECKENRIDGE OUTDOOR
EDUCATION CENTER
a Colorado nonprofit corporation

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this ____ day of _____,
2012 by _____, as _____ of the
Breckenridge Outdoor Education Center, a Colorado nonprofit corporation.

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

Notary Public

| 7153.01 ~~development agmt 06-27-12~~

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MEMORANDUM

To: Mayor and Town Council
From: Shannon Haynes, Chief of Police
Date: July 3, 2012
Subject: Authority of Mayor/Town Manager in the event of an Emergency

Tim Berry has prepared a draft ordinance for first reading that defines the specific authority of the Mayor/Town Manager in the event of a civil emergency, emergency or local disaster. I believe the ordinance presented will clarify the general powers afforded to the Mayor/Town Manager, by Charter, in the event of an emergency. The ordinance also provides a frame work for operations that will substantially reduce the risk of delays in effectively responding to an emergency event in Breckenridge. The highlights of the attached new ordinance are:

- Provides direction for the implementation of an emergency declaration, including filing requirements and the allowable term of the declaration.
- Defines the Succession of Authority.
- Enumerates the powers of the Mayor/Town Manager during a declared emergency to ensure the necessary protections of life and property.
- Identifies the enforcement ability of the Police Department and the jurisdiction of the Municipal Court.
- Allows for an alternate Town Council meeting location in the event Town Hall Council Chambers are not available.
- Reiterates the ability of the Mayor/Town Manager to enter into Mutual Aid Agreements.
- Clarifies the Town's ability to access Tabor funds during the time of an emergency.

It is my belief this proposed ordinance will provide defined authority in keeping with the broad powers granted to the Mayor/Town Manager by Town Charter. This ordinance will allow for the timely and effective use of resources in the protection of life and property.

1 **FOR WORKSESSION/FIRST READING – JULY 10**

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

5
6 COUNCIL BILL NO. ____

7
8 Series 2012

9
10 AN ORDINANCE ADOPTING CHAPTER 23 OF TITLE 1 OF THE BRECKENRIDGE
11 TOWN CODE CONCERNING CIVIL EMERGENCIES, EMERGENCIES, AND LOCAL
12 DISASTERS

13
14 WHEREAS, Section 15.7 of the Breckenridge Town Charter empowers the Mayor, or in
15 his absence, the Town Manager to take certain acts in the event of a riot, insurrection, or
16 extraordinary emergency; and

17
18 WHEREAS, Section 15.8 of the Breckenridge Town Charter, entitled “Continuity of
19 Government”, mandates that the Town Council shall have the power to provide for continuity of
20 the government of the Town of Breckenridge in the event of a natural or enemy caused disaster;
21 and

22
23 WHEREAS, the Town Council wishes to enact legislation to fully implement these
24 Charter provisions.

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

28
29 Section 1. Title 1 of the Breckenridge Town Code is amended by the addition of a new
30 Chapter 23, entitled “Civil Emergencies, Emergencies, or Local Disasters”, which shall read in
31 its entirety as follows:

32
33 **CHAPTER 23**

34
35 **CIVIL EMERGENCIES, EMERGENCIES, OR LOCAL DISASTERS**

36
37 **SECTION:**

38
39 **1-23-1: Title**

40 **1-23-2: Legislative Declaration**

41 **1-23-3: Definitions**

EMERGENCY POWERS AND PROCEDURES ORDINANCE

1 1-23-4: Authorization to Issue Declaration of Civil Emergency, Emergency, or Local
2 Disaster

3 1-23-5: Filing of Declaration

4 1-23-6 Term of Declaration

5 1-23-7: Succession of Authority

6 1-23-8: Powers

7 1-23-9: Enforcement of Orders

8 1-23-10: Authority to Enter Property

9 1-23-11: Location of Town Council Meetings and Departments

10 1-23-12: Mutual Aid Agreements

11 1-23-13: Access to TABOR Funds

12 1-23-14: Report By Town Manager/Discretionary Ratification By Town Council

13 1-23-15 Conflict With Other Laws

14
15 1-23-1: TITLE: This Chapter shall be known and may be cited as the “Town of
16 Breckenridge Civil Emergency, Emergency, and Local Disaster Ordinance.”

17
18 1-23-2. LEGISLATIVE DECLARATION: It is the intent of this Chapter to provide for
19 Continuity of Government (Sec. 15.8, Town Charter) and for the necessary organization,
20 powers, and authority to enable the timely and effective use of all available Town resources
21 to prepare for, respond to and recover from civil emergencies, emergencies, or local
22 disasters, whether natural or man-made, that are likely to affect the health, security, safety,
23 or property of the inhabitants of the Town. It is intended to grant as broad a power as is
24 permitted within the letter and spirit of the Town Charter and the Council-Manager form
25 of government. The Town Council retains the power to direct the Town Manager during
26 the pendency of a declaration.

27
28 1-23-3: DEFINITIONS:

29
30 A. As used in this Chapter, the following words have the following meanings,
31 unless the context otherwise requires:

32 CIVIL EMERGENCY:

A condition of unrest including, but not
limited to riot, civil disturbance, unlawful
assembly, hostile military or paramilitary
action, war, terrorism, or sabotage.

DECLARATION:

The written document executed by the
Mayor or Town Manager declaring a
disaster, emergency, or civil emergency.

EMERGENCY:

Any occurrence or threat of natural or
man-made disaster of a major proportion

EMERGENCY POWERS AND PROCEDURES ORDINANCE

in which the safety and welfare of the inhabitants of the Town or their property are jeopardized or placed at extreme peril that timely action may avert or minimize.

LOCAL DISASTER:

The occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including but not limited to flood, fire, cyclone, tornado, earthquake, severe high or low temperatures, blizzard, landslide, mudslide, hurricane, building or structural collapse, high water table, water pollution, air pollution, epidemic, riot, drought, utility emergency, sudden and severe energy shortages, volcano, snow, ice, windstorm, waves, hazardous substance spills, chemical or petroleum spills, biological material release or spill, radiological release or spill, structural failure, public health emergency or accidents.

1
2 B. Terms not defined in this Chapter are to be given their common meaning.
3

4 **1-23-4: AUTHORIZATION TO ISSUE DECLARATION OF CIVIL EMERGENCY,**
5 **EMERGENCY, OR LOCAL DISASTER: The Mayor, or in his absence the Town**
6 **Manager, is authorized to declare a civil emergency, emergency, or local disaster if such**
7 **person finds that the Town, or any part of the Town, is suffering from or is in imminent**
8 **danger of suffering a natural or man-made civil emergency, emergency, or local disaster. If**
9 **the Mayor issues the declaration, the Town Manager is authorized and directed to**
10 **implement the declaration in accordance with this Chapter.**
11

12 **1-23-5: FILING OF DECLARATION: The person issuing the declaration pursuant to**
13 **Section 1-23-4 shall promptly notify the Town Council. In addition, such person shall**
14 **promptly file a copy of the declaration with the Town Clerk and the Board of County**
15 **Commissioners of Summit County. The public shall be notified of such a declaration**
16 **through general dissemination to the news media, posting on the Town website, or other**
17 **means of publicity intended to advise the general public.**
18

19 **1-23-6: TERM OF DECLARATION: The declaration of a civil emergency, emergency, or**
20 **local disaster shall be in effect as determined by the person issuing the declaration for a**

1 period of up to seven (7) days. This period may be extended upon submission of a request
2 by the person issuing the declaration and the approval of the Town Council. In the event a
3 quorum of the Town Council cannot be assembled to approve a continuance of the
4 declaration, such declaration shall remain in effect until such time as a quorum can be
5 assembled. In the event a quorum of the Town Council can meet to provide the Town
6 Manager with advice and consultation during the pendency of a declaration, such meeting
7 shall be held in compliance with the Colorado Open Meetings Law and Town Council
8 Rules and Procedures as soon as possible, but in no event later than seven (7) days
9 following the initial declaration.

10
11 1-23-7: SUCCESSION OF AUTHORITY: In the event of a civil emergency, emergency,
12 or local disaster the succession of authority shall be as provided in Section 15.8 of the Town
13 Charter.

14
15 1-23-8 POWERS: Upon the issuance of civil emergency, emergency, or local disaster
16 declaration, the Town Manager has full power and authority to take the following actions
17 and issue the following orders:

18 (a) any action necessary for the protection of life and property, including, but not
19 limited to, establishing regulations governing conduct related to the cause of the emergency
20 or disaster.

21 (b) an order establishing a curfew during such hours of the days or nights and
22 affecting such categories of persons as may be designated.

23 (c) an order to direct and compel the evacuation of all or a part of the population
24 from any stricken or threatened areas within the Town if the Town Manager deems this
25 action is necessary for the preservation of life, property or other civil emergency,
26 emergency, or local disaster mitigation, response or recovery activities and to prescribe
27 routes, modes of transportation and destination in connection with an evacuation.

28 (d) an order controlling, restricting, allocating or regulating the use, sale,
29 production or distribution of food, water, clothing, and other commodities, materials,
30 goods, services and resources.

31 (e) an order requiring the closing of businesses deemed nonessential by the Town
32 Manager.

33 (f) an order suspending or limiting the sale, distribution, dispensing, or
34 transportation of alcoholic beverages, firearms, explosives and/or combustible products
35 and requiring the closing of those businesses or parts of businesses insofar as the sale,
36 distribution, dispensing or transportation of these items are concerned.

37 (g) an order prohibiting the sale or distribution within the Town of any products
38 that the Town Manager determines could be employed in a manner that would constitute a
39 danger to public health or safety.

40 (h) subject to any applicable requirements for compensation, commandeer or
41 use any private property if the Town Manager finds this action necessary to cope with the
42 civil emergency, emergency or local disaster.

43 (i) appropriate and expend funds, execute contracts, authorize the obtaining and

EMERGENCY POWERS AND PROCEDURES ORDINANCE

1 acquisition of property, equipment, services, supplies and materials without the strict
2 compliance with procurement regulations or procedures.

3 (j) transfer the direction, personnel, or functions of Town departments and
4 agencies for the purposes of performing or facilitating civil emergency, emergency, or local
5 disaster services.

6 (k) utilize all available resources of the Town as may be reasonably necessary to
7 cope with the civil emergency, emergency, or local disaster whether in preparation for,
8 response to, or recovery from a civil emergency, emergency, or local disaster.

9 (l) suspend or modify the provisions of any ordinance if strict compliance with
10 such ordinance would in any way prevent, hinder or delay necessary action in coping with
11 any civil emergency, emergency, or local disaster.

12 (m) accept services, gifts, grants and loans, equipment, supplies, and materials
13 whether from private, nonprofit or governmental sources.

14 (n) suspend or limit the use of the Town's water resources.

15 (o) make application for local, state or federal assistance.

16 (p) terminate or suspend any process, operation, machine, device or event that is
17 or may negatively impact the health, safety and welfare of persons or property within the
18 Town.

19 (q) delegate authority to such Town officials as the Town Manager determines
20 reasonably necessary or expedient.

21 (r) require the continuation, termination, disconnection or suspension of natural
22 gas, electric power, water, sewer or other public utilities.

23 (s) close or cancel the use of any municipality owned or operated building or
24 other public facility.

25 (t) exercise such powers and functions in light of the exigencies of civil
26 emergency, emergency, or local disaster including the waiving of compliance with any time
27 consuming procedures and formalities, including notices, as may be prescribed by law
28 pertaining thereto.

29 (u) issue any and all other order or undertake such other functions and activities
30 as the Town Manager reasonably believes is required under the circumstances to protect
31 the health, safety, welfare of persons or property within the Town of Breckenridge, or to
32 otherwise preserve the public peace or abate, clean up, or mitigate the effects of any civil
33 emergency, emergency or local disaster.

34
35 The declaration of emergency shall list the restrictions applicable to that
36 circumstance by reference to the individual subsections of this section. The restrictions may
37 be changed from time to time during the time frame of the declaration based upon the
38 discretion of the Town Manager.

39
40 1-23-9: ENFORCEMENT OF ORDERS:

41
42 (a) The members of the Police Department, code enforcement, and such other law
43 enforcement and peace officers as may be authorized by the Town Manager are authorized

1 and directed to enforce the orders, rules, and regulations made or issued pursuant to this
2 Chapter. All members of the public shall be deemed to have been given notice of the
3 restrictions contained within a declaration upon its dissemination to the news media or
4 publication on the Town website or other means of publicity.

5 (b) During the period of a declared civil emergency, emergency, or local disaster,
6 a person shall not:

7 (1) enter or remain upon the premises of any establishment not open for business
8 to the general public, unless such person is the owner or authorized agent of the
9 establishment.

10 (2) violate the provisions of a declaration issued pursuant to Section 1-23-4.

11 (3) violate any of the orders duly issued by the Town Manager or designee
12 pursuant to such declaration.

13 (4) willfully obstruct, hinder, or delay any duly authorized Town officer,
14 employee or volunteer in the enforcement or exercise of the provisions of the Chapter, or of
15 the undertaking of any activity pursuant to this Chapter.

16 (c) The Municipal Court shall have the jurisdiction to preside over alleged
17 violations of this section. A person convicted of a violation of this section shall be subject to
18 the penalties
19 set forth in section 1-4-1 of this Code.

20
21 1-23-10: AUTHORITY TO ENTER PROPERTY: During the period of a declared civil
22 emergency, emergency, or local disaster, a Town employee or authorized agent may enter
23 onto or upon private property if the employee or authorized agent has reasonable grounds
24 to believe that there is a true emergency and an immediate need for assistance for the
25 protection of life or property, and that entering onto the private land will allow the person
26 to take such steps to alleviate or minimize the emergency or disaster or to prevent or
27 minimize danger to lives or property from the declared civil emergency, emergency, or
28 local disaster.

29
30 1-23-11: LOCATION OF TOWN COUNCIL MEETINGS AND DEPARTMENTS:

31 (1) Whenever a civil emergency, emergency, or local disaster makes it imprudent
32 or impossible to conduct the affairs of the Town at its regular locations, the Town Council
33 may meet at any place, inside or outside the Town limits, or may meet via the telephone or
34 other communication device. Any temporary civil emergency, emergency, or local disaster
35 meeting location for the Town Council shall continue until a new location is established or
36 until the civil emergency, emergency, or local disaster is terminated and the Town Council
37 is able to return to its normal location.

38 (2) Any emergency meeting of the Town Council shall be conducted in
39 accordance with the applicable provisions of the Council's Procedures and Rules of Order.

40 (3) Whenever a civil emergency, emergency, or local disaster makes it imprudent
41 or impossible to conduct the affairs of any department of the Town at its regular location,
42 such department may conduct its business at any place, inside or outside the Town limits,
43 and may remain at the temporary location until the civil emergency, emergency or local

1 disaster is declared ended or until the department is able to return to its normal location.

2 (4) Whenever a civil emergency, emergency, or local disaster makes it imprudent
3 or impossible for Town Council, or any Town board, commission, or committee, to meet at
4 a previously scheduled date and time, such meeting shall be deemed to be postponed until a
5 quorum of the Town Council or Town board, commission, or committee is able to meet, not
6 to exceed one (1) week.

7 (5) Any official act or meeting required to be performed at any regular location
8 of the Town Council board, commission, or committee or any Town department is valid
9 when performed at any temporary location under this section.

10 (6) The provisions of this section shall apply to all executive, legislative, and
11 judicial branches, powers and functions conferred upon the Town and its officers,
12 employees, and authorized agents by the Colorado Constitution, Colorado Statutes, the
13 Town Municipal Code, including the Town Charter.

14
15 **1-23-12: MUTUAL AID AGREEMENTS:**

16 (1) The Town Manager may, on behalf of the Town, enter into such reciprocal
17 aid, mutual aid, joint powers agreements, intergovernmental assistance agreements, or
18 other compacts or plans with other governmental entities for the protection of life and
19 property. Such agreements may include the furnishing or exchange of supplies, equipment,
20 facilities, personnel and/or services.

21 (2) The Town Council or any Town board, commission, or committee may
22 exercise such powers and functions in light of the exigencies of the emergency or disaster
23 and may waive compliance with time consuming procedures and formalities prescribed by
24 law pertaining thereto.

25 (3) The foregoing shall apply to all executive, legislative and judicial powers and
26 functions conferred upon the Town and its officers, employees and authorized agents.

27
28 **1-23-13: ACCESS TO TABOR FUNDS:** In the event of a declared civil emergency,
29 emergency, or local disaster, the Town Manager shall have access to the Town's emergency
30 funds mandated by the Taxpayer's Bill of Rights (TABOR) as set forth in Article X,
31 Section 20, Subsection (5) of the Colorado Constitution, entitled "Emergency reserves."
32 Funds utilized pursuant to this Chapter shall be replenished no later than the conclusion of
33 the fiscal year following the end of the emergency.

34
35 **1-23-14: REPORT BY TOWN MANAGER/DISCRETIONARY RATIFICATION BY**
36 **TOWN COUNCIL:** At such time as a civil emergency, emergency, or local disaster is
37 declared to have ended, the Town Manager shall prepare a written report that details the
38 official actions taken by the Town Manager during the declaration, including a timeline,
39 significant actions, and a detailed summary of all expenses incurred during such
40 declaration and such written report shall be submitted to the Town Council within thirty
41 (30) days. The Town Council may, but is not required to, approve a resolution ratifying the
42 actions taken by the Town Manager during the declaration. In the event that a resolution is
43 not approved, the Town Manager report shall be retained by the Town Clerk and made a

Memorandum

TO: Town Council
FROM: Tom Daugherty, Public Works Director
DATE: July 3, 2012
RE: Water Restrictions

Attached is the Resolution implementing water restrictions for the water users of the Town of Breckenridge water district.

Please note the exceptions to this restriction are different than what was provided to the Council at the last meeting. New landscaping, public parks and public schools are intended to be exempt from the restrictions and the information sheet last week called for them to not be exempt.

Also note that the water rates for excess use over the base allowance is increased from \$3.05 to \$5.00 during the water restrictions. This rate will return to normal once the restrictions are removed.

Staff will be getting the information out to the water users by mail and will post information on the Town web site and an ad in the paper.

1
2 ***FOR WORKSESSION/ADOPTION – JULY 10***

3
4 A RESOLUTION

5
6 SERIES 2012

7
8 A RESOLUTION DECLARING THE EXISTENCE OF A WATER SHORTAGE IN THE
9 TOWN OF BRECKENRIDGE; IMPLEMENTING MANDATORY RESTRICTIONS ON THE
10 USE OF WATER BY CUSTOMERS OF THE TOWN’S WATER SYSTEM; AND
11 PROVIDING FOR THE IMPOSITION OF ADMINISTRATIVE WATER SURCHARGES
12 AGAINST PERSONS WHO VIOLATE THIS RESOLUTION

13
14 BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
15 COLORADO, as follows:

16
17 **Section 1. Authority.** This resolution is adopted by the Town Council pursuant to:

- 18
19 A. The authority provided in Section 12-1-14-1 of the Breckenridge Town Code;
20 B. Sections 13.1 and 13.3 of the Breckenridge Town Charter;
21 C. Section 31-35-402(1)(b), C.R.S.; and
22 D. Section 31-35-402(1)(f), C.R.S.

23
24 **Section 2. Findings.** The Town Council finds, determines, and declares as follows:

25
26 A. The inflow of water into the Town’s Goose Pasture Tarn water facility is expected to
27 fall below 20 cubic feet per second or less.

28
29 B. This resolution is necessary and proper to provide for the safety, preserve the health,
30 promote the prosperity, and improve the order, comfort, and convenience of the Town of
31 Breckenridge and the inhabitants thereof.

32
33 C. The restrictions and limitations on the use of water from the Town’s Water System,
34 together with the procedures related to the enforcement of such restrictions, all as set forth in this
35 resolution, are necessary to adequately protect the Town’s Water System.

36
37 **Section 3. Declaration of Water Shortage.** The Town Council finds and determines
38 that a shortage exists in the supply of water to the Town’s Water System, or that a shortage is
39 imminent, such as to require the implementation of restrictions on the use of water from Town’s
40 Water System. Accordingly, a water shortage is declared to exist within the Town of
41 Breckenridge, and the mandatory restrictions set forth in this resolution are implemented.

TEMPORARY WATER RESTRICTIONS RESOLUTION

1
2 **Section 4. Definitions.**
3

- 4 A. Words used in this resolution that are defined in the Town of Breckenridge Water
5 Ordinance (Title 12 of the Breckenridge Town Code) have the meanings provided in
6 such ordinance.
7
8 B. When used in this resolution, the term “outside watering” means the use of water
9 from the Water System to water plants, lawns, gardens, landscaping or other
10 vegetation.
11
12 C. Words used in this resolution that are not defined in either the Town of Breckenridge
13 Water Ordinance or in Subsection B. above, shall have their usual and customary
14 meanings.
15

16 **Section 5. Mandatory Restrictions On Use of Water From the Town’s Water**
17 **System.** The following restrictions, limitations, and prohibitions are implemented for all persons
18 using the Water System:
19

- 20 A. Outside watering is permitted only as follows:
21
22 1. Outside watering is permitted only three days each calendar week (Monday
23 through the next Sunday) as described in subsections D4 and D5, below.
24
25 2. On days when outside watering is permitted, it may occur only for a maximum of
26 three hours each day.
27
28 3. On days when outside watering is permitted, it may occur only between the hours
29 of 6:00 P.M. and 9:00 A.M. of the following day.
30
31 4. Properties located East of the centerline of Main Street [or Colorado Highway 9
32 north and south of Park Avenue, as applicable] may only engage in outside
33 watering on Sundays, Wednesdays, and Fridays.
34
35 5. Properties located West of the centerline of Main Street [or Colorado Highway 9
36 north and south of Park Avenue, as applicable] may engage in outside watering
37 only on Tuesdays, Thursdays, and Saturdays.
38
39 6. No outside watering is permitted on any property connected to the Water System
40 on Mondays.
41
42 7. Irrigation system audits by a qualified professional are encouraged to find and

TEMPORARY WATER RESTRICTIONS RESOLUTION

1 correct inefficiencies in irrigation systems.

2
3 8. Parking lots and driveway may not be washed or otherwise cleaned using water
4 from the Water System. Permitted options to clean parking lots include only
5 sweeping, shoveling, and the use of mini-sweepers.

6
7 B. The bulk sale of water from the Water System will not be provided for washing of
8 parking lots. Other bulk water sales will be considered on a case-by-case basis by
9 way of a permit system.

10
11 C. Restaurants connected to the Water System shall not serve water to customers unless
12 specifically requested.

13
14 D. For the duration of this resolution the excess water usage fees as described in Section
15 12-4-11(B) of the Water Ordinance shall be \$5.00 for each 1,000 gallons of metered
16 water, or fraction thereof, used per SFE billing cycle in excess of the usage allowance
17 of 12,000 gallons of water per SFE per billing cycle, and all other excess water usage
18 fees provided for in the Water Ordinance that are based upon Section 12-4-11(B) are
19 adjusted accordingly.

20
21 **Section 6. Exceptions.** The restrictions imposed by this resolution do not apply in the
22 following circumstances:

23
24 A. Plants, lawns, gardens, landscaping or other vegetation may be watered any time of
25 any day by drip irrigation or by hand (only with a watering can or a hose with a shut-
26 off nozzle).

27
28 B. Personal vehicle may be washed at any time of any day but only if:

- 29
30 1. a bucket or a hose with a shut-off nozzle is used; and
31 2. while being washed the vehicle is pulled onto a lawn area. (That is, personal
32 vehicle washing is not permitted in driveways).

33
34 C. The watering of new lawns and landscaping.

35
36 D. The watering of public school property (including, but not limited to, public school
37 athletic fields and the Town's park facilities).

38
39 **Section 7. Administrative Water surcharges For Violation of Resolution.**

40
41 A. Any person who violates the terms, conditions, and limitations of this resolution shall
42 be subject to the following:

TEMPORARY WATER RESTRICTIONS RESOLUTION

- 1
2 1. First violation – warning only (no administrative water surcharge);
3 2. Second violation - \$250.00 administrative water surcharge;
4 3. Third violation - \$500.00 administrative water surcharge;
5 4. Fourth and each subsequent violation - \$750.00 administrative water surcharge;
6 and
7 5. After the fourth violation, an owner’s ability to do any outside watering shall be
8 suspended until the termination of the restrictions imposed by this resolution.
9

10 B. Administrative water surcharges imposed pursuant to this Section 7 are a debt owned
11 by the owners of the water using property to the Town, and are collectable by the Town in the
12 manner provided in Chapter 6 of Title 12 of the Water Ordinance.
13

14 **Section 8. Effective Date; Duration of Water Restrictions.** This resolution is effective
15 upon adoption, and shall continue in full force and effect until the Town Council determines by
16 subsequent resolution that a shortage no longer exists in the supply of water to the Town’s Water
17 System, or that a shortage is no longer imminent, such as to require the implementation of
18 restrictions on the use of water from Town’s Water System.
19

20 RESOLUTION APPROVED AND ADOPTED this ___ day of July, 2012.

21
22 TOWN OF BRECKENRIDGE
23

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

29 ATTEST:
30
31
32

33 _____
34 Town Clerk
35

36 APPROVED IN FORM
37
38
39

40 _____
41 Town Attorney Date
42

43 500-123\2012 Temporary Water Restrictions Resolution_2 (07-03-12)

TEMPORARY WATER RESTRICTIONS RESOLUTION

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: July 3, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the July 3, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF July 3, 2012:

CLASS C APPLICATIONS:

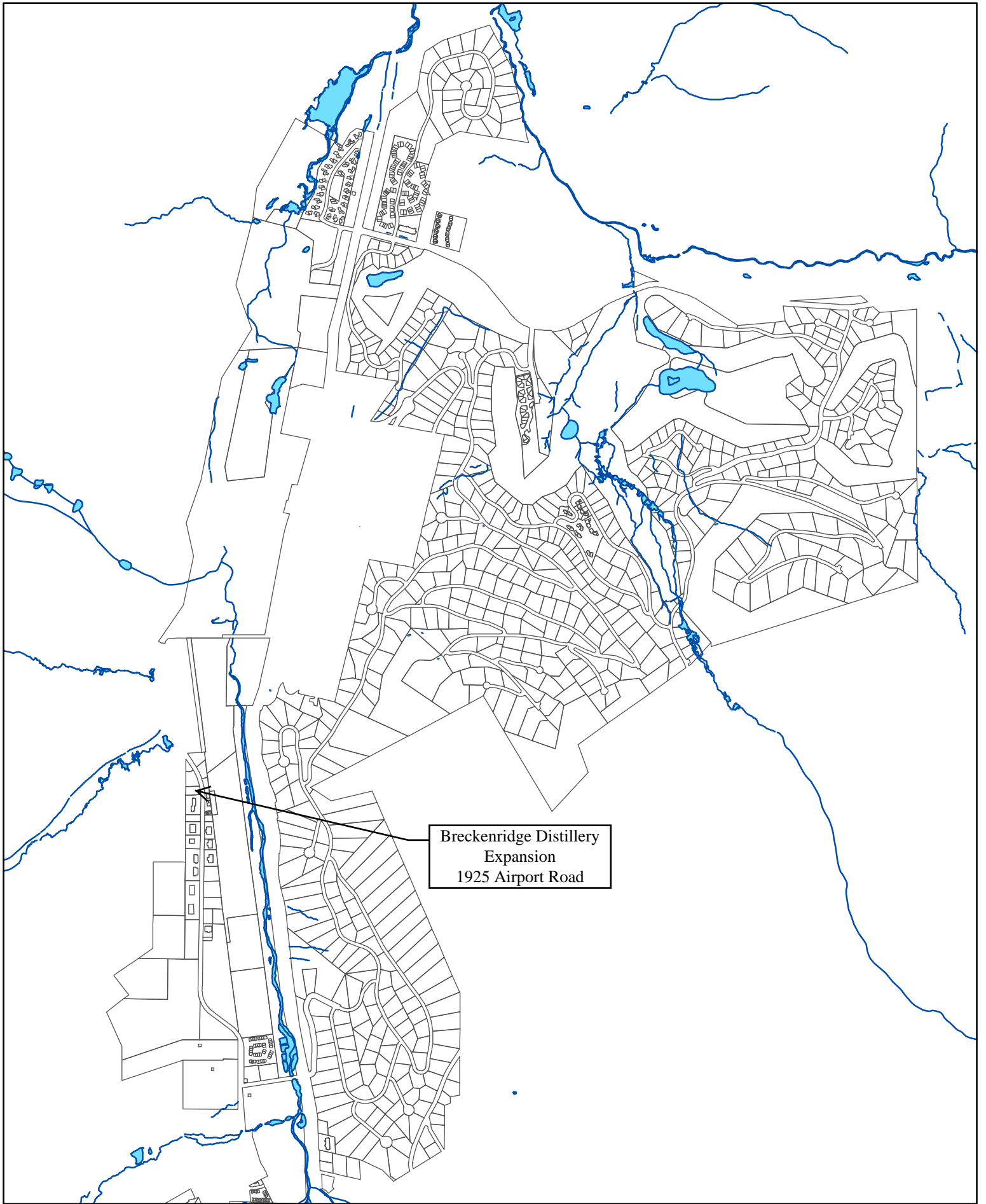
1) Slater Residence Addition (MM) PC#2012048; 487 White Cloud Drive
Addition to existing single family residence to create a total of 6 bedrooms, 6.5 bathrooms, 5,138 sq. ft. of density and 5,879 sq. ft. of mass for a F.A.R. of 1:3.1. Approved.

CLASS B APPLICATIONS:

None.

CLASS A APPLICATIONS:

1) Breckenridge Distillery Expansion (MGT) PC#2012039; 1925 Airport Road
Build a 2,703 sq. ft. addition (for additional storage and daily operations) to the existing 3,896 distillery building. Add three new corn, rye, and barley silos to allow for more storage, which would reduce the number of deliveries to the business. The addition will match the colors and materials of the existing structure. Approved.



Breckenridge Distillery
Expansion
1925 Airport Road

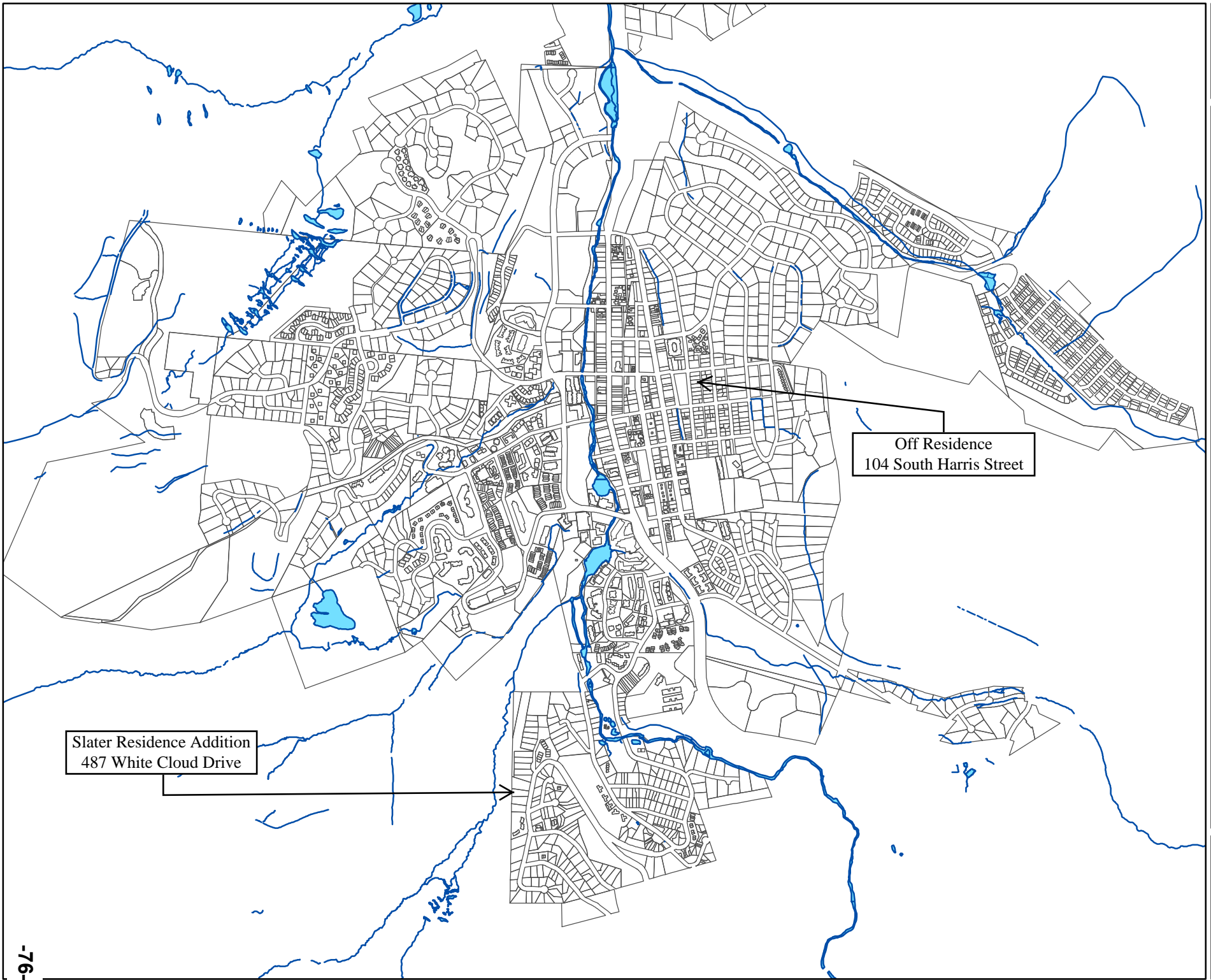


Town of Breckenridge and Summit County governments
assume no responsibility for the accuracy of the data, and
use of the product for any purpose is at user's sole risk.

Breckenridge North

printed 4/12/2011



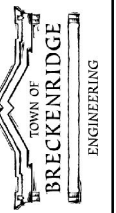


NOT TO SCALE

printed 4/12/2011

Breckenridge South

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



PLANNING COMMISSION MEETING

The meeting was called to order at 7:00 pm.

ROLL CALL

Kate Christopher Trip Butler Gretchen Dudney
Jim Lamb Dave Pringle arrived at 7:03 pm
Dan Schroder, Michael Rath and Gary Gallagher, Town Council Liaison, were absent.

APPROVAL OF AGENDA

With no changes, the July 5, 2012 Planning Commission meeting agenda was approved unanimously (7-0).

APPROVAL OF MINUTES

With no changes, the June 19, 2012 Planning Commission meeting minutes were approved unanimously (7-0).

TOWN COUNCIL REPORT:

None.

CONSENT CALENDAR:

1. Slater Residence Addition (MM) PC#2012048; 487 White Cloud Drive
Mr. Pringle: Are they lifting up the driveway? (Mr. Neubecker: The area underneath the new driveway will be parking. The area that used to be the garage, on the lower level, will be living space.) So they still have an easement over the neighbor's lot? (Mr. Neubecker: Yes. The existing driveway will remain. The other house still needs to get access through that driveway.) Would they then remove that easement in the future? (Mr. Neubecker: They want to keep the easement as is; the neighbors get along with each other.) (Mr. Sonny Neely, Architect for the Applicants: That is right, they are friends, and this solves major drainage issues on the lot. There was often a frozen pond on the entry and into their garage.) (Mr. Neubecker: It also provides extra parking on-site. At times we have been criticized for not providing enough parking.) My concern was cleaning up the encumbrances between the two lots. Project is fine with me.

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

FINAL HEARINGS:

1. Breckenridge Distillery Expansion (MGT) PC#2012039; 1925 Airport Road
Mr. Thompson presented a proposal to build a 2,703 sq. ft. addition (for additional storage and daily operations) to the existing 3,896 distillery building, and add three new corn, rye, and barley silos to allow for more storage, which would reduce the number of deliveries to the business. The addition will match the colors and materials of the existing structure. Mr. Thompson stated that the Applicant, Brian Nolt, apologized for not being able to attend the meeting this evening. He is a physician, and is working at the hospital tonight.

This proposal was heard by the Planning Commission at the June 5, 2012 meeting. There was an issue raised as to whether the cupola element qualified for an exemption from building height. After a discussion the majority of the Planning Commission agreed that this element qualified for the height exemption. Some members of the Commission asked the owner of the distillery to consider reducing the height of this element. The owner has chosen not to change this design element on the roof of the proposed addition. No changes are proposed from the preliminary hearing. Staff added a condition of approval, #22, to paint the silos the same color as the building.

Staff recommends approval of the Breckenridge Distillery Addition, PC# 2012039, located at 1925 Airport Road, Lot 1BC, with the attached Findings and Conditions.

Commissioner Questions / Comments:

- Ms. Christopher: You said the paint on the silos would match the rest of the building. What if it is paint on metal? (Mr. Thompson: There is paint that is specifically for metal.)
- Mr. Lamb: The application is pretty straightforward.
- Mr. Pringle: Have we defined a cupola? We are setting a treacherous precedent here. This is a loose interpretation of extending the height for no clear need here. They could get glass light and ventilation without the cupola extending so high. This clerestory feature is over one-third the length of the ridge.
- Mr. Lamb: The code does not state “the height should not exceed one third over the building”.
- Mr. Pringle: A cupola is what sits on the county courthouse. (Mr. Thompson: Just to clarify, the word “cupola” is the Applicant’s language; it is not what is in our code.)
- Mr. Lamb: The code reads “an area without density”. (Mr. Thompson: Correct, there is no floor in there. It is not like a loft; it is an open space.)
- Ms. Christopher: I echo Mr. Lamb. It is not density. It is a functional space, not density just for the heck of it.
- Mr. Butler: There is no issue with me.
- Mr. Pringle: I think this makes a horrible precedent. We have held the line so much and now this seems an excessive use for the height.

Ms. Dudney opened the hearing to public comment. There was no public comment and the hearing was closed.

Mr. Lamb made a motion to approve the point analysis for the Breckenridge Distillery Expansion, PC#2012039, 1925 Airport Road. Mr. Butler seconded, and the motion was carried unanimously (5-0).

Mr. Lamb made a motion to approve the Breckenridge Distillery Expansion, PC#2012039, with the presented findings and conditions. Ms. Christopher seconded, and the motion was carried unanimously (5-0).

PRELIMINARY HEARINGS:

1) Off Residence (MGT) PC#2012042; 104 South Harris Street.

Mr. Thompson presented a proposal to construct a 2,853 sq. ft., four bedroom, four bath, single family house with an attached garage. Mr. George Off and Mrs. Tara Off are in the audience, as is Ms. Janet Sutterley, Architect for the Applicant. The primary siding material is 4 ½” horizontal bevel lap cedar siding, the secondary siding material is vertical 1 x 6 square edge cedar tongue and groove or ship lap. The primary roof material is 50-year heavy weight asphalt composition shingles, with a metal roof over the garage and second floor bathroom.

The applicant’s proposal of 2,080 sq. ft. of above ground density at 9.06 UPA is in substantial compliance with Policy 5(A) and Priority Policy 118. However, going over 9 UPA incurs three negative points (Aboveground Density UPA point deductions: 9.01 – 9.50 incurs negative three (-3) points).

Staff believes there is an issue with the size of the front module. The applicant has calculated the front module at 1,495 sq. ft., which includes the main level and upstairs. However, the applicant is counting the 54 sq. ft. upper level bathroom, which is accessed from an upper level bedroom, as part of the connector element. Staff believes that when viewed from the north and south elevations this bathroom appears to be part of the front module, not the connector element, and it is connected to the front module by the floor plan. If the upper level bathroom is part of the front module then it is over the average module size of 1,500, as it would be calculated at

1,549 sq. ft.

Does the Planning Commission agree with Staff interpretation on this module size?

Priority Policy 80A. Use connectors to link smaller modules and for new additions to historic structures.

- **The width of the connector should not exceed two-thirds the façade of the smaller of the two modules that are to be linked.** The proposal meets this requirement, the width of the connector does not exceed two-thirds the façade of the rear module.
- **The wall planes of the connector should be set back from the corners of the modules to be linked by a minimum of two feet on any side.** The structure meets this requirement by stepping in two feet on the north elevation and twelve feet on the south elevation.
- **The height of the connector should be clearly lower than that of the masses to be linked. In general, the ridge line of the connector should be at least two feet less than that of the original, principal mass.** The height of the connector to the top of the bathroom shed roof is measured at 20' and the rear module is also measured exactly at 20' in height. Staff believes that the applicant is failing this Priority Policy by not designing the connector to be "clearly lower than that of the masses to be linked".

(Note: the plans included in the Planning Commission packet were different than the plans which are proposed; there is a slightly larger window on the north elevation.)

The applicant proposes to move the historic shed to facilitate the proposed addition. Therefore, Staff suggests, and as past precedent supports, assigning negative points under Policy 5/R, Architectural Compatibility for rearranging historic structures in order to facilitate new development. We note, moving historic buildings can still be proposed, as long as the Priority Policies are met and as long as the negative points can be mitigated. Based on past precedent and the Code, we are suggesting negative five (-5) points for moving the historic shed, which alters the original interpretation of the site. The Whitehead building (the Prospector building) is not correct precedent and is to be stricken from the report. Our apologies for the incorrect example. That shed was added in the late 1960s or early 1970s and was not the historic location.

The shed is a contributing building, and staff believes that removal of significant amounts of salvageable historic fabric would cause a reduction in the historic rating. Applicant has agreed to keep the historic fabric in place. These are significant and expensive restorations that deserve positive points under policy 24/R-Social Community. Staff finds that this application is most comparable to the Ducayet Residence and the Hastings Residence in scope, and staff recommends six (+6) positive points under this policy. +15 points is the maximum allowed.

The front yard setback is met at twenty three feet (23'); also this twenty three feet (23') setback respects the established front yard setback of the historic residences on Lot 1 and Lot 4, Block 7, Yingling and Mickles. The side yard setback to the southern property line is meeting the relative setback of five feet (5'). There recommended rear yard setback of fifteen (15') is not being met as it is proposed at ten (10') to the garage. The relative side yard setback is not being met on the north property line, where it is proposed at three feet (3'). Also, there is a roof overhang that encroaches another 18" into the side yard setback; the 18" encroachment into the three feet (3') side yard setback can only occur with Planning Commission approval. There are two setback encroachments, which incurs negative three (-3) points each, for a total of negative six (-6) points. Is the Planning Commission comfortable with the 18" roof overhang encroachment along the north property line?

At this time, Staff believes, that the application warrants the following points: 5/R – Above Ground

Density: negative three (-3) points for going over 9UPA to 9.06 UPA, Policy 5/R – Architectural Compatibility: negative five (-5) points changing the orientation of the historic shed, Policy 9/R – Placement of Structures: negative six (-6) for not meeting two setbacks, the recommended side yard setback on the north property line and the garage which does not meet the recommended rear setback, Policy 18/R – Parking: positive two (+2) for accessing the parking in the rear and putting it inside a garage off the alley, Policy 22/R – Landscaping: zero (0) points at this time (possible two points if changes made to landscaping plan), and Policy 24/R – Historic Preservation: positive six (+6) points for restoring the historic shed, for a total of negative fourteen (-14) points and positive eight (+8) with a possible positive two (+2) more points if changes are made to the landscaping plan.

Staff has the following questions for the Planning Commission:

1. Does the Commission agree with the Staff's interpretation of Priority Policy 118 related to the front module size?
2. Does the Commission agree with the Staff's interpretation of Priority Policy 80A related to the connector not being clearly lower than the masses to be linked?

(The Commission took a five minute break.)

Ms. Dudney called the meeting back to order.

Commissioner Questions / Comments:

- Mr. Butler: Did you say you were going to talk about the front module more? (Mr. Thompson: No, I said I would talk about the connector.)
- Mr. Pringle: When we say the average module size, is that a hard number, or a number encouraged to be close to? At 1,500 square feet or 1, difference 549 square feet, is that 49 feet a significant amount? Have we hit the intent here? Is 49 square feet too much?
- Mr. Lamb: It works out to 3%; is that 1,500 or 1,501? Does it say should not exceed 1,500? (Mr. Thompson: The average size is 1,500. (He quoted the relevant section from the code.)
- Mr. Pringle: If the median size is 1,500 square feet, it sounds like you have respected the average size; it does not say it is a hard number. If you went to 1,450 would you get negative points? whereas 9 UPA is a clear hard number.
- Ms. Christopher: Within 14 feet? (Ms. Dudney: Actually it is 49 feet.) I feel that is respecting the average.
- Mr. Butler: I am comfortable with meeting the 1,500 feet average.
- Mr. Lamb: This is all interconnected. 3% over the guidelines. On 9 UPA, if you are 1% over, you are over, but this I am not hearing this is over.
- Ms. Dudney: I agree with all of you. What about the issue of the 20 feet in the connector?; height of bathroom is 20 feet and height of garage is 20 feet?

Ms. Janet Sutterley, Architect: Talking about the South elevation. I have three items:

Point One: Policies 80A and 118: These are closely related. We are focusing directly on the upper level bathroom. I will address 80A first. In our first submittal, the bathroom roof was even with the module. I lowered the rear roof two feet and then put all wall areas in one plane away from the rear module. Element is viewed more from the south. Roof is now two feet below the module. 80A bullet 3 "height of connector should be clearly lower than the two masses to be linked." I can't understand why this doesn't meet 80A there is nothing in the code that suggests anything with respect to the grade change. Code clearly addresses the ridge relationships and we are two feet below the rear module ridge. How does this not meet Policy 80A? That is my question to the Commission. How this relates to Policy 118: the bathroom is part of connector.

Does not make a difference what it is connected to internally. Should not matter what is going on internally. This is more of visual based discussion, not code based discussion. Don't notice as much from North side, which is why I am pointing out the South side. All reads as one plane.

Point Two: The shed: I read Larry Crispell's letter, and I agree 100%. I think his concern came from the shed on the neighboring property. Really important to have a plan up front; we plan to stabilize, and then move the shed. Not in agreement of taking boards off and numbering them and then replacing them in same order.

Going through staff's point analysis:

- 1) Stroble Residence: Received negative five (-5) points. This was the house, primary structure, primary façade, not the shed. I don't feel like that is comparable.
- 2) The Prospector Building: We already discussed this not being applicable.
- 3) The Silverthorne House: This was moved completely out of its' historic context from back to front of lot.
- 4) Harris Residence: Negative five (-5) points for moving of shed and moving of primary structure three feet to the North. Again, moving of primary structure.
- 5) The sheds on the adjacent property (not stated as an example previously): One shed was not even on the lot. (Mr. Thompson: Went through a variance process to move onto the property. We did not give negative points for moving the shed onto the property.) One off property and one right on the property line. Not given any negative points. (Mr. Pringle: How long ago?) Three or four years.
- 6) Case Residence: Shed on the east side of the same alley.

I know precedent has a lot to do with this. We are talking about moving a shed. Mr. Thompson mentioned it has to do with the orientation of the building. I have other options on the shed, but can't proceed because of five negative points. I can't explore the options because I am starting out with negative five (-5) points right out of the gate. Not really in a position because of harnessing with negative five (-5) points, which is a huge amount of hardship. I believe the intent of the code is to keep buildings in their contexts. Not intent of code to penalize applicants for such minor alterations on their lot.

The big question for me is the shed on the rear of lot; does it really warrant negative five (-5) points? I still feel "no" is the answer. The code does not have a point spread right now; maybe down the road it will, but we can't wait for that potential change. Prior to this we have been moving houses too; this is just a shed.

Point Three: Landscaping: We are on board with staff there; we will work with staff for positive two (+2) points. Would not want spruce in front yard; prefer cottonwoods in front yard. Happy to work with staff if the Commission does not want to get involved.

In summary: Have we met Policy 80A? If we have, is Policy 118 not a significant discussion? Do you support negative five (-5) points on moving the shed? Comment on tree if you like.

Thank you very much.

Commissioner Questions / Comments:

Mr. Pringle: Big question is on Policy 80A.

Ms. Christopher: Where it falls is definition of the word "lower". Are you talking from a side view? Is that an elevation?

Mr. Pringle: Regarding Policy 80A, the policy works really well in some instances; in some it is really difficult to make it work. This might be one of those cases. I thought connecting to a building there are other ways to do it; you can do it with breaks, changing materials, ways to define that break. We have hamstrung ourselves with recent precedent.

Ms. Dudney: Look at actual language; is staff interpreting that language correctly?

- Mr. Pringle: We are talking about the principal mass being in front.
- Ms. Christopher: Yes, definitely lower than the house in front even if looking in the back, my definition of “lower” applies.
- Mr. Lamb: The link does meet “lower”.
- Ms. Dudney: I agree.
- Mr. Pringle: If you hit two bullet items and 50% of third, does that comply?
- Mr. Lamb: The code starts with “in general”, so that makes it problematic right off the bat.
- Ms. Dudney: We addressed 80A and we addressed the square footage issue earlier (should it be calculated at 1,549 versus 1,500).
- Mr. Lamb: On the square footage, we are incurring negative points because we are so close. If we cut 16 feet off front module, you are 33 square feet over. (Ms. Sutterley: Yes, we are really close, but we needed to see where we were at tonight. We needed bigger answers tonight.) 33 feet is much closer than 49 feet.
- Ms. Dudney: I have no issue between 33 versus 49 feet if the average is 1,500. It does not say, “can’t be bigger than 1,500”.
- Ms. Christopher: Agreed.

(Regarding the shed)

- Mr. Lamb: Negative five (-5) points for moving the shed.
- Ms. Dudney: Question for the Applicant: if we were to allow this to be vague and subjective, no one would know where they stand. Do you agree? (Ms. Sutterley: I agree it needs to be case by case. There is a big difference moving primary vs. small structures. That should not be the same.)
- Mr. Lamb: The Code is not written that way; small structure versus large. I hear what you are saying; but don’t see in the code where it says that. (Mr. Neubecker: We are recommending positive six (+6) for restoring the shed. If the shed is “just a shed”, is that correct? If it is “just a shed” for moving, then it should be “just a shed” for positive points for restoration as well, and thus fewer positive points. We believe sheds are very important to the heritage to the Town.) (Mr. Thompson: A lot of people refer to this as “shed alley”.)
- Mr. Pringle: That is because we have done a good job preserving sheds. Look at the Doss property (Legacy Place). I don’t think we gave them negative points for moving sheds. (Mr. Neubecker: That is very possible, but we want to correct our mistakes. We got our hands slapped by the State for rotating a cabin in the same location. They are very important structures.) The Silverthorne House was changing the context of that historic structure. (Mr. Thompson: Code does not differentiate between primary and secondary structures.) (Ms. Sutterley: On the question of how would you feel; we are not given precedent for negative five (-5) points other than the Theobald project, which I meant to go over in my presentation. We have not set a precedent; none of the other sheds have been given negative five (-5) points. I feel like we are the first one. This is a completely different situation. We are setting precedent for moving just a shed and getting dinged.) I think the restoration is very important.
- Ms. Christopher: Is this shed pointing towards the other sheds on Lot 2? (Ms. Sutterley: If we could, we would keep orientation as it is and move two feet to the south.) Did this shed used to belong to Lot 2 to the north? (Mr. Thompson: It was more likely related to Lot 1. The owner of Lot 1 owned Lots 1, 2 and 3.) I see about taking a hit, but I also see we are changing the street orientation of the shed from orientation to Lot 1. Now we are moving it to relate to Harris Street, which changes the orientation. (Mr. Neubecker: The question for the Planning Commission is context. Talking about moving two feet to the south; what if it was three feet? What is too much?)

Ms. Dudney opened the hearing to public comment. There was no public comment and the hearing was closed.

Ms. Dudney inquired as to whether the Applicants had any further comments.

Mr. George Off: Our family came to Colorado in the 1870's. I have been skiing Breckenridge since the 1960's. We love Breckenridge, love the historic character, and want to support that, but negative points associated with the shed are hard. We prefer to keep the shed in the context it is in.

Ms. Tara Off: We can overcome negative three (-3) points for the setback, but not negative eight (-8) for the combination of the moving and the setback. It seems like a fairly large penalty to overcome. (Mr. Pringle: I agree with you.)

Commissioner Questions / Comments:

Mr. Pringle: I agree with the Applicants. I have been talking about this for the last several meetings. If they just pick up and move the shed two feet to the south, no one will ever know; it is so insignificant. Negative eight (-8) points is insurmountable.

Ms. Christopher: Moving two feet is different than rotating it and moving it a long way; there is no difference in the code. Moving is moving.

Ms. Dudney: If you were subjective about moving them, would you also be subjective about the restoration of "just a shed"?

Mr. Pringle: Not as weighty an issue as primary structure. Now if we do this we can't go back.

Mr. Lamb: If we don't agree with that, we should change the code.

Ms. Christopher: The code says moving structures. We can't change the code tonight.

Mr. Lamb: I agree, but the code says what it says.

Mr. Pringle: We used to say "no harm no foul". (Mr. Thompson: That is not what happened next door; they went through a variance.) (Ms. Off: May I ask a question? There were two sheds on the property to the north; one was off the property, one moved on with no negative points. The second was on property, was moved and then connected to first shed, but got no negative points? Why is that different?) (Mr. Thompson: We took a lot of heat from those sheds. That was a complete mistake; we should have awarded negative points.) (Mr. Neubecker: We have recent precedent that is more important. We had consensus on the Planning Commission that we don't want to move structures, and the way we discourage that is by awarding negative points.) (Ms. Off: But recent precedent you are quoting is not a shed, so there is not any recent precedent relating to a shed.)

Mr. Butler: Context argument is best argument for leniency. Context here is not like anything else. But I don't see any opportunity for wiggle room in the code. Negative five (-5) points.

Ms. Dudney: I agree, but would like to see a work session on this to discuss having separate discussion on sheds, not as many negative points, but not as many positive points either. Agree there is not opportunity but the code is clear. Negative five (-5) points.

Mr. Pringle: Policy 60A states if you do anything to a historic structure, it diminishes your ability to do anything. We have to be reasonable. We have allowed people to move structures to increase livability and vitality in the historic district. Staff seems to take hard line approach. There are years of precedent where we have allowed applicants to move structures, no harm no foul.

Ms. Christopher: I concur with Ms. Dudney that we go over precedence in a future work session.

Mr. Lamb: This seems to be coming up a lot. On windows and landscaping, I am fine with the windows. Groupings of three windows are fine. On the landscaping, the Applicant and staff can work out with the Town. I would not want spruce either, but I see that as minor and staff can work it out.

- Mr. Butler: I am comfortable with windows and Applicant and staff working on landscape.
- Ms. Christopher: I would go with spruce or cottonwood for the landscaping. I prefer the narrower window as presented in the packet.
- Mr. Pringle: Agree with Ms. Christopher on the windows; narrower is more consistent. Three together is fine. Generally need to be more consistent.
- Ms. Christopher: What I meant was, on the new elevation, I didn't like seeing one wider window.
- Mr. Pringle: Windows 1 2 3 4 on the north side; need reason for them to be different sizes. Landscaping, "better landscaping is better landscaping", not more landscaping. It is required. Two trees leaning, agree they are hazard. Not sure what you do to make up negative points.
- Ms. Dudney: I am indifferent on windows and landscaping; leave up to staff and Applicants.

OTHER MATTERS:

- 1) Class C Subdivisions Approved 1/1/12 – 6/30/12 (Memo Only)

ADJOURNMENT:

The meeting was adjourned at 8:49 p.m.

Gretchen Dudney, Vice Chair



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, unless otherwise noted.

JULY 2012

Tuesday, July 10; 3:00/7:30 p.m.	First Meeting of the Month
Friday, July 13; Amazing Grace	Coffee Talk
Tuesday, July 24; 3:00/7:30 p.m.	Second Meeting of the Month

AUGUST 2012

Friday, August 10; tbd	Coffee Talk
Tuesday, August, 14; 3:00/7:30 p.m.	First Meeting of the Month
Friday, August 24; Main St Breckenridge	USA Pro Cycling Challenge
Tuesday, August 28; 3:00/7:30 p.m.	Second Meeting of the Month

OTHER MEETINGS

1 st & 3 rd Tuesday of the Month; 7:00 p.m.	Planning Commission; Council Chambers
1 st Wednesday of the Month; 4:00 p.m.	Public Art Commission; 3 rd floor Conf Room
2 nd & 4 th Tuesday of the Month; 1:30 p.m.	Board of County Commissioners; County
2 nd Thursday of every other month (Dec, Feb, Apr, June, Aug, Oct) 12:00 noon	Breckenridge Heritage Alliance
2 nd & 4 th Tuesday of the month; 2:00 p.m.	Housing/Childcare Committee
2 nd Thursday of the Month; 5:30 p.m.	Sanitation District
3 rd Monday of the Month; 5:30 p.m.	BOSAC; 3 rd floor Conf Room
3 rd Tuesday of the Month; 9:00 a.m.	Liquor Licensing Authority; Council Chambers
4 th Wednesday of the Month; 9:00 a.m.	Summit Combined Housing Authority
4 th Wednesday of the Month; 8:30 a.m.	Breckenridge Resort Chamber; BRC Offices
4 th Thursday of the Month; 7:00 a.m.	Red White and Blue; Main Fire Station
TBD (on web site as meetings are scheduled)	Breckenridge Marketing Advisory Committee; 3 rd floor Conf Room

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