



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING

Tuesday, July 24, 2012; 7:30 PM
Town Hall Auditorium

I	CALL TO ORDER, ROLL CALL	
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	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)	

*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.

X OTHER MATTERS

XI SCHEDULED MEETINGS

55

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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I CALL TO ORDER, ROLL CALL

Mayor Warner called the meeting to order at 7:41pm. The following members answered roll call: Mr. Gallagher, Ms. McAtamney, Ms. Wolfe, Mr. Brewer, Mr. Dudick, Mr. Burke, and Mayor Warner.

II APPROVAL OF MINUTES - JUNE 26, 2012

The following changes were made to the June 26, 2012 minutes: Mayor Warner corrected the amount listed on page four of the minutes under new business from \$60,000 to \$600,000; Mr. Dudick corrected the vote count in the executive session from a vote of 6-1 to a vote of 6-0 because he recused himself from the vote; and, Ms. McAtamney corrected the spelling page 3 from Mariai to Mairi. Mayor Warner ordered the minutes approved as corrected.

II APPROVAL OF AGENDA

There were no changes to the agenda.

IV COMMUNICATIONS TO COUNCIL

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

There were no citizen comments.

B. BRECKENRIDGE RESORT CHAMBER UPDATE

John McMahon, Director Breckenridge Resort Chamber, stated that so far the summer numbers were showing pretty strong increases; occupancy is showing a 21% growth and there has been a 6.3% increase in ADR; so far the summer is pacing 12% ahead; people have been re-directed to Breckenridge because of the fire impacts in other areas of the state; the BRC has been getting some fire impacts questions but does not feel that the fires have had a direct impact on Breckenridge; he attended a meeting with the Colorado Tourism Board to discuss recovery, communications strategies, and impacts from the fires in CO. Mr. McMahon also stated that he will be providing more feedback from Kingdom Days and the impact from gondola opening early from BMAC, but that so far the feedback seems to be positive; the BRC is in support of the rodeo and is helping with their advertising and sponsoring some related activities; the BRC's annual meeting is planned for this coming Thursday; and they are in the process of planning for the upcoming 2013 season.

Mayor Warner let Mr. McMahon know that the Council had discussed the SnowBall and Ice Castle events in the work session and that overall there was positive feedback for both events. The Council was not sure about the timing of the SnowBall. The Council's direction to Mr. McMahon on the SnowBall was that they would like to see this event the first week of April (April 4, 5 & 6) and not in February or March; they liked how this event would attract a younger demographic to the town. Mr. McMahon stated that he appreciates the feedback on these events and stated that the BRC really feels that the Ice Castle event really fits the image of Breckenridge and is a good addition to the snow sculptures.

Mayor Warner and Ms. Mctamney commented that the fourth of July parade was great. Mr. McMahon asked for any and all feedback regarding the events around the fourth of July. Mayor Warner wanted to pass on some constructive criticism regarding the fourth of July parade; he stated there was some concern about some parade participants taking too much time in front of the announcers; and also concern about the announcers pronouncing everyone's names correctly and being respectful to everyone in the parade. Mr. McMahon appreciated the feedback and would look at addressing both items; he stated that one of the things that the BRC is looking at for 2013 is to have timekeepers involved in the parade to keep a better cadence in the parade.

Mr. Brewer asked for a small update regarding what to expect at the upcoming annual meeting. Mr. McMahon stated that the BRC had just completed their brand survey of Breckenridge; conveying this image will have to be a community wide effort, as it involves everyone, as it is all about the guest experience. He stated that at their annual meeting they would be discussing the re-framing of the Towns advertising image; and that Al White, head of Colorado Tourism, would also be at the meeting to discuss budget challenges and the health of tourism and the effect of the fires; the mission statement would be presented on Thursday.

C. USA PRO CYCLING CHALLENGE UPDATE FROM LOCAL ORGANIZING COMMITTEE CO-CHAIRS

Mike Schilling stated everything is on track and on budget; there will be a press release tomorrow announcing that Maceo Parker will be the live entertainment at the Riverwalk Center immediately following the stage finish, which will be shown live on several jumbo screens; the key sponsors for the event include Grand Lodge on Peak 7, Double Tree, MiCasa, Fatty's, Downstairs at Eric's, Park & Main, Valdora Mountain Lodge, Gilchrist Catering,

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and the Breckenridge Restaurant Association; www.Breckprocyding.com is the clearing house address for all information including road closures; and, tomorrow the first big article regarding the race will be published in the Summit Daily. Mr. Schilling wanted to give kudos to staff for all of their help with this event.

D. RED, WHITE & BLUE FIRE DEPARTMENT UPDATE

Chief Lori Miller updated the Council on the fire danger situation. On Monday, her staff talked with White River National Forest and they decided not to lower the ban. The Fire Department decided to stay with National Forest recommendation, and they will reevaluate on Monday. Chief Miller stated that Smokey the Bear and the fire ban levels are different; the RWBFD is discussing options to help people understand the difference between the fire bans levels and the levels of fire danger; they are discussing different way of communicating this. The Council offered several different suggestions with the end suggestion being to have the sign in Smokey read 'Fire Ban' until the fire ban is lifted, at which time they would go back to the fire danger levels (low, moderate, etc).

Ms. Wolfe asked whether or not there have been any issues with lightning strikes in the County. The Chief stated that there have been no issues with lightning thus far. Chief Miller also stated that if there is any kind of fire update both fire and police will be involved and that SC Alerts will be sent out. She stated that it is possible that they could set up a notification for the Council members to alert them regarding any fire situation.

Ms. McAtamney wanted to pass on appreciation for the communication that came via the Summit County Alert system regarding the smoke that was visible in Summit County. It was great to receive that communication to confirm that there was not a fire in Summit County.

V 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. Tom Daugherty, Public Works Director/Engineer stated that this lease is for a long-term period and thus requires this to be an ordinance. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed. Mr. Dudick moved to approve 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. McAtamney seconded the motion. The motion passed 7-0.

2. 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. Laurie Best, Planner III stated there were no changes to this ordinance since the 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. 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. Burke seconded the motion. The motion passed 7-0.

3. 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 (PINWOOD)

Mayor Warner read the title into the minutes. Mr. Gagen stated that there were no changes to this ordinance since the first reading.

Mayor Warner asked when the Town would see payments. Mr. Gagen stated that the Town would see the debt payment right away and that it is their plan is to get all of the deferred equity paid off. He stated if they paid none of it, it would still move it up by about 4 years from the current projection. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed. Ms. McAtamney 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 (PINWOOD). Mr. Brewer seconded the motion. The motion passed 7-0.

4. Council Bill No. 21, Series 2012 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH THE BRECKENRIDGE OUTDOOR EDUCATION CENTER, A Colorado Non-Profit Corporation

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(Lower Level - The Maggie Building)

Mayor Warner read the title into the minutes. Ms. Best stated there were no changes to this ordinance since the first reading, however there were some changes to the actual development agreement, including a waiver of fees for the application and a waiver of parking requirements. She stated all of these changes were included in the packet, and the new copy handed out today included the provision to waive the housing impact fee.

Mayor Warner opened the public hearing. Tim Casey, chair of the BOEC thanked the Council for considering this item; since this ordinance would allow them to enhance the services offered by the BOEC in this location. 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 Non-Profit Corporation (Lower Level - The Maggie Building) Mr. Burke seconded the motion. The motion passed 7-0.

VI NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2012

1. Council Bill No. 23, Series 2012 - AN ORDINANCE ADOPTING CHAPTER 23 OF TITLE 1 OF THE BRECKENRIDGE TOWN CODE CONCERNING CIVIL EMERGENCIES, EMERGENCIES, AND LOCAL DISASTERS

Mayor Warner read the title into the minutes. Chief Shannon Haynes, Breckenridge Police Department stated that this ordinance defines the specific authority of the Town Mayor and Manager in case of emergencies; and, specifies the powers and provides structure so that there can be a timely and efficient response of town resources. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed. Ms. McAtamney moved to approve Council Bill No. 23, Series 2012 - AN ORDINANCE ADOPTING CHAPTER 23 OF TITLE 1 OF THE BRECKENRIDGE TOWN CODE CONCERNING CIVIL EMERGENCIES, EMERGENCIES, AND LOCAL DISASTERS. Mr. Burke seconded the motion. The motion passed 7-0.

B. RESOLUTIONS, SERIES 2012

1. A RESOLUTION DECLARING THE EXISTENCE OF A WATER SHORTAGE IN THE TOWN OF BRECKENRIDGE; IMPLEMENTING MANDATORY RESTRICTIONS ON THE USE OF WATER BY CUSTOMERS OF THE TOWN'S WATER SYSTEM; AND PROVIDING FOR THE IMPOSITION OF ADMINISTRATIVE WATER SURCHARGES AGAINST PERSONS WHO VIOLATE THIS RESOLUTION

Mayor Warner read the title into the minutes. Mr. Daugherty stated that this resolution was necessary given our current situation with the drought and the low levels of the rivers.

Ms. McAtamney asked about the timeframe for enforcing these restrictions. Mr. Daugherty stated that it would be approximately two weeks before the implementation would occur. Mr. Burke asked about the fee structure. Mr. Daugherty stated that the fee structure is really about getting out the message about water usage than it is about fines. Mayor Warner opened the public hearing. There were no comments and the public hearing was closed. Mr. Gallagher moved to approve A RESOLUTION DECLARING THE EXISTENCE OF A WATER SHORTAGE IN THE TOWN OF BRECKENRIDGE; IMPLEMENTING MANDATORY RESTRICTIONS ON THE USE OF WATER BY CUSTOMERS OF THE TOWN'S WATER SYSTEM; AND PROVIDING FOR THE IMPOSITION OF ADMINISTRATIVE WATER SURCHARGES AGAINST PERSONS WHO VIOLATE THIS RESOLUTION. Mr. Dudick seconded the motion. The motion passed 7-0.

C. OTHER

VII PLANNING MATTERS

A. PLANNING COMMISSION DECISIONS OF JULY 3, 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) Mr. Gallagher stated that there was no work session to attend.

Mayor Warner mentioned an earlier discussion regarding the historic restoration of sheds. The Council stated they would like to review the history of the code regulations for further discussions.

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VIII REPORT OF TOWN MANAGER AND STAFF

No report.

IX REPORT OF MAYOR AND COUNCILMEMBERS

- A. CAST/MMC (MAYOR WARNER) Mayor Warner stated that he had attended the MMC meeting last week and they had discussed several things: 1) They discussed bicycle stop rules; Summit County was wondering if they have the authority to enact bicycle rules within the State Statues. Mayor Warner stated that Town enacted bicycle rules last year. 2) They also discussed the CDOT funding for Highway projects for the coming year; The Town will have to come up with a 10% match for highway projects in Summit County; this will be a topic to bring up with Ski Area. 3) They also discussed CO Mental Health Detox Facility and CO West Mental Health Funding - Heavy loss in 2012; 63% of the users of the facility are Summit County residents; \$100,000 loss in 2013; Facility also serves Lake, Park and Grand county and Lake & Park do not pay toward these funds, so we are asking everyone to step up and contribute to this funding. Glenwood Spring closed their facility. 4) Alton Scales is leaving CMC. 5) Solar Garden-not much to update.
- B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER) Mr. Brewer stated they are meeting next week; they are expecting an update on the Firecracker 50; and the V3 completion report; this trail is a great link to the existing trails, and a safe alternate route for this year's Firecracker 50. He wanted to pass on thanks to the entire trail crew.
- C. BRC (MR. BURKE) Mr. Burke emailed his update to the other Council members, and added he will not be at the annual meeting. Mr. Gagen asked if they needed to address the marketing committee question. Mr. Dudick stated that there is a BMAC meeting next week; he questions the marketing strategy and the marketing staff; and, he feels there is possible conflict of interest within the marketing committee. Mr. Burke suggested we look at the staff make-up. The Council agreed.
- D. MARKETING COMMITTEE (MR. DUDICK) No Report
- E. SUMMIT COMBINED HOUSING AUTHORITY (MS. WOLFE) No Report
- F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER) Mr. Brewer reported they will meet next week to discuss making the museums free, an update on the Wakefield-Sawmill project and, phase two of the Rotary Park.
- G. WATER TASK FORCE (MR. GALLAGHER) No Report.
- H. LANDFILL TASK FORCE (MS. WOLFE) No Report.

X OTHER MATTERS

Mr. Burke and Mr. Dudick shared they have not used any plastic bags since the last meeting.

Ms. Wolfe stated that with all of the public comments about the Rodeo, evaluating events, especially new events to the town, is very important. We should be evaluating them very strongly and with the same criteria for all events so that the town can make informed decision about events in the future and get away from the notion that the Town's decision on events are experimental. Would like to have a formalize criteria, including expenses, nuisance reports, revenues, attendance, etc; Would like to put all events through this same process.

Mr. Gagen stated that the BRC has a process in place to evaluate events. So it might be best to start with them. Ms. Dilallo shared that events that go through the Special Event Permit process have a consistent criteria that are looked at.

Mayor Warner stated he would like to see a long-term strategy for forest health including, an evaluation of ground cover, prescribed cuts, and prescribed burns; and, that he would like to add this item to their top 10 list. Ms. McAtamney added she would like to see a voluntary defensible space initiative in the Town, and possible reforestation projects. Mr. Gagen shared that there is a Forest Health Management Task Force in place.

XI SCHEDULED MEETINGS

XII ADJOURNMENT

With no further business to discuss, the meeting adjourned at 8:59pm
Submitted by Mistaya Pierpont, Administrative Services Specialist

ATTEST:

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Laura Kennedy, Town Clerk

John Warner, Mayor

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 23 (Emergency Powers and Procedures Ordinance)

DATE: July 17, 2012 (for July 24th meeting)

The second reading of the ordinance dealing with Town powers and procedures in the event of an emergency is scheduled for your meeting on July 24th. There are no changes proposed to ordinance from first reading.

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

1 **FOR WORKSESSION/SECOND READING – JULY 24**

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. 23

9
10 Series 2012

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

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

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

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

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

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

34
35 **CHAPTER 23**

36
37 **CIVIL EMERGENCIES, EMERGENCIES, OR LOCAL DISASTERS**

38
39 **SECTION:**

40
41 **1-23-1: Title**

EMERGENCY POWERS AND PROCEDURES ORDINANCE

- 1 1-23-2: Legislative Declaration
- 2 1-23-3: Definitions
- 3 1-23-4: Authorization to Issue Declaration of Civil Emergency, Emergency, or Local
- 4 Disaster
- 5 1-23-5: Filing of Declaration
- 6 1-23-6 Term of Declaration
- 7 1-23-7: Succession of Authority
- 8 1-23-8: Powers
- 9 1-23-9: Enforcement of Orders
- 10 1-23-10: Authority to Enter Property
- 11 1-23-11: Location of Town Council Meetings and Departments
- 12 1-23-12: Mutual Aid Agreements
- 13 1-23-13: Access to TABOR Funds
- 14 1-23-14: Report By Town Manager/Discretionary Ratification By Town Council
- 15 1-23-15 Conflict With Other Laws

17 1-23-1: TITLE: This Chapter shall be known and may be cited as the “Town of
 18 Breckenridge Civil Emergency, Emergency, and Local Disaster Ordinance.”

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

30 1-23-3: DEFINITIONS:

- 32 A. As used in this Chapter, the following words have the following meanings,
 33 unless the context otherwise requires:

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

10
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

1 **1-23-6: TERM OF DECLARATION: The declaration of a civil emergency, emergency, or**
2 **local disaster shall be in effect as determined by the person issuing the declaration for a**
3 **period of up to seven (7) days. This period may be extended upon submission of a request**
4 **by the person issuing the declaration and the approval of the Town Council. In the event a**
5 **quorum of the Town Council cannot be assembled to approve a continuance of the**
6 **declaration, such declaration shall remain in effect until such time as a quorum can be**
7 **assembled. In the event a quorum of the Town Council can meet to provide the Town**
8 **Manager with advice and consultation during the pendency of a declaration, such meeting**
9 **shall be held in compliance with the Colorado Open Meetings Law and Town Council**
10 **Rules and Procedures as soon as possible, but in no event later than seven (7) days**
11 **following the initial declaration.**

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

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

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

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

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

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

33 (e) **an order requiring the closing of businesses deemed nonessential by the Town**
34 **Manager.**

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

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

42 (h) **subject to any applicable requirements for compensation, commandeer or**
43 **use any private property if the Town Manager finds this action necessary to cope with the**

EMERGENCY POWERS AND PROCEDURES ORDINANCE

1 civil emergency, emergency or local disaster.

2 (i) appropriate and expend funds, execute contracts, authorize the obtaining and
3 acquisition of property, equipment, services, supplies and materials without the strict
4 compliance with procurement regulations or procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

41
42 1-23-9: ENFORCEMENT OF ORDERS:
43

1 (a) The members of the Police Department, code enforcement, and such other law
2 enforcement and peace officers as may be authorized by the Town Manager are authorized
3 and directed to enforce the orders, rules, and regulations made or issued pursuant to this
4 Chapter. All members of the public shall be deemed to have been given notice of the
5 restrictions contained within a declaration upon its dissemination to the news media or
6 publication on the Town website or other means of publicity.

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

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

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

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

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

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

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

31
32 1-23-11: LOCATION OF TOWN COUNCIL MEETINGS AND DEPARTMENTS:

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

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

42 (3) Whenever a civil emergency, emergency, or local disaster makes it imprudent
43 or impossible to conduct the affairs of any department of the Town at its regular location,

EMERGENCY POWERS AND PROCEDURES ORDINANCE

1 such department may conduct its business at any place, inside or outside the Town limits,
2 and may remain at the temporary location until the civil emergency, emergency or local
3 disaster is declared ended or until the department is able to return to its normal location.

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

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

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

16
17 **1-23-12: MUTUAL AID AGREEMENTS:**

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

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

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

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

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

1 **actions taken by the Town Manager during the declaration. In the event that a resolution is**
2 **not approved, the Town Manager report shall be retained by the Town Clerk and made a**
3 **part of the official record of the Town Council Meeting at which the report was discussed**
4 **by the Town Council in conjunction with the Town Manager.**

5
6 **1-23-15: CONFLICT WITH OTHER LAWS: If any provision of this Chapter conflicts**
7 **with the Town Charter, the Town Charter shall control. If any provision of this Chapter**
8 **conflicts with any provision of this Code, or any provision of the Town Councils**
9 **Procedures and Rules of Order, this Chapter shall control.**

10
11 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
12 various secondary codes adopted by reference therein, shall continue in full force and effect.

13
14 Section 3. The Town Council hereby finds, determines and declares that this ordinance is
15 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
16 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
17 thereof.

18
19 Section 4. The Town Council hereby finds, determines and declares that it has the power
20 to adopt this ordinance pursuant to Section 15.8 of the Breckenridge Town Charter, and the
21 authority granted to home rule municipalities by Article XX of the Colorado Constitution.

22
23 Section 5. This ordinance shall be published and become effective as provided by
24 Section 5.9 of the Breckenridge Town Charter.

25
26 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
27 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
28 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
29 _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
30 Town.

31
32 TOWN OF BRECKENRIDGE, a Colorado
33 municipal corporation

34
35 By _____
36 John G. Warner, Mayor

37
38 ATTEST:

39
40 _____
41 Town Clerk

42
43 500-329\Emergency Powers and Procedures Ordinance (07-17-12)(Second Reading)

EMERGENCY POWERS AND PROCEDURES ORDINANCE



MEMORANDUM

To: Mayor & Town Council
From: Tim Gagen, Town Manager
Date: July 17, 2012
Subject: *Breckenridge Grand Vacation (BGV) & Vail Resorts Development Agreement*

The owners of BGA have approached the Town regarding a potential time share development at the Base of Peak 8 in the general location of the Berghof Restaurant. This proposed site is part of the Peak 8 Master Plan with Vail Resorts (VR) and would be purchased from VR. Before beginning the formal planning review process, BGV has requested a development agreement with the Town to deal with certain development related issues. The following issues are addressed in the proposed development agreement before the Council for consideration tonight on First Reading:

1. Ability to begin infrastructure improvements and demolition of the Berghof prior to issuance of building permit.
2. Extent vesting by one year from the normal three years.
3. Increase the bonus multiplier for conference/amenity space from approximately 6,000 square feet to approximately 18,000 square feet.
4. Decrease parking requirement to 1.7 spaces per parking study.
5. Transfer 11.5 residential SFE's and five commercial SFE's via TDR from Open Space bank.
6. Reclassify already built and future proposed public restroom space, employee locker room space and storage spaces as listed in the Peak 7 and 8 Master Plan as skier services to new category that does not require density.

In connection with the requested changes listed, the proponents are providing \$25,000 to be applied toward the Town's ongoing Cucumber Gulch preservation activities.

The development agreement, if approved, does not approve the proposed development. It only provides a framework upon which the development can be considered by the Planning Commission. The development is still subject to full review by the Planning Commission including a fit test and ultimate approval by the Town Council.

The proposed development agreement has been subject to give and take by the Council and proponents and we believe is now ready for formal Council consideration.

1 ***FOR WORKSESSION/FIRST READING – JULY 24***

2
3 COUNCIL BILL NO. _____

4
5 Series 2012

6
7 AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
8 VAIL SUMMIT RESORTS, INC., a Colorado corporation, AND PEAK 8 PROPERTIES, LLC,
9 a Colorado limited liability company)

10
11 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
12 COLORADO:

13
14 Section 1. Findings. The Town Council of the Town of Breckenridge finds and
15 determines as follows:

16
17 A. Vail Summit Resorts, Inc., a Colorado corporation (“**VSR**”) is the owner of the
18 Remainder of Tract C, Peak 8 Subdivision Filing No. 1 according to the Plat thereof recorded
19 March 24, 2010 at Reception No. 936240, Summit County, Colorado (“**Property**”).

20
21 B. VSR and Peak 8 Properties, LLC, a Colorado limited liability company (“**Peak 8**”),
22 are in discussions related to a potential sale of an approximately 2.1 acre portion of the Property
23 (the “**Sale Parcel**”) for Peak 8 to develop in a manner similar to Peak 8’s project known as
24 Grand Lodge on Peak 7.

25 C. The Property is subject to the Master Plan - Amended, Breckenridge Ski Resort,
26 Amendment to May 2003 Peaks 7 & 8 Master Plan approved by the Breckenridge Town Council
27 on April 8, 2008, notice of which approval was recorded June 3, 2008 at Reception No. 889143
28 of the Summit County, Colorado records (the “**Master Plan**”).

29 D. As owner of the Property, VSR has the right to propose an amendment to the Master
30 Plan, to request density transfers to the Property, to request Town approval for the gross density
31 recommended by the Town’s Land Use Guidelines (“**Guidelines**”) to be exceed as provided for
32 in Subsection 9-1-19:39.I.(2) of the Breckenridge Town Code, and to enter into agreements with
33 the Town concerning such amendment to the Master Plan, such a density transfer, such density
34 in excess of that recommended by the Guidelines, and such other matters as the Town and the
35 VSR may agree is appropriate.

36
37 E. Pursuant to Chapter 9 of the Breckenridge Town Code the Town Council has the
38 authority to enter into a development agreement. Further, in connection with a master plan
39 amendment, there is no process in the Town’s Development Code for approval of density in
40 excess of that recommended by the Guidelines and the transfer of density pursuant to a
41 certificate of development rights (“**TDRs**”) issued pursuant to the Intergovernmental Agreement
42 concerning transfer of development rights between the Town and Summit County, Colorado
43 (“**IGA**”), and, therefore, a development agreement provides a means for such an approval and
44 transfer.

1 F. In order for Peak 8 to develop the Sale Parcel in a manner that will enhance the sale
2 of Peak 8's timeshare product an additional 11.5 SFEs of residential density and 5 SFEs of
3 commercial density will be required and an amendment to the Master Plan and authorization to
4 use TDRs to accommodate such density will be required.

5 G. In connection with the future development of the Property, it has been proposed that
6 there should be an amendment to the Master Plan to authorize an increase in the 200% multiplier
7 for amenity space as provided for in Subsection 9-1-19:24 (Relative): D of the Breckenridge
8 Town Code to 600% in order to further encourage meeting and conference facilities or recreation
9 and leisure amenities.

10 H. In connection with VSR's ability to complete the potential build-out authorized under
11 the Master Plan and provide additional improved facilities to service VSR's guests, including
12 facilities planned to be included in Peak 8's development of the Sale Parcel, an amendment to
13 the definition of Guest Services in the Master Plan has been proposed to provide for existing and
14 future non-income producing space for such functions as employee lockers, public restrooms,
15 storage areas, and lift and lift personnel facilities not to be treated as density or mass.

16 I. Based on parking data provided by Peak 8 verifying that, at its two other timeshare
17 resorts in Breckenridge (Grand Timber Lodge and Grand Lodge on Peak 7), the average number
18 of cars parked per two bedroom unit with a lock-off or divisible room was 1.55 over the 12
19 months from April, 2011 through March, 2012, a variance or exception of the requirement under
20 Subsection 9-3-16:A of the Breckenridge Town Code for two off-street parking spaces for each
21 such two bedroom unit with a divisible room should be provided to reduce the required parking
22 to 1.7 spaces for each such two bedroom unit with a divisible room.

23 J. Because there is no provision in the Breckenridge Town Code allowing site work to
24 begin prior to issuance of a building permit, in order to facilitate the beginning of vertical
25 construction of Peak 8's proposed project in the spring of 2014, the Town has been requested to
26 authorize its Department of Community Development to grant permission for the
27 commencement of infrastructure improvements, including, but not limited to, demolition of the
28 Bergenhof building located on the Sale Parcel, construction of storm water management
29 facilities, and relocation of utilities prior to issuance of a building permit, and site excavation
30 subject to receipt of assurances of completion deemed satisfactory by the Town's Department of
31 Community Development.

32 K. As the commitment encouraged to be made in connection with an application for a
33 development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, Peak
34 8 has proposed a payment to the Town of \$25,000 to be applied toward the Town's ongoing
35 Cucumber Gulch preservation activities. This commitment is intended to apply as the
36 commitment encouraged not only for the proposed Development Agreement described in this
37 ordinance, but also as the commitment for a subsequent development agreement for one
38 additional year of vesting (four total years of vesting) for Peak 8's development permit, which
39 has been requested by Peak 8 but cannot be approved by the Town until after the applicable
40 permit has been issued.
41

1 L. A proposed development agreement between the Town, BSR, and Peak 8 addressing
2 the topics described above has been prepared, a copy of which is marked **Exhibit “A”**, attached
3 hereto and incorporated herein by reference (“**Development Agreement**”).
4

5 M. The Town Council had a preliminary discussion of the development agreement
6 application, and the proposed Development Agreement, as required by Section 9-9-10(A) of the
7 Breckenridge Town Code.
8

9 N. The Town Council determined that request for a development agreement need not be
10 referred to the Breckenridge Planning Commission for its review and recommendation.
11

12 O. The Town Council has reviewed the Development Agreement.
13

14 P. The approval of the Development Agreement is warranted in light of all relevant
15 circumstances.
16

17 Q. The procedures to be used to review and approve a development agreement are
18 provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such
19 Chapter have substantially been met or waived in connection with the approval of the
20 Development Agreement and the adoption of this ordinance.
21

22 Section 2. Approval of Development Agreement. The Development Agreement between
23 the Town, Vail Summit Resorts, Inc., a Colorado corporation, and Peak 8 Properties, LLC, a
24 Colorado limited liability company, (**Exhibit “A”** hereto) is approved, and the Town Manager is
25 authorized, empowered, and directed to execute such agreement for and on behalf of the Town of
26 Breckenridge.
27

28 Section 3. Notice of Approval. The Development Agreement must contain a notice in the
29 form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in
30 compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code must be
31 published by the Town Clerk one time in a newspaper of general circulation in the Town within
32 fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of
33 Section 24-68-103, C.R.S.
34

35 Section 4. Police Power Finding. The Town Council finds, determines, and declares that
36 this ordinance is necessary and proper to provide for the safety, preserve the health, promote the
37 prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and
38 the inhabitants thereof.
39

40 Section 5. Authority. The Town Council finds, determines, and declares that it has the
41 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by
42 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town
43 Charter.
44

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

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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 among the TOWN OF BRECKENRIDGE, a municipal corporation of the State of Colorado (the “Town”), VAIL SUMMIT RESORTS, INC., a Colorado corporation (the “Owner”), and PEAK 8 PROPERTIES, LLC, a Colorado limited liability company (the “Buyer”).

Recitals

A. Owner is the owner of the Remainder of Tract C, Peak 8 Subdivision Filing No. 1 according to the Plat thereof recorded March 24, 2010 at Reception No. 936240, Summit County, Colorado (“Property”).

B. Owner and Buyer are in discussions related to a potential sale of an approximately 2.1 acre portion of the Property (the “Sale Parcel”) for Buyer to develop in a manner similar to Buyer’s project known as Grand Lodge on Peak 7.

C. The Property is subject to the Master Plan - Amended, Breckenridge Ski Resort, Amendment to May 2003 Peaks 7 & 8 Master Plan approved by the Breckenridge Town Council on April 8, 2008, notice of which approval was recorded June 3, 2008 at Reception No. 889143 of the Summit County, Colorado records (the “Master Plan”).

D. As owner of the Property, Owner has the right to propose an amendment to the Master Plan, to request density transfers to the Property, to request Town approval for the gross density recommended by the Town’s Land Use Guidelines (“Guidelines”) to be exceed as provided for in Subsection 9-1-19:39.I.(2) of the Breckenridge Town Code, and to enter into agreements with the Town concerning such amendment to the Master Plan, such a density transfer, such density in excess of that recommended by the Guidelines and such other matters as the Town and the Owner may agree is appropriate.

E. Pursuant to Chapter 9 of the Breckenridge Town Code the Town Council has the authority to enter into a development agreement. Further, in connection with a master plan amendment, there is no process in the Town’s Development Code for approval of density in excess of that recommended by the Guidelines and the transfer of density pursuant to a certificate of development rights (“TDRs”) issued pursuant to the Intergovernmental Agreement concerning transfer of development rights between the Town and Summit County, Colorado (“IGA”), and, therefore, a development agreement provides a means for such an approval and transfer.

F. In order for Buyer to develop the Sale Parcel in a manner that will enhance the sale of Buyer’s timeshare product an additional 11.5 SFEs of residential density and 5 SFEs of

commercial density will be required and an amendment to the Master Plan and authorization to use TDRs to accommodate such density will be required.

G. In connection with the future development of the Property, it has been agreed that there should be an amendment to the Master Plan to authorize an increase in the 200% multiplier for amenity space as provided for in Subsection 9-1-19:24 (Relative): D of the Breckenridge Town Code to 600% in order to further encourage meeting and conference facilities or recreation and leisure amenities.

H. In connection with Owner's ability to complete the potential build-out authorized under the Master Plan and provide additional improved facilities to service Owner's guests, including facilities planned to be included in Buyer's development of the Sale Parcel, an amendment to the definition of Guest Services in the Master Plan is required to provide for existing and future non-income producing space for such functions as employee lockers, public restrooms, storage areas, and lift and lift personnel facilities not to be treated as density or mass.

I. Based on parking data provided by Buyer verifying that, at its 2 other timeshare resorts in Breckenridge (Grand Timber Lodge and Grand Lodge on Peak 7), the average number of cars parked per 2 bedroom unit with a lock-off or divisible room was 1.55 over the 12 months from April, 2011 through March, 2012, a variance or exception of the requirement under Subsection 9-3-8:B of the Breckenridge Town Code for 2 off-street parking spaces for each such 2 bedroom unit with a divisible room should be provided to reduce the required parking to 1.7 spaces for each such 2 bedroom unit with a divisible room.

J. Because there is no provision in the Breckenridge Town Code allowing site work to begin prior to issuance of a building permit, in order to facilitate the beginning of vertical construction of Buyer's proposed project in the spring of 2014, the Town is prepared to authorize its Department of Community Development to grant permission for the commencement of infrastructure improvements, including, but not limited to, demolition of the Berghof building located on the Sale Parcel, construction of storm water management facilities, and relocation of utilities prior to issuance of a building permit, and site excavation subject to receipt of assurances of completion deemed satisfactory by the Town's Department of Community Development.

K. As the commitment encouraged to be made in connection with an application for a development agreement in accordance with Section 9-9-4 of the Breckenridge Town Code, Buyer has proposed a payment to the Town of \$25,000 to be applied toward the Town's ongoing Cucumber Gulch preservation activities. This commitment is intended to apply as the commitment encouraged not only for this Agreement but also as the commitment for a development agreement for 1 additional year of vesting (4 total years of vesting) for the Buyer's development permit, which has been requested by Buyer but will not be approved by the Town until after the applicable permit has been issued.

L. 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. Upon: (a) final approval of (i) the transfer of TDRs consisting of up to 16.5 SFEs (11.5 for residential use and 5 for commercial use) to the Sale Parcel, (ii) a Class A Development Permit amending the Master Plan to allow for such additional density (the “Master Plan Amendment”), and (iii) a Class A Development Permit for the Sale Parcel acceptable to Buyer and Owner allowing for the development of the Sale Parcel utilizing up to 91.5 SFEs for a Condo-Hotel (as provided for in the Town Code) at 1,200 square feet of density per SFE and up to 5 SFEs for commercial use at 1,000 square feet of density per SFE (the “Permit”); and (b) the passage of any time periods within which any referendums, appeals or other challenges to such approvals must be brought, without any such referendums, appeals or other challenges having been filed, commenced or asserted, Buyer shall: (A) pay \$25,000 to the Town to be applied to the Town’s ongoing Cucumber Gulch preservation activities, and (B) pursuant to the terms of the IGA, pay the then-current price per TDR for each TDR required to support the total residential density authorized by the Permit minus the total residential density of 80 SFEs to be assigned to the Sale Parcel by Seller under the Master Plan.

2. Pursuant to Subsection 9-1-19:39.I.(2) of the Development Code, 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 the Master Plan Amendment providing for density in excess of the current Guidelines by the addition of up to 16.5 SFEs (11.5 residential and 5 commercial) to the allowable density of 80 SFEs for the Sale Parcel and an application for the Permit accommodating such excess density.

3. Upon approval of the Master Plan Amendment and the Permit, the Owner is hereby authorized to process the transfer to the Sale Parcel of up to 16.5 TDRs providing for up to 16.5 SFEs, pursuant to the terms of the IGA.

4. The provisions of subsection 9-1-19:24 (Relative):D of the Breckenridge Town Code notwithstanding, in connection with the future development of the Property pursuant to the Master Plan, meeting and conference facilities or recreation and leisure amenities over and above that required in subsection 9-1-19:24 (Absolute) of the Breckenridge Town Code shall not be assessed against the density and mass of a project when the facilities or amenities are legally guaranteed to remain as meeting and conference facilities or recreation and leisure amenities and they do not equal more than 600% of the area required under said subsection 9-1-19:24 (Absolute).

5. Pursuant to Subsection 9-1-19:39.I.(2) of the Development Code, 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 the Master Plan Amendment providing for the following amended definition of Guest Services Facilities:

Guest Services Facilities include space for the following primary activities or facilities: ticket sales, administration, nursery or childcare facilities, lockers for guests, cafeterias, lounges, storage areas for recreational equipment for sale or rental, patrol and first aid facilities, and instruction related activities. Guest Services Facilities constructed using the 57 SFEs, which were excluded from total density for purposes of a separate density reduction calculation, may not be used as a private club or other restricted access facility requiring membership. Cafeterias constructed using Guest Services Facilities density may be used from time to time outside of the winter recreation season, but may not be used as full service restaurants open to the public on a regular basis outside of the winter recreation season.

Guest Services Facilities will not include lockers for employees, public restrooms, storage areas (not including storage areas for recreational equipment for sale or rental) and lift and lift personnel facilities (“Support Facilities”) already constructed at the time of approval of this Amendment or to be constructed. Support Facilities will not apply against the 57 SFEs authorized under this Master Plan for Guest Services Facilities and shall not be assessed against the density and mass of any building within which they are located or are to be located provided that the Support Facilities are legally guaranteed to be used only for the foregoing described purposes and do not exceed a total of 17,594 square feet.

6. Buyer has requested the Town to provide, in connection with the development of the Sale Parcel as a timeshare resort, a variance or exception of the requirement for 2 off-street parking spaces for each 2 bedroom unit with a divisible room that would be required under the Town’s “Off-Street Parking Regulations”, Subsection 9-3-8:B of the Breckenridge Town Code. Pursuant to Section 9-3-16 of the Breckenridge Town Code, the Town Council finds and determines as follows:

(A) the granting of the variance or exception of the requirement for 2 off-street parking spaces for each 2 bedroom unit with a divisible room will not be detrimental to the public health, safety, or welfare or injurious to other property;

(B) the conditions upon which the 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 Buyer 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 described by law.

Based upon such findings, the Town grants, in connection with the development of the Sale Parcel as a timeshare resort, the variance or exception of reducing the required off-street parking

spaces for each 2 bedroom unit with a divisible room to 1.7 off-street parking spaces for each such 2 bedroom unit with a divisible room.

7. Subject to the Town's Department of Community Department receiving adequate assurances of or security for completion of the authorized infrastructure improvements or return of the Sale Parcel generally to the condition it was in before the commencement of any work, the Town's Department of Community Development is hereby authorized to permit the excavation for and construction of infrastructure improvements, including, but not limited to, demolition of the Berghof building located on the Sale Parcel (subject to obtaining a demolition permit from the Town), construction of storm water management facilities, and relocation of utilities, and site excavation after issuance of the Permit but before issuance of a building permit.

8. 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, the Master Plan Amendment and the Permit shall be done in compliance with the then-current laws of the Town.

9. 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.

10. This Agreement shall be binding upon and inure to the benefit of Town, Owner and Buyer, their successors and assigns.

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

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. Buyer with respect to its interests or benefits provided for in paragraphs 1, 2, 3, 4, 6, and 7 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 such benefits under 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 wrongful intentional act or omission of Buyer; any subcontractor of Buyer, or any officer, employee, representative, or agent of Buyer or of any

subcontractor of Buyer, or which arise out of any worker's compensation claim of any employee of Buyer, or of any employee of any subcontractor of Buyer; 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. Buyer 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 Buyer. Buyer also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

14. Owner with respect to its interests or benefits provided for in paragraph 5 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 such benefits under 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 wrongful intentional act or omission of Owner; any subcontractor of Owner, or any officer, employee, representative, or agent of Owner or of any subcontractor of Owner, or which arise out of any worker's compensation claim of any employee of Owner, or of any employee of any subcontractor of Owner; 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. Owner 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 Owner. Owner also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees.

15. 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.

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

17. 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 Owner; 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 Owner or Buyer or the acceptance of any improvements.

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

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

20. 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 Owner and Buyer expressly waive their right to bring such action in or to remove such action to any other court, whether state or federal.

21. 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 Owner: Alex Iskenderian
Vail Resorts Development Company
137 Benchmark Road
P.O. Box 959
Avon, CO 81620

With A Copy (which shall not constitute notice) to: Stephen C. West, Esq.
West Brown Huntley & Hunter, P.C.
P.O. Box 588
Breckenridge, CO 80424

With A Copy (which shall not constitute notice) to: Vail Resorts Management Company
137 Benchmark Road
P.O. Box 959
Avon, CO 81620
Attn: Legal Department

If to the Buyer :

Nick Doran
Peak 7, LLC
100 S. Main Street
P.O. Box 6879
Breckenridge, CO 80424

With A Copy (which
shall not constitute
notice) to:

John L. Palmquist, Esq.
GC Legal Strategies
2520 S. St. Paul Street
Denver, CO 80210

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.

22. As between Owner and Buyer, nothing contained within this Agreement shall be deemed to modify that certain letter of intent related to the Sale Parcel dated as of June 7, 2012 between Owner and Buyer (the "LOI") or to create any binding obligations of a part of Owner to Buyer or Buyer to Owner which are not expressly set forth in the LOI. The foregoing sentence shall not affect Owner's or Buyer's obligations to the Town as provided for in this Agreement.

23. 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.

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

[SEPARATE SIGNATURE PAGES TO FOLLOW]

TOWN OF BRECKENRIDGE

Attest:

Town Clerk

By: _____
Timothy J. Gagen, 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 _____, of the Town of
Breckenridge.

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

Notary Public

VAIL SUMMIT RESORTS, INC.
a Colorado corporation

By:

Alex Iskenderian, Senior Vice President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2012
by Alex Iskenderian as Senior Vice President of Vail Summit Resorts, Inc., a Colorado
corporation.

Witness my hand and official seal.

My commission expires:_____

Notary Public

PEAK 8 PROPERTIES, LLC
a Colorado limited liability company

By:

Robert A. Millisor, Member

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2012
by Robert A. Millisor as a Member of Peak 8 Properties, LLC, a Colorado limited liability
company.

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

Notary Public

Memo

To: Mayor and Town Council
From: Julia Puester, AICP
Date: July 16, 2012 for meeting of July 24, 2012
Re: First Reading Policy 33R Energy Conservation (Existing Structures)

In January 2011, the Town Council approved an amendment to Policy 33R *Energy Conservation* which quantified the amount of energy being conserved. This was accomplished using a Home Energy Rating System (HERS) for residential uses. A relatively similar method was also recognized for commercial development. The results are calculated and measurable.

While the code language has worked well for new construction, it has not been useful for existing structures. New construction starts from scratch. These buildings can take advantage of new materials installed such that there are no major air leaks, new windows and so on, creating a tight building envelope. Existing structures on the other hand have aged over time. The materials and construction methods used on older structures are also lacking many advancements in the field that we see today.

It is important that the Town encourage existing structures to make strides toward energy efficiency and conservation. However, the Policy as currently written does not provide this encouragement. Thus staff has provided the attached modification to Policy 33R that would incentivize energy improvements in existing buildings.

The attached modification to Policy 33R would warrant points for existing structures based on the percentage improvement of the HERS index of the existing structure before and after improvements have been made. A similar modification is proposed for existing commercial, mixed use and multifamily buildings over 3 stories in height (maximum height in HERS system). In this case, positive points would be based on the percentage of energy use saved by comparing the existing energy consumption of the building to the consumption of the proposed remodeled structure.

The Planning Commission unanimously approved the attached modification to Policy 33R *Energy Conservation* with regard to existing structures on June 5, 2012.

Proposed Changes

The following highlights the attached the proposed changes to Policy 33R:

- Positive points for proposed incremental percentage increase in energy consumption saved in existing residential and commercial structures.
- Clarification on HERS and commercial International Energy Conservation Code analysis submittal timing for review with the development permit application and building permit application.
- Detailed descriptions of required plan information for commercial structures (for clarification to applicants).
- Clarification on public safety areas for exemptions (both public and private high pedestrian areas) based on Council discussion on Energy Policies on July 10th.

Staff will be available to answer questions at the meeting on the proposed Policy 33R attached.

1 **FOR WORKSESSION/FIRST READING – JULY 24**

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 REPEALING AND READOPTING WITH CHANGES POLICY 33
11 (RELATIVE) OF SECTION 9-1-19 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS
12 THE “BRECKENRIDGE DEVELOPMENT CODE”, CONCERNING ENERGY
13 CONSERVATION;

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

17
18 Section 1. Policy 33 (Relative) of Section 9-1-19 of the Breckenridge Town Code is
19 amended so as to read in its entirety as follows:

20 9-1-19-33R: POLICY 33 (RELATIVE) ENERGY CONSERVATION:

21
22 The goal of this policy is to incentivize energy conservation and renewable energy
23 systems in new and existing development at a site plan level. This policy is not
24 applicable to an application for a master plan. This policy seeks to reduce the
25 community’s carbon footprint and energy usage and to help protect the public
26 health, safety and welfare of its citizens.

27 A. Residential Structure Three Stories Or Less: All new and existing
28 residential developments are strongly encouraged to have a home energy rating
29 survey (HERS) **as part of the development permit review process** to determine
30 potential energy saving methods and to reward developments that reduce their
31 energy use.

32
33 **For existing residential development, including additions, positive points will be**
34 **awarded for the percentage of improvement in the HERS index when comparing the**
35 **HERS index of the existing structure to the HERS index of the proposed structure**
36 **with improvements. (Example: The percentage shall be calculated as follows: If the**
37 **existing structure has a HERS index of 120, and has a HERS index of 70 as a result**
38 **of the improvements proposed in the development permit application, there is a**
39 **41% improvement in the HERS index over the existing conditions (120-70=50;**
40 **50/120=0.41). Such improvement warrants an award of positive three (+3) points.)**

41
42 Positive points will be awarded according to the following point schedule:

<u>Points</u>	<u>HERS Index For New Residential: HERS Index</u>	<u>Existing Residential (prior to _____, 2012): Percentage (%) Improvement Beyond existing HERS Index</u>
+1	Obtaining a HERS index	<u>Obtaining a HERS Index</u>
+2	61 - 80	<u>10-29%</u>
+3	41 - 60	<u>30-49%</u>
+4	21 - 40	<u>50-69%</u>
+5	1 - 20	<u>70-99%</u>
+6	0	<u>100+%</u>

1 B. Commercial, Lodging ~~A~~ and Multi-Family In Excess Of Three Stories In
2 Height: New and existing commercial, lodging, and multi-family developments
3 are strongly encouraged to take advantage of the positive points that are available
4 under this policy by achieving demonstrable and quantifiable energy ~~saving~~ use
5 reduction within the development. ~~For new construction, p~~Positive points will
6 be awarded for the percentage of energy saved use reduction of the
7 performance building when compared to the same building built to the
8 minimum beyond the minimum standards of the adopted IECC¹. The
9 percentage of energy use saved shall be expressed as MBh (thousand
10 BTUs/hour).

11 For modifications to existing buildings including additions, positive points
12 will be awarded for the percentage of energy saved beyond the energy
13 consumption analysis of the existing structure(s) compared to the energy
14 consumption of the proposed structure remodel. Points shall be awarded in
15 accordance with the following point schedule:
16

<u>Points</u>	<u>New Structures: Percent Energy Saved Beyond The IECC Minimum Standards</u>	<u>Existing Structures (prior to 2012): Percent Improvement Beyond Existing Energy Consumption</u>
+1	10% - 19%	10% - 19%
+3	20% - 29%	20% - 29%
+4	30% - 39%	30% - 39%
+5	40% - 49%	40% - 49%
+6	50% - 59%	50% - 59%
+7	60% - 69%	60% - 69%
+8	70% - 79%	70% - 79%
+9	80%+	80%+

¹ The international energy conservation code adopted and amended by title 8, chapter 1 of this code.

1 Positive points will be awarded only if an energy analysis has been prepared by a
2 registered design professional **as required by Section E of this Policy**, using an
3 approved simulation tool in accordance with simulated performance alternative
4 provisions of the Town's adopted energy code.

5 ~~Development approval will be subject to conditions requiring third party~~
6 ~~balancing and design professional certification of the performance building prior~~
7 ~~to building permit and a certificate of occupancy/completion.~~

8 C. Excessive Energy Usage: Developments with excessive energy components
9 are discouraged. However, if the planning commission determines that any of the
10 following design features are required for the health, safety and welfare of the
11 general public, then no negative points shall be assessed. To encourage energy
12 conservation, the following point schedule shall be utilized to evaluate how well a
13 proposal meets this policy:
14

<u>Point Range</u>	<u>Design Feature</u>
1x(-3/0)	Heated driveway, sidewalk, plaza, etc.
1x(-1/0)	Outdoor commercial or common space residential gas fireplace (per gas fireplace)
1x(-1/0)	Large outdoor water features (per feature)

15 D. Other Design Features:

16
17 1x(-2/+2) Other design features determined by the planning commission to
18 conserve significant amounts of energy may be considered for positive points.
19 Alternatively, other features that use excessive amounts of energy may be
20 assigned negative points.

21 E. General Provisions:

22 **(1) A projected analysis shall be submitted at the time of development**
23 **permit application as well as submittal of a confirmed analysis prior to**
24 **the issuance of a certificate of occupancy or certificate of completion. A**
25 **HERS analysis shall be performed by a certified HERS rater. An analysis**
26 **of energy saved beyond the IECC shall be performed by a licensed**
27 **Colorado Engineer.**

28 **(+2)** No development approved with required positive points under this policy
29 shall be modified to reduce the HERS index, **percentage of improvement**, or
30 percentage of energy savings above the IECC standards in connection with the
31 issuance of such development permit. ("Required positive points" means those
32 points that were necessary for the project to be approved with a passing point
33 analysis.)

1 (23) Prior to the issuance of a certificate of occupancy each development for
2 which positive points are awarded under this policy shall submit a letter of
3 certification showing compliance with the projected energy rating or
4 percentage of energy savings in comparison to the IECC. The required
5 **confirmed** certification for a residential development three (3) stories or less
6 in height shall be submitted by a ~~registered Colorado engineer, or a qualified~~
7 **certified** HERS rater. The required **confirmed** certification for a residential
8 development taller than three (3) stories, and for all commercial development,
9 shall be submitted by a licensed Colorado Engineer **and accompanied by**
10 ~~balance~~ and **commissioning-reports**.

11 F. Sliding Scale Examples: Examples set forth in this policy are for purpose of
12 illustration only, and are not binding upon the planning commission. The
13 ultimate allocation of points shall be made by the planning commission
14 pursuant to section 9-1-17-3 of this chapter.

15 (1) Heated Outdoor Spaces 1x(0/-3):

16 a. Zero points: For public safety concerns **on public or private property**
17 **such as high pedestrian traffic areas**, ~~systems which are one hundred~~
18 ~~percent (100%) powered by alternative energy source such as solar, wind or~~
19 ~~geothermal~~, or small areas on private property which are part of a generally
20 well designed plan that takes advantage of southern exposure and/or specific
21 site features.

22 b. Negative points: Assessed based on the specific application of heated area.
23 (For example, a heated driveway of a single-family home compared to a
24 driveway apron only; a heated patio). The points warranted are dependent on
25 the specific project layout such as safety concerns, amount of heated area,
26 design issues such as north or south facing outdoor living spaces, etc.

27 (2) Water Features 1x(0/-1):

28 a. Zero points: No water feature or features powered by an alternative energy
29 source or feature utilizing less than four thousand (4,000) watts or less than
30 five (5) horsepower.

31 b. Negative points: Based on the amount of energy (watts) utilized for the
32 feature (large features of 4,000 watts or more, or 5 horsepower motor or
33 greater).
34

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

37 Section 3. The Town Council hereby finds, determines and declares that this
38 ordinance is necessary and proper to provide for the safety, preserve the health, promote the

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

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

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

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

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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Town Clerk

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: July 18, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the July 17, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF July 17, 2012:

CLASS C APPLICATIONS:

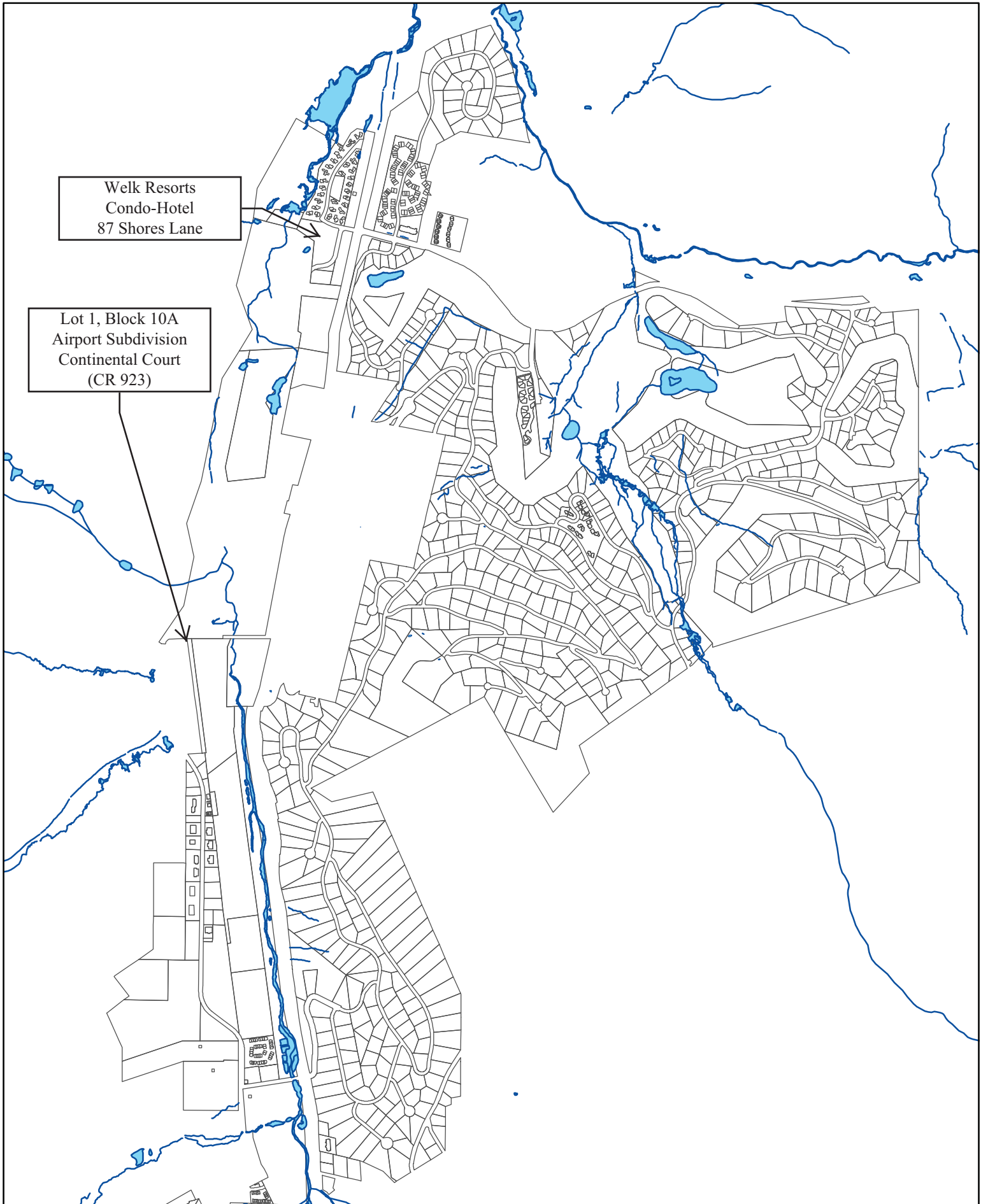
None.

CLASS B APPLICATIONS:

- 1) Jerky Wagon (CN) PC#2012049; 100 South Main Street
Application for small vendor cart to sell beef jerky (dried meats). Approved.
- 2) Lot 1, Block 10A, Airport Resubdivision (MGT) PC#2012045; Continental Court (CR 923)
Application to re-subdivide Lot 1, Block 10A, Breckenridge Airport Subdivision Amended into two lots.
Approved.
- 3) Silverthorne House Extended Vesting (JP) PC#2012035; 300 North Main Street
Application to extend site plan development permit to construct one duplex building (Building B), one single family building (Building C), relocate, restore and convert the existing barn (Building D) to a deed restricted residential unit, add a parking area in the rear of the lot, install remaining landscaping, and install a new trash enclosure. Approved.

CLASS A APPLICATIONS:

None.



Welk Resorts
Condo-Hotel
87 Shores Lane

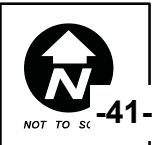
Lot 1, Block 10A
Airport Subdivision
Continental Court
(CR 923)

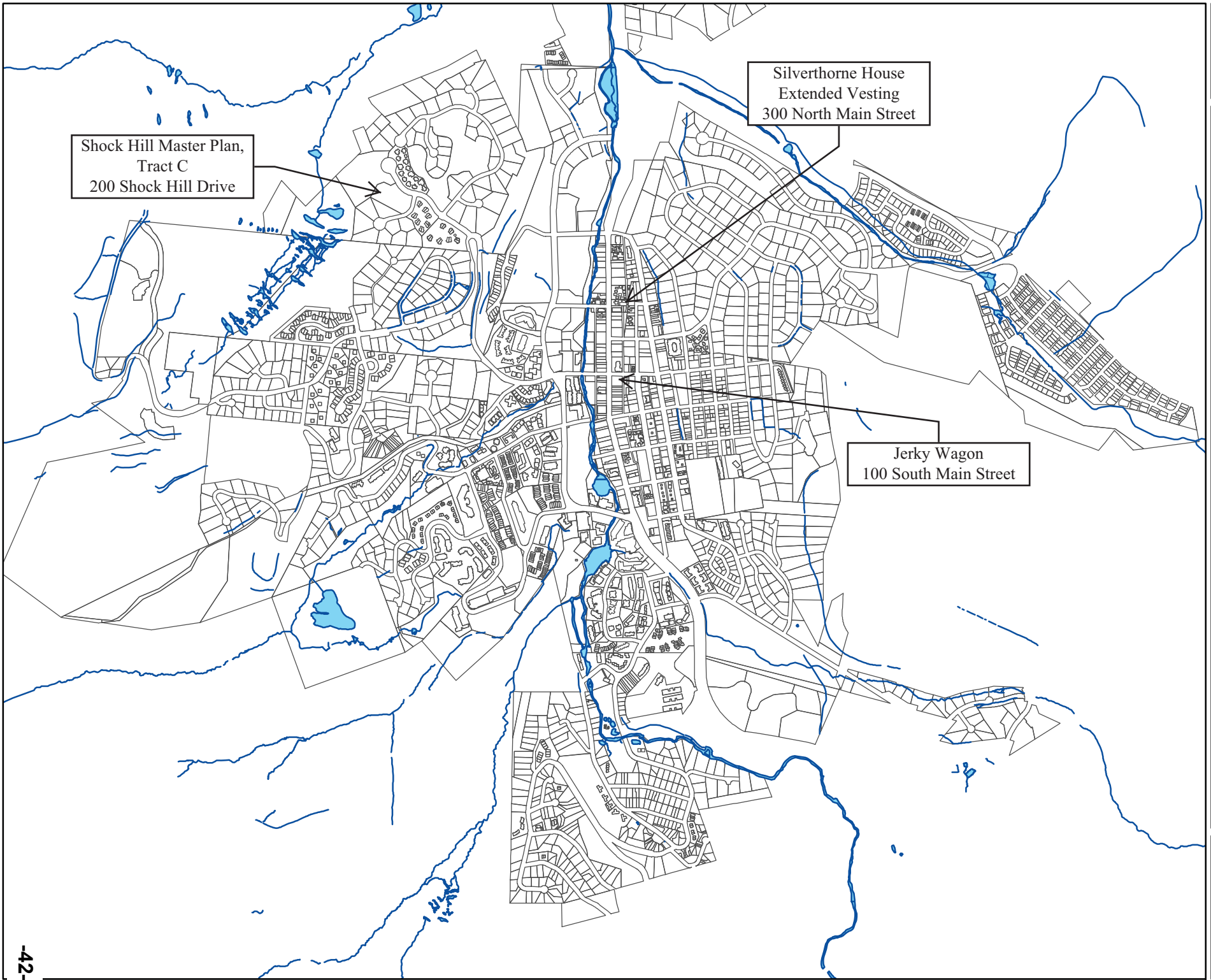


Breckenridge North

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.

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 Michael Rath David Pringle arrived at 7:05 pm
Dan Schroder was absent.

APPROVAL OF AGENDA

With no changes, the July 17, 2012 Planning Commission meeting agenda was approved unanimously (6-0).

APPROVAL OF MINUTES

With no changes, the July 3, 2012 Planning Commission meeting minutes were approved unanimously (6-0).

TOWN COUNCIL REPORT:

Gary Gallagher:

1. Harris Street Building (old CMC building): Council is prepared to take it to the next step; architect plan has received favorable feedback; where it needs to go now is pricing vs. wants. Construction site will cost out the project and if the county will contribute along with fundraising to cover the cost of the space. We would like to see everyone pay their 'fair share'. 4-6 weeks until info comes back.
2. Breckenridge is enticing the Ice Castle promoter, who was in Silverthorne, to be located in the downtown Breckenridge area. Possible sites include the Riverwalk Center lawn or Tiger Dredge Parking Lot. The Council is concerned about the damage to the lawn. Fits nicely with Breckenridge in that it is family event. 6,000 visitors in Silverthorne and have had 20,000 hits on internet.
3. Several articles on Snowball Express, not yet approved by all Council members, but at this point the venue would be ice skating rink. Up in the air is that the promoter would like to do something in January; lodging would prefer early April when season is quieter. Lots of conflict; lots of emails; unless something else occurs, there is currently 4 in favor and 3 against the Snowball.
4. Last Town Council meeting, Breckenridge Grand Vacations on Peak 8; development agreement is being hashed out. Breckenridge Ski Resort is asking initially for 22 SFEs to handle their ski services, and the Breckenridge Grand Vacations and Breckenridge Ram agreed to come together. That space would not count against mass but would against density (worth about 10 SFEs). The Town asked for assistance on the balance of 12; Town Council felt that the request was not appropriate, said Breckenridge Grand Vacations needs to pay the 'full freight'. Since they weren't moving forward, and sales didn't know what they would need in the future, we will see sometime in the future what they really want to do on Peak 8.
5. Solar Gardens: Xcel is finally close to accepting our solicitations for Solar Gardens. 2 acres of Stillson property and property out on the McCain parcel on Airport Road. Might be heating up; Town wants to pursue Solar Gardens and when the Xcel and developer gets worked out, we will hear more about this in August. This is something that will progress subject to Planning Commission approval. Promoter's intention is to present first the Stillson and then the McCain.
6. Plastic bag conversation: Town has decided that they would like community, lodging, etc. to work some program together to come to resolution in trying to eliminate plastic refuse that people take out of the stores here in town. Council would like to have a program in place by end of year at which time businesses would come on board.
7. Fire Bans: County dropped their fire ban. Open fires are now allowed. Frisco and Dillon will also be dropping their fire bans. The Forest Service will be meeting about the National Forest; early indications are that they will maintain Stage One; able to burn in camp areas but keeping fires tighter.

Breckenridge may drop their Stage One altogether. If Breckenridge drops their Stage One, we can have heaters on patio, tiki torches, etc. as prior to severe fire ban.

8. Council would like Planning to reevaluate sheds as a primary structure. Lots of historic projects that have come before Planning; sheds and secondary structures have been part of that; Planning said that they are already working on this issue and are planning a work session.
9. Rodeo: Mr. Pringle asked about the rodeo and expressed a desire that it is a fun event with little conflict and suggested that Council attend to ward off any unhappy attendees.

PRELIMINARY HEARINGS:

1. Shock Hill Master Plan, Tract C (MGT) PC#2012050, 200 Shock Hill Drive
Mr. Thompson presented a proposal to Master Plan for 15 units totaling 38,400 sq. ft. per the approved Shock Hill Master Plan. The proposal is for 15 market-rate units in duplex and single family form. Master Plan development standards in the form of Master Plan Notes are proposed for the entire development. After Council approval, each building will be submitted separately for review under individual Class C applications. The Shock Hill Master Plan allocated 24 SFE's for Tract C Shock Hill. In December 2010 an amendment to the Shock Hill Master Plan was approved for the Shock Hill Lodge and Spa with 66.70 SFE's, which would have required density to be transferred to the site. The current proposal is to go back to the original Shock Hill Master Plan and only use the 24 SFE's allowed in the Master Plan.

Staff had the following questions with this evening's presentation:

- Did the Commission have any comments on the Master Plan notes?
- Did the Commission support the depicted building separation for the units?
- Did the Commission believe the level of intensity is appropriate and allows for the site to function efficiently, and is still buffered well from the neighbors?
- Did the proposed Penn Lode Drive access and circulation work well as a 14' wide one-way private road?

Commissioner Questions / Comments:

- Mr. Pringle: I can't read the notes. I would think that you could gain a little bit more of the urban look. Tweak the setbacks between structures to gain a little bit of space. Level of intensity is appropriate; buffer the site from neighbor to neighbor; the 14 foot roadway is fine.
- Mr. Lamb: Well written Staff Report Matt; building separation is fine; narrow road is a good idea, less asphalt is a good thing.
- Ms. Dudney: Ditto, agree with Mr. Lamb's comments.
- Mr. Butler: No comments. I do support the building separation; level of intensity is appropriate; like the 14 foot private road.
- Ms. Christopher: Ditto.
- Mr. Rath: Ditto. The access makes a lot of sense; integrates well with the surrounding neighborhoods.

Staff welcomed any additional comment and suggested this application return for a Final Hearing.

Mr. Marc Hogan, Architect for the Applicant: Very pleased to be here; Tim and Patty Casey are also present. Appreciate the one way drive saving more trees; got rid of all of the pine beetle trees. We will incorporate energy conservation; all units planned for both solar thermal and PV. Some of the buildings are shaded and they will be challenged, but they will all be roughed in for those elements.

(No questions from Planning Commission.)

Mr. Casey: We assembled a team with Marc and Steve considering what would fit well on the site. We approached the owners and indicated that we would like to purchase Tract C and do something and more like the Shock Hill Cottages; met with Mr. John Quigley and feel that we have landed on something fitting. We appreciate the Staff and their review.

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

Commissioner Questions / Comments:

Ms. Christopher: Master plan notes on our pdf; can't read the notes. Question: Does this private one way drive line up with Columbia drive? (Mr. Thompson: Yes it does line up with Columbia Drive.) Looks good so far. Likes the idea of less paving for the private road.

Mr. Lamb: No negative points? (Mr. Thompson: No.)

Final Comments:

Mr. Rath: Interested in final design. (Mr. Neubecker: Staff will compare the proposed architecture to the concept Master Plan notes to make sure that they are consistent.) I think variety is important. (Mr. Hogan: Have developed rough concepts and have some to provide at the final hearing. Variety is important to this Master Plan.)

Ms. Christopher: Appreciate the lower amount of paving; are you going to continue the sidewalk from the road? (Mr. Casey: Yes; it will be tied into the existing sidewalk.) (Mr. Thompson: Wetlands report; the original plat for Tract C showed a small wetland.) (The applicants did not believe it was a wetland; however, there is a recorded wetland on the plat. The applicants hired a consultant (Mike Claffey) to determine as to whether or not it was a wetland and ultimately decided that it was not a wetland. A Condition of Approval will be added prior to the final hearing requiring a new Plat to be recorded with no wetland shown.)

Mr. Pringle: Hoping that we get a better idea of what architecture the project will look like. Suggested the applicant consider not use up all of the allowable density and mass, as property owners in the future will want to do additions.

Ms. Dudney: Relied on Matt's Staff Report, which listed many of the Master Plan Notes. Comfortable with the Master Plan as proposed.

2. Welk Resorts Condo-Hotel (MM) PC #2012044; 87 Shores Lane

Mr. Mosher presented a proposal to construct a 72-unit condo-hotel at Parcels C-1, C-2 and a Portion of Tract A of the Shores at the Highlands Subdivision. With this submittal, the Applicants have refined the design of the buildings and site and are in the process of adjusting the areas and counts with staff to be sure the calculations work and that there will be a passing point analysis. Hence, this submittal is still lacking these numerical details. Staff has recently met with the applicants with the goal of offering a more comprehensive review at the next hearing.

At the June 5, 2012, Worksession, Staff heard general support for the overall concept for the building forms, finishes and general architecture. There were concerns expressed about the parking layout and site buffering. Changes since that meeting include: modification of the parking layout and creation of landscaping with berms. Staff anticipates having greater numerical detail (densities, parking, snow stacking etc.) with the next submittal.

As indicated, the Applicant is seeking comments regarding the general concept as presented. There will be additional detail when the application returns again for a second preliminary review. Staff welcomed any

additional comments or concerns.

Ms. Dudney: There seems like there are so many negative points. (Mr. Mosher: Lots of options available to add positive points for example, for shuttle, employee housing, refuse within building, etc. The initial draft review of the points came up with a passing score of positive eight (+8) points. That is what the developer is working towards.)

The Applicants were present and made a presentation. Jon Fredericks, President of Welk Resorts; Brett Park, Valley Landscape Design Group (Landscape Architect); Jeff Edwards, Development Crew; Rick Hulbert, Architect.

Mr. Fredericks: Welk is a family owned company - a grandson of Lawrence Welk; we have been in this business since 1964 with 43,000 vacation owners. Average owner is 47 years old; \$90,000 a year income. We generate \$130 million per year in annual revenue. We want to focus on the revision on the plans based on your input. We are known for high product and service levels; top 5% of our industry.

Mr. Hulbert: The great thing about working with the Welk Company is that each development should have a sense of place in its own context. I toured the town with Mr. Tom Begley, met Mr. Mosher, and came up with our objectives:

- Respect the town history; use as inspiration;
- Celebrate the present setting and emerging development (the challenge is that it has been dredge mined);
- Anticipate the future of sustainable master planned resort design.
- Guests that come to the resort, neighbors who come to the resort and visitors.

Narrative in conjunction with conceptual drawings and plat for Level 3:

The great thing about this team is that we have members in all venues of the development: landscape, design, production. We want to encourage a design that is more timeless and less trendy and sets a precedent. (Mr. Hulbert presented an aerial view.) Some portions of the buildings will be three-stories stepping down at the edges to two-stories. We are going to make a case for it. We would like to pretend that there is a miner who made some money; didn't want to be a miner anymore, wanted to be a rancher, so he built a big stone based home with a big chimney. What was left when we "found it" was a chimney; also he had a bunkhouse for the ranch hands and a horse barn. We are going to take these three elements to design our community. Lobby building is for amenities; barn is now a meetings facility with a little commercial. The lobby building interfaces with the new time share units that are a mix of 2 and 3 stories. Employee housing, housekeeping and maintenance building is also provided. No backs or sides; all fronts. Amenities: indoor and outdoor pool, lobby, check in, ski storage, owners lounge, fitness facility, games room for family use. We put a skylight over the fireplace for light, but all of the lighting is downcast lighting per planning. From the lobby building you can walk down to time share suites lighted by side lights for mobility. Lots of elegant berms; internal gardens in-between the lobby and pool area and time share building. (Mr. Hulbert provided elevations of the buildings, plats with grade noted from top of project to bottom. Showed floor plans for 2 bedrooms and 3 bedrooms; 1,200-1,300 square feet.)

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

Commissioner Questions / Comments:

Ms. Dudney: What is happening around the project? I am concerned about project looking into the units south. (Mr. Park and Mr. Hulbert: They would be buffered with landscape and berm. Berms

- wrap around the project that buffer and repeat throughout the project.) How close are you to the McCain property? (Mr. Park: Determined to be almost a mile away.) My only concern is to protect the project from what can happen around you.
- Mr. Pringle: What is your relationship with the river? You are going to set the tone; this will be a positive impact on the surrounding projects. (Mr. Park: We are working backwards from the river; trying to let nature take its natural course up the slope; this is a working landscape with the fish, birds and river. We are going to work with staff to restore the landscape.) When I talked about telling a story last time, in my mind, when you come into Breckenridge people wonder why buildings are there. The project has context. I am a leery of the design of the big barn, and maintenance facility. Don't know if that is the design concept; maybe go to a mining type concept. Height will be an issue although I am not opposed to it as long as it is done well and can be mitigated.
- Mr. Rath: You have a lot of 'guts' for launching this without knowing what else will go out there; looks like you are creating an 'oasis'. You're going to bring all of this greenery and I hope that it starts a trend out of it; it was once, before the dredge boats, a river running through trees. I wish you luck and hope the neighbors support you. You really listened to us from last time; creating something that belonged here. I like that you have a story. Sooner rather than later, involve some people who are intimate with Breckenridge to inject some local design passion.
- Ms. Christopher: Thank you for listening from the last meeting. Good design here. I hope that you have neighbor support. Thoughts: 50 foot line on the barn; looks like glass for balusters; not safe for mountain living.
- Mr. Lamb: Story is interesting; I understand that it isn't a modern building. I like the idea of recreating the ecosystem, and the berming around the parking lot.
- Mr. Butler: In the future, this will be coveted for seeing this vision today.

COMBINED HEARINGS:

1) Jerky Wagon (CN) PC#2012049, 100 South Main Street

Mr. Neubecker presented a proposal for a small vendor cart to sell jerky (dried meats) at the southeast corner of Lincoln and Main Streets. Climax Jerky, Inc. is a retail business that sells a variety of dried meats, known as "jerky". The company operates in several locations throughout the state, and has operated in Breckenridge since 2008. Sales are made from a covered wagon. The wagon is 8'4" long, 4'4" wide and about 8' tall. The wagon is constructed primarily of wood and steel, with a canvas cover.

The Jerky Wagon has been in this location since 2008. Prior to 2008, other vendors have used this location for vending food and beverages, since at least 1992. In March 2012 the Town Council adopted a revised Vendor Cart policy in the Development Code to address the new and existing vendor carts in town. The new Vendor Cart Policy 49 (Absolute) sets design standards for both large and small vendor carts. This proposal is for a small vendor cart, since it is less than 40 square feet and the cart will be removed from the site each day after operations end.

Mr. Neubecker went through the design standards for small vendor carts. Staff found the application to be in compliance with all policies required.

The Planning Department has approved Climax Jerky Wagon vendor cart, PC#2012049, located at 100 S. Main Street, Lincoln West Mall, with the attached findings and conditions.

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

The owner, Brooke Comi started in Climax 13 years ago and thanked the Commission for taking the time to review.

Commissioner Questions / Comments:

Ms. Christopher: Do you have other jerky carts? (Ms. Comi: Silverthorne, all farmers markets, 16th Street mall and 2 locations at DIA.)

Mr. Pringle: This is exactly what we had in mind when we discussed vendor carts. I support it.

Mr. Lamb: This is what a proper vendor application should look like.

Mr. Pringle made a motion to approve the point analysis for the Jerky Wagon, PC#2012049, 100 South Main Street. Ms. Christopher seconded and the motion was carried unanimously (6-0).

Mr. Pringle made a motion to approve the Jerky Wagon, PC#2012049, 100 South Main Street, with the presented findings and conditions. Ms. Christopher seconded, and the motion carried unanimously (6-0)

2) Lot 1, Block 10A, Airport Resubdivision (MM) PC#2012045, Continental Court (CR 923)

Mr. Mosher presented a proposal to resubdivide Lot 1, Block 10A, Breckenridge Airport Subdivision Amended into two lots. The proposed lots are to be used with the adjacent western lots in the County's Continental Subdivision. No density is associated with this land. The lots may only be used in the future for landscaping, parking, and storage in accordance with the provisions of the Town's Development Code.

The Planning Department has advertised this resubdivision as a Combined Preliminary and Final Hearing, as Staff believes all relevant issues to be resolved. This resubdivision complies with the Subdivision Ordinance and the terms of the Breckenridge Airport Planned Unit Development.

Staff recommended that the Commission approve the Re-subdivision of Lot 1, Block 10A, Breckenridge Airport Subdivision Amended Class B Subdivision, PC#2012045, with the presented Findings and Conditions.

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

Commissioner Questions / Comments:

Mr. Lamb: Could you ever transfer density back on? (Mr. Mosher: No, property is stripped of all density.) What does splitting this accomplish? (Mr. Mosher: This property abuts parcels that are in the County. The conditions within the PUD are that if any of these were to subdivide, we would say it needed to be subdivided as well. Intended for parking; ownership should line up and work together.)

Mr. Pringle made a motion to approve the Lot 1, Block 10A, Airport Resubdivision, PC#2012045, Continental Court (CR 923), with the presented findings and conditions. Ms. Christopher seconded, and the motion was carried unanimously (6-0).

3) Silverthorne House Extended Vesting (JP) PC#2012035, 300 North Main Street

Ms. Puester presented a proposal to extend the property rights vesting for a site plan development permit to construct one duplex building (Building B), one single family building (Building C), relocate, restore and convert the existing barn (Building D) to a deed restricted residential unit, add a parking area in the rear of the lot, install remaining landscaping, and install a new trash enclosure. Mr. Dave Hartman, Applicant, was also present at the meeting.

The Silverthorne house site plan addition, restoration, and landmarking development permit was approved June 9,

2009 and was valid for a 3 year period (expiring on June 8, 2012). The Applicant has partially completed the development. Last summer the Silverthorne house underwent a historic restoration including installation of foundation, restoration and repair of the building exterior and 20 foot relocation on site. The Silverthorne house and carriage barn was also historically landmarked in 2009. The front yard was restored to its historic condition by removing the driveway off of Main Street, allowing the Town to construct Main Street improvements and landscaping and drainage was installed. The completed work primarily received all positive points with the exception of relocating the historic house 20 feet on the lot.

The Applicant has not completed the site plan primarily due to economic conditions. Mr. Hartman has expressed his intent of moving forward with the carriage barn this summer and buildings B and C in the next two years.

No changes to the application are proposed from the development permit approved in 2009. Staff has kept the original point analysis, approved by the Planning Commission at the June 9, 2009 meeting; however, should the Planning Commission find that the Applicant shall meet the modifications to the Handbook of Design Standards, the applicant would not meet Policy 5 (Absolute) *Architectural Compatibility*, resulting in a failing point analysis and failing project.

Subsequent to the approval of this application in 2009, the Town approved a number of code changes that would no longer allow several features of their design or future subdivision of footprint lots. As such, code section 9-1-17 (I) allows the Planning Commission several options in its consideration of the request to extend the vesting. The Commission has the ability to 1) review and approve this application under the Codes in effect at the time of the original permit application in 2009 which would essentially be extending the vested property rights, 2) deny the extended property right application or 3) require the recently adopted Design Standards to be followed or a combination of the two as conditions. The Planning Commission may approve, deny or approve the extension with conditions (per code section 9-1-17-11 (I)).

Mr. Dave Hartman, the owner and Applicant: The property was in a state of disrepair; we started this project in 2006 and it took 3 years to take it through the Planning Commission. It is a landmark property on Main; the key was to get the Silverthorne house relocated to a foundation; we completed a good restoration and restored the front yard historic context. We slowed the development because of the economy in 2009. In 2010, I set up a temporary office and moved the Silverthorne house to its current location. We are ready to start Phase 2 of this project; had structural's come through today for the Carriage House restoration and conversion into a two story employee unit. Please extend these vested rights as I received them and support a future waiver to the new subdivision footprint code requirements. If we resubmit under the the current code, I will not be able to put the density allowed and planned for the site plan to recoup restoration costs incurred. I would like to recoup some of the capital I invested in the restoration of the property. Additionally, Staff's request to change the exterior can be done, but seems like a lot of barn wood. (Mr. Rath: What percentage of your total budget has been spent?) We are just shy of a half million dollars for the Silverthorne house. We need about \$150,000 for the carriage barn and \$1 million for the two new buildings, so we spent about 1/3 of what the total costs will be thus far.

Staff has specific questions on the following:

1. Would the Commission apply the 2010 code modification regarding building scale to the project resulting in a non-passing point analysis or uphold the decision made in 2009?
2. Staff has recommended that Building B have an exterior material modification to rough sawn siding or similar to appear more like that found historically on outbuildings. Did the Commission concur?
3. Did the Commission find that the application should be modified to meet Priority Policy 89 regarding setbacks resulting in a non-passing point analysis?
4. Did the Commission want to require the application to meet the Priority Policy 81 modification and have the buildings lowered in height to be below the building height of the Silverthorne house resulting in a

failed point analysis or find that as the original barn in 1890 was 2 stories results in this policy being not applicable?

5. Would the Commission support a waiver at this time per Code section 9-2-1-15 to the 2010 subdivision code modifications on footprint lots? (Note that as a subdivision application is not before the Commission at this time, this is not a formal decision for a waiver.)

If the Commission finds that the Silverthorne House Site Plan meets all absolute polices and supports the final point analysis which was previously approved, Staff recommended approval of PC#2012035 with the following additional condition (to the 2009 development permit):

1. The applicant shall modify Building B exterior materials to be a rough sawn siding or similar material to be approved by staff prior to the issuance of a building permit.

Ms. Dudney opened the hearing to public comment.

Mr. Michael Cavanaugh: Congrats to Dave for his tenacity and restoration work; there is a precedent that you might be setting. I think that it is a good one to set. His project is a good project.

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

Commissioner Questions / Comments:

Ms. Dudney: Does this set a precedent for future Planning Commissions? (Ms. Puester: This is a unique circumstance; it is extending a project which has already begun in which the Applicant has developed what received positive points initially.) In the 1890 Sanborn map, the original barn in the back was higher. So why would we write the code so that secondary properties should be shorter than primary? (Mr. Neubecker: That was the desired character, generally. We had seen a lot of taller buildings in the back being proposed at the time and it was determined that was not the desired character. Not necessarily will it always be that way. There are always special circumstances such as this one where the barn was taller than the Silverthorne house historically.)

Mr. Rath: Is it relevant that these will be footprint lots? (Mr. Grosshuesch: Spoke to the national standards with respect to the footprint lots-they are acceptable in mixed use areas which this is in, our Downtown Overlay District; also said that the recommendation is to extend the vested property rights which means keep the footprint, keep the structure sizes and change the material on the Building B. In the downtown area there is more of a mixed product, and having units subdivided off is more in character with the rest of the area.)

Mr. Lamb: I am in agreement with Staff. To change the rules for the Applicant in the middle of the project construction is not fair. If we hold him up we would end up with a worse project. These are special circumstances. He was in before the code changes. We want people to restore historic houses and we need to treat him fairly. I support a waiver to allow for the subdivision and am ambivalent about the material change.

Mr. Butler: It is incongruous that the 2010 Commission helped modify the code to current state and now in 2012 would not apply it. I like the project. I would not apply the 2010 code modifications in this case. I don't have a problem with exterior material on the duplex. No, they should not have to modify setbacks, no on building height modification and I support a future waiver at this time.

Ms. Christopher: The location of this project is in an area with mixed uses, there are other examples of footprint subdividing in this block. We should allow the Applicant to continue project as approved. This is a unique circumstance where the code was changed after his project was approved and he went forward in good faith. Alright with the 3 year vesting, uphold

- the 2009 codes, the setbacks no change, Applicant should work with the Staff on exterior of building B, no to the lower building heights, the waiver, yes supports one.
- Mr. Rath: Thinks there is a lot of density-the whole alley is like that; the argument that there have been changes in the economy is common although code has changed. I don't want to pull the 'rug' out from someone's feet. He started this with good intentions. Stick with 2009, exterior modification seems like such a small issue but I support Staff's opinion on that. Applicant should change exterior of building B to be more barn like. In support of a passing analysis, I don't believe that we should support a failing analysis, I support a waiver.
- Mr. Pringle: Asked for clarification on the building elements change. Is there any inappropriate ornamentation? (Ms. Puester: No, that was removed prior to the 2009 approval). Do we accomplish what we want with the barn siding? (Ms. Puester: We would work with the Applicant to find something appropriate that fits. C is 1/8 rough sawn; B is 4" cementations horizontal lap reveal.) (Mr. Neubecker and Mr. Grosshuesch: Discussed a simple design for the barn wood design.) I agree with what Mr. Lamb said; the Applicant has been working on completing this property. He has done a beautiful job. It would be easy to give him a permit renewal with no changes. I don't want to answer any of the questions except will we grant the waiver, and the answer is yes.
- Ms. Dudney: This is the first time that the Planning Commission has had this 'power'. It is not common that the code changes so significantly and not fair to change the rules on the applicant half way through. A Master Plan is different than a single property. He has encountered all of the expensive outlay upfront. I think we should waive the code change. I also agree with the Applicant about not changing the exterior on Bldg B. It was approved in 2009.

Mr. Lamb made a motion to approve the point analysis for the Silverthorne House Extended Vesting, PC#2012035, 300 North Main Street. Ms. Christopher seconded the motion to approve and the motion was carried unanimously (6-0).

Mr. Lamb made a motion to approve the Silverthorne House Extended Vesting, PC#2012035, 300 North Main Street, leaving the presented findings and conditions that were approved in 2009. Mr. Rath seconded, and the motion was carried unanimously (6-0).

OTHER MATTERS:

- Ms. Dudney: Can we talk about having a work session per City (Town) Council. (Mr. Grosshuesch: We would like to give you some recommendations and analysis; we don't have it yet but it is coming.)
- Mr. Grosshuesch: Regarding the Silverthorne House; the principle is important to the integrity of the historic district. We are happy with the outcome. Don't minimize the importance of the principle.

ADJOURNMENT:

The meeting was adjourned at 10:14 p.m.

Gretchen Dudney, Vice Chair

Town of Breckenridge Executive Summary
Economic Indicators
(Published July 18, 2012)

Indicator Monitoring System

Up and down arrow symbols are used to show whether the indicator appears to be getting better, appears stable, or is getting worse. We have also designated the color green, yellow or red to display if the indicator is currently good, fair or poor.



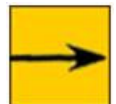
Unemployment: Local (May 2012)

Summit County’s May unemployment rate of 10.5% is significantly lower than the May 2011 rate of 11.4% yet higher than May 2010 rate of 9.7%. Summit’s rate is lower than Pitkin County (12.4%) and Eagle County (12.4%). Due to the seasonality of the economy, higher unemployment rates in May are typical however our rate is still considered relatively high for the time of year (prior to 2008, the May unemployment rate typically did not rise above 5%). *See comparison chart online.* (Note that the arrow follows the KEY for all of the indicators. In this case, the arrow pointing up meaning that the unemployment rate has dropped and is ‘getting better’ and yellow indicates the condition as “fair”.) (Source: BLS)



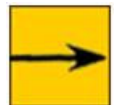
Unemployment: State (May 2012)

The Colorado State unemployment rate holds relatively steady with small increase of one tenth of a percent in May to 8.1% after several months of an incremental downward trend. However, this May is lower than May 2011 rate of 8.7%. (The highest unemployment rate the State has ever seen was 9.3% in February 2011-rates tracked since 1976) (Source: State of Colorado)



Unemployment: National (May-June 2012)

National unemployment rate remains the same at 8.2% for June after seven months of minor decreases. June 2012 remains trending down from last June’s rate of 9.2% and June’s 2010 rate of 9.5%. (Source: BLS)



Destination Lodging Reservations Activity (June 2012)

Occupancy rates saw a significant jump up 43% for the month of June over June 2011. This is likely due in part to the high temperatures in the Front Range and other areas of the country. (Source: MTrip)



6 Month Projected YTD Occupancy (July-December 2012)

Future bookings for the upcoming July-December 2012 period continues to show an increase this month of 7.6% in projected occupancy rate over the corresponding period last year. (Source: MTrip)



Traffic Counts and Sales Trend (June 2012)

June traffic count in town on Highway 9 at Tiger Road was 18,252 total vehicles. As the traffic count is under 20,000, we do not expect to see a large increase in sales tax revenues for June. *(Note: There is a strong correlation between high net taxable sales and traffic once a 20,000 vehicle count has been reached. Please see detailed report on website for chart.)* (Source: CDOT and Town of Breckenridge Finance)



Traffic Count at Eisenhower Tunnel and Highway 9 (June 2012)

During the month of June, the traffic count at the Eisenhower tunnel (westbound) was up 7% over June 2011. Data also showed June traffic coming into town on Highway 9 mirrored a 7% increase from June 2011. Traffic flows indicate that the Town continues to maintain its relative capture rate coming from the tunnel. (Source: CDOT)



Consumer Confidence Index-CCI (June 2012)

The Consumer Confidence Index (CCI), saw a dip of 2.4 points from May to June to 62 points (1985=100). This decline is another negative shift (of 3.7%) for the fourth month in a row however it is still in the range that most economists consider a “good” level of consumer confidence. Based on the index level continuing to fall, we expect that real estate transfer tax revenues will also lag over the same period until the index sees consistent improvement. (Source: CCB)



Mountain Communities Sales Tax Comparisons (May 2012)

The amount of taxable sales in Town for May 2012 was up 13.26% from May 2011 levels. Posting a substantial increase, Breckenridge continues to hold at the top three (3rd out of 8) of the mountain communities for sales tax collected for the month in comparison to last year's May numbers. Most of the communities showed increased sales. Year to date, the mountain communities in the top four spots include Aspen (up 7.97%), Glenwood Springs (7.69%), Snowmass (6.48%), and Breckenridge (4.68%). (Source: Steamboat Springs Finance Dept.)



Standard & Poor's 500 Index and Town Real Estate Transfer Tax (June 2012)

The S&P 500 average monthly adjusted closing price saw a moderate rise after declining in May, continuing a relatively fluctuating 2011/2012 YTD. At the same time, we saw our RETT receipts remain virtually the same this month from Town collections in June 2011 and below that of June 2010. We believe that RETT will continue to lag any growth rates that the S&P 500 achieves for the near future. A prolonged positive change in RETT will likely require a long sustained recovery in the S&P 500 index, with an increase in the wealth effect. *See website for detailed chart and additional information.* (Source: S&P 500 and Town Finance)



Town of Breckenridge RETT Collection (June 2012)

June 2012 RETT collection (\$251,399) is virtually the same as June 2011 (\$251,806). This June is most significantly down from June 2010 (\$326,779) by 23%. (Source: Town Finance)



Real Estate Sales (May 2012)

After a disappointing April, May 2012 Summit county real estate sales were up considerably in \$ volume by 22% and 25% in the number of transactions compared to May 2011. Of that, Breckenridge took in 34% of the \$ volume and 29% of the transactions countywide for this month. This month reflects an uptick after an overall downward in \$ volume in the last seven months trend (Feb. 2012 being the only month of increase). (Source: Land Title)



Foreclosure Stressed Properties (May 2012)

Breckenridge properties (excluding timeshares) which have started the foreclosure process are at 25% (28 properties) of the total units within Summit County in 2012 YTD. These are considered distressed properties which may or may not undergo the foreclosure process. Should these properties actually undergo foreclosure, these properties may sell at an accelerated rate and lower price per square foot in the short term. (Source: Land Title)



If you have any questions or comments, please contact Julia Puester at (970) 453-3174 or juliap@townofbreckenridge.com.



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 24; 3:00/7:30 p.m. Second Meeting of the Month

AUGUST 2012

Friday, August 10; Park & Main 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