

**TOWN OF BLUE RIVER, COLORADO
ORDINANCE NO. 2021-05**

**AN ORDINANCE ADOPTING NEW SECTIONS 2-6-100 AND 2-6-110 OF THE
BLUE RIVER MUNICIPAL CODE TO PROVIDE AN APPEAL PROCESS FOR
FINAL DECISIONS OF THE PLANNING AND ZONING COMMISSION AND
DECLARING AN EMERGENCY**

WHEREAS, pursuant to Part 2, Article 23, Title 31 of the Colorado Revised Statutes, the Town of Blue River ("Town") has authority to establish a planning commission with duties set forth in such Part 2; and

WHEREAS, the Town Board of Trustees enacted a new Article 6 of Chapter 2 in 2020 to provide for duties, obligations, authorities, and membership of the Planning and Zoning Commission; and

WHEREAS, the Planning and Zoning Commission has the authority to issue recommendations or advisory decisions in accordance with the Municipal Code; and

WHEREAS, the Planning and Zoning Commission has in limited circumstances the authority to issue final decisions for certain site design proposals such as determining conformance of applications with design guidelines; and

WHEREAS, the Board of Trustees desires to provide for a right of appeal of final decisions of the Planning and Zoning Commission; and

WHEREAS, because the Planning and Zoning Commission routinely engages in issuing final decisions that should be made subject to reasonable opportunity of appeal to the Board of Trustees, the immediate effectiveness of this ordinance is necessary to best ensure fairness and equal process to applicants and to best serve the public.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BLUE RIVER, COLORADO:

Section 1. Article VI of Chapter 2 of the Blue River Municipal Code is hereby amended to add a new Section 2-6-100 to read in full as follows:

Sec. 2-6-100. Effective date of Planning and Zoning Commission decision

- (a) Recommendations and Advisory Decisions. Recommendations or advisory decisions of the Planning and Zoning Commission that are subject to later consideration or review and a final decision by the Board of Trustees in accordance with the Municipal Code shall be effective at the time of the recommendation or decision.
- (b) Final Decisions. Decisions of the Planning and Zoning Commission concerning an application for development or improvement of property which decision is final and subject to appeal to the Board of Trustees in accordance with the Municipal Code shall be deemed effective six (6) days following the date of the decision provided that no appeal is submitted pursuant to Section 2-6-110. During such 6-day period, no building or other permit or authorization concerning the development or improvements that are the subject of the Commission's decision shall be issued by the Town and, if issued in error, shall not be effective and may be revoked.

- (c) Zoning Variances. Decisions of the Planning and Zoning Commission concerning an application for variance as provided by Article 11 of Chapter 16 (zoning variances) shall be effective immediately upon execution of a Commission Resolution granting or denying the variance and shall not be subject to an appeal as provided by Section 2-6-110. Appeals of a zoning variance decision shall be available in accordance with state law.

Section 2. Article VI of Chapter 2 of the Blue River Municipal Code is hereby amended to add a new Section 2-6-110 to read in full as follows:

Sec. 2-6-110. Appeal of Final Planning and Zoning Commission Decision

- (a) This section shall apply only to final decisions of the Planning and Zoning Commission as set forth in Section 2-6-100. This section shall not apply to recommendations, advisory opinions, or to decisions to grant to deny a variance as provided by Article 11 of Chapter 16 (zoning variances).
- (b) An appeal of a final decision issued by the Planning and Zoning Commission may be brought to the Board of Trustees in accordance with this section by any person that sufficiently alleges in accordance with Colorado law: (1) a legally recognized injury-in-fact from the decision to be reviewed; and (2) such alleged injury is to a legally protected interest.
- (c) A complete and timely filing of a notice of appeal and the processing to conclusion of such appeal evidenced by the issuance of a decision by the Board of Trustees pursuant to this Section is a jurisdictional prerequisite to the further right of appeal under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
- (d) An appeal requires strict conformance with the following process:
- (1) Within five (5) business days of the date of the Planning and Zoning Commission decision, the party seeking appeal (the “appellant”) shall submit to the Town a timely and complete notice of appeal. Submission of the notice of appeal shall be made by physical delivery to the Town Manager or, as an alternative to physical delivery, the notice of appeal may be transmitted by electronic mail if addressed to both the Town Manager and the Mayor at electronic mail addresses available on the Town’s official website. To be deemed timely and complete, a notice of appeal shall include:
 - a. The name, telephone number, and electronic mail contact information for the appellant, an explicit demand for appeal, the name or title associated with the application, the date of the Planning & Zoning Commission’s decision, and a description of the general errors, grounds, or reasons supporting the appeal.
 - b. A statement setting forth the specific basis for an injury-in-fact and a legally protected interest which basis would confer upon the appellant the standing or legal right of appeal as required by section 2-6-110(a) and the law of the state of Colorado.

- c. Full payment of any Town-imposed appeal fee established by the Town Manager as reasonably related to the cost of providing notice and conducting a hearing. Such fee is non-refundable.
- (2) The Town Manager, in consultation with the Town Attorney, shall determine whether a submitted notice of appeal is timely and complete. The appellant shall be promptly notified by the Town Manager of such determination.
- (3) Failure to timely submit a complete notice of appeal shall be deemed a failure to submit an appeal and a failure to meet the jurisdictional prerequisite for further right of appeal under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
- (4) Upon receipt of a timely and complete notice of appeal:
 - a. No building permits or other Town authorizations or approvals shall be issued for the development or the improvements that are the subject of the appeal of the Planning & Zoning Commission decision until the conclusion of the appeal.
 - b. The Town Manager shall schedule the appeal to be considered by the Board of Trustees at the Board's earliest available opportunity and with sufficient time to meet applicable notice requirements. Such date of appeal shall not to exceed sixty (60) days following the Planning and Zoning Commission final decision.
 - c. The Town Manager shall cause to be prepared and published and/or posted public notice of the appeal and the scheduled appeal hearing. Such notice shall comply with the same notice requirements applicable to the original hearing of the matter before the Planning and Zoning Commission.
 - d. The Town Manager shall cause the record of the Planning and Zoning Commission proceeding to be prepared and distributed to the Board of Trustees together with the notice of appeal and any materials or documents submitted by the applicant, the appellant, or other interested parties.
- (5) At the scheduled date and time of the Board of Trustees' consideration of the appeal:
 - a. The Town Manager and/or the Town Attorney shall present general information concerning the original application, the appeal, and the development or the improvements that comprise the subject of the appeal.

- b. The Board of Trustees shall conduct a quasi-judicial, *de novo*,¹ public hearing on the appeal. The applicant, appellant (if not the applicant), and all interested parties shall be provided a reasonable opportunity to address the Board of Trustees in accordance with any adopted rules of procedure or practices of the Town.
 - c. The Board of Trustees shall render a final decision on the application subject to appeal. Such decision may, at the Board's option, be evidenced by a resolution or other form of written decision. The Board of Trustees' decision shall not be subject to further appeal pursuant to this section and further appeal shall be available pursuant to Rule 106(a)(IV) of the Colorado Rules of Civil Procedure or other available judicial process or procedure.
- (6) During the pendency of an appeal, the Town shall suspend the effective date of the Planning and Zoning Commission's decision pending the final decision of the Board of Trustees.
 - (7) The date of the final decision for purposes of judicial review pursuant to Rule 106(a)(IV) of the Colorado Rules of Civil Procedure or other available judicial process or procedure shall be the date of the Board of Trustees' final decision on appeal.
 - (8) In the event of a withdrawal of the appeal by the appellant prior to the issuance of a final decision on appeal by the Board of Trustees, the Planning and Zoning Commission's original decision shall be deemed the final decision on the matter effective as of the date of the Planning and Zoning Commission's original decision.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 4. Repeal. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 5. Minor Revision or Correction Authorized. The Town Manager, in consultation with the Town Attorney, is authorized to make minor revisions or corrections to the codified version of the provisions of this Ordinance provided that such revisions or corrections are grammatical, typographical, or non-substantive and do not alter or change the meaning and intent of this Ordinance.

¹ *De novo* means that the proceeding will be treated as a completely new matter as if it had not been previously heard or decided.

Section 6. Emergency Declaration and Effective Date. The Board of Trustees hereby legislatively declares that the passage of this Ordinance is necessary for the immediate preservation of the public peace, health or safety. Specifically, the passage of this Ordinance as an Emergency Ordinance is necessary in order to guarantee or ensure to all applicants and aggrieved parties fair, proper, and timely processing of applications submitted to the Town for development or improvements in accordance with the Blue River Municipal Code. Upon passage by a supermajority of the members of the Board of Trustees in office, as required by state law, this Ordinance shall become effective immediately upon adoption.

FINALLY PASSED, APPROVED, ADOPTED AND ORDERED PUBLISHED at a regular meeting of the Board of Trustees of the Town of Blue River, Colorado, held on the 16th day of February, 2021.

Mayor

APPROVED AS TO FORM:

ATTEST:

Town Clerk

Town Attorney

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PLANNING DEPARTMENT

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February 10, 2021

Town of Blue River Board of Trustees
c/o Michelle Eddy
Town Manager/Clerk
PO Box 1784
Breckenridge, CO 80424
michelle@townofblueriver.org

RE: Summit County Comments on the Proposed Annexation of “Lot 28A, Gold King Placer” to the Town of Blue River

Dear Board of Trustees:

With this letter, Summit County respectfully submits comments on the proposed Annexation of “Lot 28A, Gold King Placer” and proposed rezoning from the County’s A-I zoning to the Town’s R-I zoning for the Board of Trustees’ review and consideration. We acknowledge the Town’s sovereign authority to make decisions about development on the subject property upon annexation into the Town’s boundaries. The following comments are offered in the spirit of inter-jurisdictional cooperative planning and shared responsibility for protecting the public interest, quality of life, and natural resources in the Upper Blue Basin. Summit County offers itself as a partner for the Town to work with to facilitate the implementation of any suggestions or recommendations presented in this letter, including expeditiously facilitating any transfer of development rights to the subject property through the Upper Blue Transferable Development Rights (TDR) program and the impacts to road maintenance. In this context, the County offers the following discussion:

Proposal:

The request is to annex into the Town of Blue River and proceed with a subdivision of a parcel of land referred to as “Lot 28A, Gold King Placer”. As set forth in more detail below, the subject property was not subdivided via a platting process, thus the terminology of “referred to” as “Lot 28A” is intentional as the description in the deed employs metes and bounds descriptions and the designation of “A” as the easterly portion of Lot 28 is not officially documented on any deed. “Lot 28A” is approximately 5.05 acres, and according to Summit County Assessor data, is developed with a 2,255-square-foot single-family home originally constructed in 1964. County Road 802 crosses the property and the applicant proposes to annex into the Town Blue River and then proceed with a subdivision creating another lot of approximately 2 acres southeast of CR 802 to accommodate a single-family home.

Density and Development Permitted by County Zoning (1 Unit):

The area known as Gold King Placer was originally deeded into approximately 30 ten-acre parcels between 1959 – 1961. Many years ago a few lots were further divided into smaller parcels, including the subject parcel. These additional subdivisions were expressly disallowed by the County’s development policies starting in the early 1990’s and that policy position has been maintained ever since. When the County adopted zoning in 1969, Gold King Placer was zoned Agricultural (A-I) which allows 1 (one) unit per 20 acres. While the existing parcel is below the minimum lot size for the zone district, the creation of the parcel and construction of the home both predate both subdivision and zoning regulations and are considered legal, non-conforming. Accordingly, 1 (one) unit of density legally exists on the property. Despite the non-conforming status, a lot of 5 acres where 20 is required, Summit County acknowledges the development right on Lot 28A such that if the existing home were to be damaged or

destroyed, the property owner could rebuild a single-family home through the applicable County process. The existing zoning does not permit an additional unit of density to be constructed nor a subdivision to allow for an additional unit of density.

Density Concern:

The proposal to annex and rezone the subject property to R-1 is an upzoning, i.e. the creation of 1 (one) additional unit of density beyond the density permitted by zoning. This increase in density is one of the primary concerns of the County, and should the Town of Blue River annex and support a subdivision, a simple means to address this concern would be to transfer a development right to this property to account for the increase in density.

This concern about upzoning the property is detailed within the Joint Upper Blue Master Plan (JUBMP), first adopted by Summit County and the Towns of Breckenridge and Blue River in 1997 and then readopted by all three jurisdictions in 2011. The JUBMP provides a shared set of policies to serve as an advisory guide for development in the Upper Blue Basin. As stated in the JUBMP, "it is recognized that the Plan should inform all such decisions and that each of these jurisdictions will strive to make decisions which are aligned and consistent with the Plan."

A key issue is a desire to sustain the quality of the Upper Blue Basin's resources and community character, upon which our economy is based. When developing the plan, all jurisdictions recognized that unrestricted growth will cause significant negative impacts on the sensitive environment of the basin and the balance that the community has sought to achieve over decades of cooperative effort. One of the primary goals in the JUBMP is to cap the ultimate development potential to what is already allowed by existing zoning, with further goals to reduce density below this amount to the extent possible. In order to maintain a cap on overall density in the Upper Blue Basin, the plan states that no upzonings should be approved in the Basin without utilizing Transferable Development Rights (TDRs), thus keeping the overall basin density the same. The specific goals and policies stated in the Plan are:

Goal A. Future land use decisions should advance an urban/rural development pattern and not increase overall density in the Basin.

Policy/Action 3. No new density (beyond that currently zoned) shall be approved or allocated to any parcel within the Basin unless such density is transferred to the proposed development site in accordance with the guidelines established in basin transferable development rights (TDR) programs and the Towns and County Development Codes.

Policy/Action 4. Rezoning or other actions which increase density beyond the level currently zoned should require a transfer of development rights in accordance with established TDR program regulations.

Past Precedent in Blue River:

In June of 2005, the County facilitated the transfer of 4 TDRs as required by the Board of Trustees in concert with platting of the McCullough Gulch Reserve subdivision to account for the upzoning and increase in density. Should the Board of Trustees decide to move forward with the proposed annexation and upzoning, the County would be equally willing to assist in the transfer of required TDRs.

Requested Action:

While the JUBMP is an advisory document and not binding on any of the three jurisdictions, the density cap and TDR requirements are the cornerstone of the plan and the County and the Town of Breckenridge have upheld the density cap and TDR requirements in all applicable development approvals granted since its adoption. While the County is not aware of all development decisions within the Town of Blue River, it is our understanding that the Town of Blue River has done the same. Since its adoption in 1997, 45 separate TDR transactions have occurred in the Upper Blue Basin, involving the transfer of over 100 development rights, and resulting in protection of approximately 2,000 acres of backcountry land. We have consistently upheld these policies ourselves, and we

ask that the Town of Blue River continue to do the same, as our partner in the joint plan. We therefore respectfully request that the Town uphold the density limitations and TDR policies set forth in the JUBMP, by requiring the transfer of development rights for any additional density created above the density currently permitted by County zoning.

Facilitation of Transferrable Development Rights:

Should the Town require a TDR in conjunction with this request, the County offers our willingness to facilitate the transfer of development rights in an expeditious manner. The current cost of a TDR sold from the Joint Upper Blue TDR Bank is \$99,045. Additionally, while less preferable, an option in lieu of the property owner purchasing a TDR from the bank would be for the Town of Blue River to extinguish density in concert with this upzoning. The Town of Blue River owns lots that are zoned for development, but will never realistically accommodate development, i.e. wetlands lots. Thus another option would be to retire this density in concert with the annexation and rezoning proposal in order to adhere to the policies set forth in the JUBMP. County staff would note that the County Code currently has a mechanism to remove development rights from wetland lots and use them as TDRs, and the County would be happy to lend any expertise it has on this issue to the Town.

Legal Access and Road Maintenance:

Access via Summit County Road 802 was granted in 1963 via declaration at reception #96557. The Summit County Road & Bridge Department has records of County maintenance of CR 802 dating back at least as far as 1978. The annexation of this parcel would include the easement for the road, which is similar in nature to other roadway easements in the Town of Blue River, and would transfer jurisdiction and maintenance responsibilities to the Town of Blue River. The result of such a transfer would be that access to the location where our maintenance currently stops, and where our plow turns around, would be interrupted by the jurisdictional boundary. This would potentially disrupt access and maintenance activities that benefit the two other lots in the Gold King Placer that take access from the County maintained portion of CR 802. The disruption to maintenance and the jurisdictional difficulties presented by the annexation would have to be worked out between the Town and the County. While the County does not wish to cease maintenance on any areas that it currently maintains, it's certainly possible that it would become necessary to do so.

Future Precedent Concerns:

As noted prior, the approximately 30 lots in the Gold King Placer were originally created by deed prior to the adoption of zoning or subdivision regulations by the County. In 1969, when the County did adopt zoning, the entire area was zoned A-I and has remained so since that time. The County has consistently maintained for decades that the "lots" in Gold King Placer were never actually subdivided according to the common use of that term and the purposes for which subdivision exists today. This means that the parcels in that area have never been analyzed in accordance with any subdivision standards, let alone the standards as they exist today in Chapter 8000 of the Code. No review authority has considered whether the parcels are appropriate for the use(s) proposed, and whether the development proposed will be compatible and coordinated with the surrounding areas, not to mention capable of being served by the necessary utilities. The issue of increased density in the Gold King Placer implicates a number of specific environmental concerns, including the impact that additional wells and septic systems would have on the sensitive ecology of the Blue River area. The non-conforming parcel plan review that the County Code requires for non-platted, non-conforming lots is an attempt to provide for some of the review that citizens rely on to ensure that development results in orderly, stable neighborhoods, does not degrade the local environment, and protects the public health, safety, and welfare. Annexation of one parcel out of this area will inevitably result in additional requests for annexation, resulting in the splintering and jurisdictional bifurcation of an already tenuously planned neighborhood. The County respectfully requests that the Town of Blue River consider the impact its decision in this case may have on future proposals.

Feel free to reach out to us with any questions or concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read 'RJ', is written over a horizontal line.

April Kroner
Planning Director

Robert Jacobs
County Engineer/Road & Bridge Director

cc: Bentley Henderson, Assistant County Manager
Jim Curnutte, Community Development Director
Keely Ambrose, Assistant County Attorney
Jessica Potter, Senior Planner