

CALL TO ORDER AND ROLL CALL

Mayor Blake called the February 12, 2008 Town Council Meeting to order at 7:30 p.m. The following members answered roll call: Mr. Bergeron, Mr. Mamula, Ms. McAtamney, Mr. Rossi, Mr. Millisor, Dr. Warner and Mayor Blake.

APPROVAL OF MINUTES – January 22, 2008 Regular Meeting

There were no changes to the minutes. Dr. Warner commented that Rick Sramek's name was misspelled 2 times. They were approved with that one change.

APPROVAL OF AGENDA

Town Manager, Tim Gagen, commented that they would like to add an Executive Session related to Attorney Advice at the end of the meeting

COMMUNICATIONS TO COUNCIL

- A. Citizens Comment - (Non-Agenda Items ONLY; 3 minute limit please)
1. Leslie Davis- Introduced herself as the new operator of the Valley Brook Child Care Facility.
 2. Paul Hintgen- Owns Country Boy Mine and Breckenridge Sleigh Rides. In earlier January the catering contractor decided business wasn't good enough and interpreted his contract with the Town to exclude Breckenridge Sleigh Rides from the Gold Run Nordic Center. He has done extensive marketing, website design, brochure development, PR, etc and he is now not allowed to use the Gold Run Nordic Center, you can't use the bathrooms or warm up near the fire. His numbers have been down since Gilchrist closed the restaurant and will not allow them in the building. He handed out a letter from his attorney to be part of the record.
 3. Cindy Hintgen- Owns Country Boy Mine and Breckenridge Sleigh Rides. Has to tell parents that she can not have them enter the building. They want to warm up and assure their children are warm and they need a place to go to the bathroom. She becomes the target of their anger and frustration. They want to know why they can't enter the building and why their marketing says they have these facilities and have a five star sleigh ride. They offered to split bathrooms cleaning costs but that was ignored. They offered to do a port-a-potty and that was denied.
 4. Doug Tomlinson- Previous owner of Breckenridge Sleighrides. He is here because Paul and Cindy requested his help. After 4 weeks the TOB has failed to come up with a solution. The situation has been poorly managed. If the TOB wants a world-class sleigh ride operation they can not allow the catering company to shut down. They have done a lot of marketing and have been taking reservations for months. Mr. Gilchrist does not give any explanation or any resolution. If the Town fails to take a stance they will be condoning Mr. Gilchrist's behavior. Why is it that the Nordic visitors can use the facility but the sleigh ride guests cannot? He feels Mr. Gilchrist is not in compliance with the contract. Mr. Gilchrist has refused to provide dinner or have the facility open for the sleigh rides. He quoted a portion of the contract between Mr. Gilchrist and the TOB that says that he will provide dinner for special events and sleigh rides.
 4. Tim Hinely- Plays Tennis everyday. He represents a group that plays and a lot of Seniors that play tennis. He believes they have between 300-350 people who use the tennis courts. John O'Conner and Tim do a great job. He hopes that the Council will consider keeping the courts.

Mayor Blake commented that he spoke with Tim and told him that at the work session the Council decided that the 2 courts will remain a part of the facility at least for now. He mentioned that the tennis players were well represented at the work session.

5. Marty Trissler- Commented Sunset magazine had a great article on Breckenridge and the Sleigh Rides.

B. BRC Director's Report – Shawna, commented that the Hintgen's have done a great job with marketing and have been very helpful to the Chamber. NBS commented that it was the smoothest Summit/Mini-Summit they have ever done. There were about 900 guests. She handed out a breakdown of the Economic Impact from the week the NBS was in town. Talked with a bunch of the lodging companies and they were extremely happy and very well booked especially in their high-end properties. With Snow Sculpture as well, January was great and they can't wait to see the numbers.

Welcome Center visits were 15,580 guest contacts for the month compared to 8,169 guests last year. Mr. Rossi asked if that was bathroom use as well. Mr. Mamula commented that if we could find out the difference between the entrance counter and the bathroom counter so we could determine if it was a smart decision to put the bathrooms down there. Terry Perkins, Public Works Director, commented that the counter on the way down to the bathrooms was fixed.

CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILLS, SERIES 2007 & 2008 – PUBLIC HEARINGS**

1. Council Bill No. 3, Series 2008- AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH JOSEPH S. MILLER AND BRADDOCK HOLDINGS, LLC, a Colorado limited liability company (Extended Vested Property Rights—Stan Miller Master Plan)

Tim Berry commented that a formal application for the Master Plan for the combined Miller Annexation and Braddock Holdings properties would be submitted. In connection with that application and the annexation of the Miller property, the applicants consistently have expressed the need for extended vesting for a period of eighteen years therefore a separate development agreement for the extended vesting must occur.

Mayor Blake asked for public comment. There was no comment. He closed the public hearing.

Ms. McAtamney moved to approve Council Bill No. 3, Series 2008 on second reading. Dr. Warner made the second. The motion passed 7-0.

2. Council Bill No. 4, Series 2008- AN ORDINANCE AUTHORIZING THE GRANTING OF A SIGN EASEMENT TO B & D LIMITED PARTNERSHIP

Tim Berry commented that in 2006 the Town approved a sign variance to authorize the placement of a 28 square foot off-premise sign for the new Breckenridge Building Center building. The proposed location of the sign is on property owned by the Town. Therefore, in order to finalize the sign that was approved in 2006 it is necessary for the Town to grant the BBC permission to place its new sign on Town property. The sign is proposed to be located near the intersection of Highway 9 and the new BBC as more clearly depicted in the proposed easement.

Pursuant to the proposed Easement, B & D will pay the Town \$500 per year for the easement grant. The rental is to be paid in 5-year installments to minimize the accounting for both parties. If B & D should fail to pay the required rental, the Town can terminate the easement and require B & D to reconvey the easement to the Town, thereby clearing the Town's title to the land.

Mayor Blake asked for public comment. There was no comment. He closed the public hearing.

Mr. Mamula moved to approve Council Bill No. 4, Series 2008 on second reading in the form of the sign easement that is contained in the Council Packet. Dr. Warner made the second. The motion passed 7-0.

3. Council Bill No. 5, Series 2008- AN ORDINANCE AUTHORIZING A SECOND AMENDED GRANT OF EASEMENTS TO B & D LIMITED PARTNERSHIP

Tim Berry commented that this ordinance would grant an access Easement to the buildings located off Highway 9. There is a blank on Page 71 in section 8 that they just received the information on today and are in the process of confirming. He requested that they continue the ordinance to the next meeting.

Mayor Blake asked for public comment. There was no comment. He closed the public hearing.

Mr. Bergeron moved to move the second reading of Council Bill No. 5, Series 2008 to the second meeting in February. Mr. Mamula made the second. The motion passed 7-0.

B. FIRST READING OF COUNCIL BILLS, SERIES 2008-

1. Council Bill No. 6, Series 2008- AN ORDINANCE ADOPTING AMENDED GUIDELINES FOR LAND USE DISTRICT 33

Tim Berry commented that at the last meeting the Council adopted an ordinance placing the recently annexed Stan Miller property in Land Use District 33. However, as was acknowledged in the Annexation Agreement, the Land Use Guidelines for District 33 need to be amended in order to allow for the development of the Stan Miller property as contemplated by the annexation proposal. It is a condition of the Stan Miller Annexation Agreement that the Land Use District 33 Guidelines be amended to accommodate the proposed Stan Miller development.

The revised guidelines will allow for the Planning Commission to consider and ultimately approve (if appropriate) the proposed Master Plan for the development of the Stan Miller property. Without the amendment to the Land Use District 33 Guidelines, the proposed Stan Miller Master Plan cannot be approved as submitted.

This particular amendment to the Land Use Guidelines is classified as a quasi-judicial amendment because it deals with specifically identifiable property. Under the Town's established procedures, it is necessary for the Town to publish twice a special notice of public hearing and to also provide a special notice to the owners of all real property located within Land Use District 33 who would be affected by the adoption of the proposed LUG amendments. In order to allow for the special notice to be published and mailed to the affected landowners, it will be necessary for second reading of this ordinance to be held no sooner than the March 11th Council meeting.

Mr. Bergeron moved to approve Council Bill No. 6, Series 2008 on first reading and to move the second reading to the March 11th Council meeting. Mr. Mamula made the second. The motion passed 7-0.

2. Council Bill No. 7, Series 2008- AN ORDINANCE AMENDING SECTION 1-7-1 OF THE BRECKENRIDGE TOWN CODE CONCERNING THE COMPENSATION OF THE MAYOR AND COUNCILMEMBERS ELECTED OR APPOINTED ON OR AFTER APRIL 1, 2008

Tim Berry commented that the ordinance would amend the portion of the Town Code that sets the salaries of the Mayor and the Councilmembers. If adopted, the ordinance will raise the monthly salaries of the Mayor and the Councilmembers to \$1,200 and \$800, respectively.

Because an elected official's salary can neither be increased nor decreased during his or her term of office, if this ordinance is adopted the change will apply only to persons elected at the regular Town election this April and thereafter.

Dr. Warner moved to approve Council Bill No. 7, Series 2008 on first reading. Mr. Bergeron made the second. The motion passed 6-1 with Mr. Rossi objecting.

3. Council Bill No. 8, Series 2008- AN ORDINANCE AMENDING SECTION 1205 OF THE MODEL TRAFFIC CODE FOR COLORADO, 2003 EDITION

Tim Berry commented that the ordinance would amend the Model Traffic Code to allow for angle parking within the Town. The Model Traffic Code contemplates that angle parking may properly be used within a municipality, but the Code requires that it be authorized by ordinance. As you know, we have several locations within Town where angle parking is required.

The ordinance would amend Section 1205 of the Model Traffic Code to authorize angle parking within the Town where determined to be appropriate by the Town Engineer. As you will note, once a street is designated for angle parking the Town will have to make or sign the street to indicate that angle parking is permitted and at angle at which vehicles shall be parked.

Any person who parks improperly in a designated angle parking slot will be guilty of a civil traffic violation. The Municipal Judge will establish the appropriate fine.

This ordinance will not be applicable to Colorado Highway 9, so it will not be necessary to get CDOT's approval before this ordinance can become effective.

Mr. Mamula moved to approve Council Bill No. 8, Series 2008 on first reading. Mr. Rossi made the second. The motion passed 7-0.

C. RESOLUTIONS, SERIES 2008

1. A RESOLUTION AUTHORIZING THE RED, WHITE & BLUE FIRE PROTECTION DISTRICT TO ENFORCE A FIRE CODE WITHIN THE CORPORATE LIMITS OF THE TOWN OF BRECKENRIDGE

Tim Berry commented that the Red White and Blue Fire Protection District recently updated their Fire Code by adopting the 2006 International Fire Code with amendments. Colorado statute provides Fire Protection Districts with the powers to adopt and enforce fire codes, but those codes do not apply within a municipality unless the governing body of the municipality adopts a resolution saying the Fire Protection Districts can enforce the fire code within the municipality. In the past the Town's position on this matter has been to defer adoption and enforcement of Fire Codes to the Red White and Blue Fire Protection District.

The resolution will provide the Red White and Blue Fire Protection District with the powers to enforce the newly adopted a Fire Code and any subsequently adopted Fire Codes within the town. He met with Jay Nelson with RWB after the work session in regard to enforcement of the occupancy requirements of the fire code and they will continue to enforce it.

Mayor Blake asked for public comment. There was no comment. He closed the public hearing.

Mr. Bergeron moved to approve the Resolution, Series 2008. Ms. McAtamney made the second. The motion passed 7-0.

2. A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE STATE OF COLORADO GOVERNOR'S ENERGY OFFICE

Tim Berry commented that the Resolution would approve a memorandum of understanding with the Town and the Governor's Energy Office (GEO). The purpose of the MOU is to establish that we are utilizing the services of the GEO, and that we intend to follow their prescribed process, in our efforts to hire a performance contractor to conduct energy audits on our buildings and vehicle fleet. The GEO's services are at no cost to the town.

Mayor Blake asked for public comment. There was no comment. He closed the public hearing.

Mr. Millisor moved to approve the Resolution, Series 2008. Ms. McAtamney made the second. The motion passed 7-0.

D. OTHER

PLANNING MATTERS

• Planning Commission Decisions of January 15, 2008.

With no requests for call up, Mayor Blake stated the Planning Commission decisions of the February 5, 2008 meeting will stand as presented.

• Town Council Representative Report.

Dr. Warner commented that Tim Berry opened the meeting with a discussion on conflict of interest, point analysis, etc.

REPORT OF TOWN MANAGER AND STAFF

Tim Gagen, Town Manager, commented that

REPORT OF MAYOR AND COUNCILMEMBERS

A. Report of Mayor (CAST)

Mayor Blake had nothing to report.

B. Breckenridge Open Space Advisory Commission (Mr. Bergeron)

Mr. Bergeron commented on the Breckenridge Nature Series. They have tripled the amount of business in the last year. Though they are still subsidized they are moving in the right direction and Carin Faust is doing a great job. They did a trail review and talked about the Peak 6 Scoping.

C. BRC (Mr. Rossi)

Mr. Rossi had nothing to report.

D. Multi-Jurisdictional Housing Authority (Mr. Millisor)

Mr. Millisor commented that they will be bringing a proposal to take a portion of the 5A money to help create a revolving fund that they can use for AMI's for 100-160%.

E. Breckenridge Heritage Alliance (Ms. McAtamney)

Ms. McAtamney commented that the Carter Museum is closed for renovations and they interviewed 2 entities for the exhibits. One was Roybal and another company out of Estes Park. They Council was surprised that Roybal was being considered.

F. Liquor Licensing Authority (Mr. Bergeron)

Mr. Bergeron had nothing to report.

OTHER MATTERS

Dr. Warner commented on the woman that came in with the single use bags. He would like to see the Town look into it. Tim Gagen commented that the Green Team is looking into it. The Council would like to talk about it as a policy issue.

Mr. Rossi commented on something that Mike Dudick said. Try to have the events for the Snow Sculpture through out the week and not just on one day. Maybe try to get people to park out in the Airport Road lots for event parking. Commented on the crosswalks at Lincoln and Main and the barndance. It should be controlled by a Police Officer or turned off during high traffic times.

Mr. Millisor commented this year that it is so much worse coming into Town northbound between 4-5pm. Tim Gagen commented that he will have Rick come talk about it but they have also seen a lot more workers coming in and out of Town.

Mr. Bergeron commented that we have an over capacity issue. He also commented on the light at Lincoln and Main. Mr. Bergeron commented that the Country Boy Mine and Sleigh Rides are an amenity for this Town.

Mr. Mamula questioned the Council as to whether they were on board with what was said about the Gondola master planning. They confirmed that they were.

SCHEDULED MEETINGS

EXECUTIVE SESSION

At 8:26pm Mr. Rossi moved to go into Executive Session pursuant to Paragraph (b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for purposes of receiving legal advice on specific legal questions.

At 8:50 pm Mr. Mamula moved to convene in the Town Council's regular meeting. Mr. Rossi made the second. All were in favor of the motion.

ADJOURNMENT

With no further business to discuss the regular meeting was adjourned at 8:50 pm.

Submitted by Alison Kellermann, Administrative Services Coordinator

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

Ernie Blake, Mayor

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February 6, 2009

VIA EMAIL (paul@countryboymine.com)

Tommyknockers, Inc.
Attn: Paul Hintgen, President
P.O. Box 2332
Breckenridge, CO 80424

Re: Provision in Lease between Town of Breckenridge and BBB, Incorporated.

Dear Paul:

This letter sets forth a brief discussion of the Golf Course Clubhouse Restaurant Lease (“Lease”) between the Town of Breckenridge (the “Town”) and BBB, Incorporated, dated April 15, 2006. As we have discussed, the Lease contains a provision that allows the Town to make rules and regulations regarding the Leased Premises, including the common area bathrooms.

Section 11.1 of the Lease states the following:

Tenant shall faithfully observe and comply with any rules and regulations that Landlord shall from time to time promulgate with respect to the Leased Premises. The rules and regulations promulgated shall be reasonable and may not unilaterally change or significantly alter the material terms and conditions of this Lease. The rules and regulations, and any amendments thereto, shall be binding upon the Tenant upon delivery of a copy of them to Tenant.

This language unequivocally gives the Town the right to promulgate reasonable rules and regulations regarding the Leased Premises.

The current dispute over access to the common area bathrooms has a very simple solution. The Town, pursuant to Section 11.1, may promulgate rules stating that the other users of the Clubhouse, including golfers and Nordic skiers, may have access to the common area bathrooms. In return for having access to the common area bathrooms, the other users would pay a proportionate share of the janitorial costs for the bathrooms. Section 4.5.4 of the Lease sets forth the janitorial responsibilities of BBB, Incorporated for the common area bathrooms.

As you know, we have previously made a similar proposal to BBB, Incorporated, which was rejected. This is a perfectly reasonable and logical resolution to the current dispute, and will not significantly alter the material terms of the Lease. This solution will not adversely impact the operation of the restaurant by BBB, Incorporated or the other users of the Clubhouse.

Very truly yours,

/s/ Joshua N. Reider
Joshua N. Reider