



OFFICIAL MINUTES

4:30 Executive Session | 5:30 Regular Session | Town Council Meeting Rescheduled from 9/4

Tuesday, September 03, 2024

Town Hall / Council Chambers - 302 Pine St Minturn, CO

The agenda is subject to change, including the addition of items 24 hours in advance or the deletion of items at any time. The order of agenda items listed are approximate.

This agenda and meetings can be viewed at www.minturn.org.

MEETING ACCESS INFORMATION AND PUBLIC PARTICIPATION:

This will be an in-person meeting with access for the public to attend in person or via the Zoom link included. Zoom Link: <https://us02web.zoom.us/j/89129851168>

Zoom Call-In Information: 1 651 372 8299 or 1 301 715 8592 **Webinar ID:** 891 2985 1168

Please note: All virtual participants are muted. In order to be called upon an unmuted, you will need to use the “raise hand” feature in the Zoom platform. When it’s your turn to speak, the moderator will unmute your line and you will have five (5) minutes for public comment.

Public Comments: If you are unable to attend, public comments regarding any items on the agenda can be submitted to Jay Brunvand, Town Clerk, prior to the meeting and will be included as part of the record.

1. CALL TO ORDER

Mayor Earle B. called the meeting to order at 4:30pm.

2. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council present Mayor Earle Bidez, Mayor Pro Eric Gotthelf, Town Council members Lynn Feiger, Gusty Kanakis, Tom Priest, Brian Rodine, and Kate Schifani.

Staff present: Town Attorney Mike Sawyer, Town Manager Michelle Metteer, Town Planner Madison Harris, and Town Clerk Jay Brunvand (zoom).

3. EXECUTIVE SESSION

- A.** An Executive Session pursuant to CRS Section 24-6-402(4)(b) for the purposes of consulting with the attorney to receive legal advice on legal questions related to the following matters: Battle Mountain Settlement

Motion by Eric G., second by Gusty K., to convene in executive session pursuant to CRS Section 24-6-402(4)(b) for the purposes of consulting with the attorney to receive legal advice on legal questions related to the following matters Battle Mountain settlement as presented. Motion passed 6-0.

Those present in the Executive Session included the Council present, Attorneys Mike S. and Polly Jessen, and Town Manager Michelle M.

Note: Council convened from Executive Session and convened in Regular Session at 5:50pm.

4. APPROVAL OF CONSENT AGENDA

Consent agenda items are routine Town business, items that have received clear direction previously from the council, final land-use file documents after the public hearing has been closed, or which do not require council deliberation.

- A.** 08-21-2024 Minutes
- B.** 0017 Miles End Lane - New Single Family Residence
- C.** 0031 Miles End Lane - New Single Family Residence
- D.** 0171 Miles End Lane - New Single Family Residence
- E.** 0176 Miles End Lane - New Single Family Residence
- F.** 0201 Miles End Lane - New Single Family Residence
- G.** Resolution 50 - Series 2-24 A Resolution Supporting a Great Outdoors Colorado Grant Application for Little Beach Park Improvements
- H.** Ordinance 11 - Series 2024 (First Reading) Continuance of an Ordinance Amending the Town's Historic Register to Add 151 Main Street to October 2, 2024
- I.** Ordinance 12 - Series 2024 (First Reading) Continuance of an Ordinance Amending the Town's Historic Register to Add 155 Main Street to October 2, 2024
- J.** Liquor License - MT Imports dba MT Vino, 23698 Hwy 24 Suite C1-4B - Annual renewal of a retail sales liquor license, Marco Tonazzi (Owner / Manager)
- K.** Liquor License - Shop N Hop - 401 Main St - Annual renewal of a retail sales liquor license, Terry Marcum (Owner / Manager)

Motion by Gusty K., second by Tom P., to approve the Consent Agenda of September 3, 2024, as presented. Motion passed 7-0.

5. APPROVAL OF REGULAR AGENDA

Opportunity for amendment or deletions to the agenda.

Motion by Tom P., second by Kate S., to approve the Agenda of September 3, 2024, as presented. Motion passed 7-0.

6. DECLARATION OF CONFLICTS OF INTEREST

7. PUBLIC COMMENT

Citizens are invited to comment on any item on the Consent Agenda, or not on the regular Agenda subject to a public hearing. Please limit your comments to five (5) minutes per person unless arrangements have been made for a presentation with the Town Clerk. Those who are speaking are requested to state their name and address for the record.

A. Public Comment Submittals

Mr. Tim McMann, discussed the Greenbridge in Red Cliff noted a recent jump and death and encouraged support of mental health issues.

Mr. Daren Tucholke, 550 Taylor St, spoke of his concern that costs are increasing and how we should try to keep all our residents.

Mr. Hawkeye Flaherty, 160 Main St, spoke of why the meeting date was moved. He felt this was not called for. It was noted the importance of having all council members present and in person.

8. COUNCIL COMMENTS & COMMITTEE REPORTS

Earle B. apologized to the council for any comments he has made.

9. STAFF REPORTS

A. Manager's Report

Master Meter House RFP

Following Resolution 09 – Series 2021, Procurement Policy and Procedures, the Town advertised the Request for Proposals (RFP) for the Master Meter House PRV installation from July 19, 2024, to August 23, 2024. Upon the deadline, no complete project submittals were received for consideration. Following Sec IV. Expenditure approval and Source Selection Requirements (i)(1), Waiver of Competitive Source Selection Requirements, due to no RFP submittals, the project will now be managed by John Volk on a time and materials basis not to exceed the projected estimated cost of \$300k.

International City Manager's Association (ICMA) Certified Manager Accreditation

I have been nominated by the credentialing committee for approval of the ICMA-CM. The nomination will now be reviewed by the ICMA Executive Board in November and approvals will be announced thereafter.

Boulder Street One Way

As a friendly reminder, Boulder St between Harrison Ave and Mann Ave is a one-way street heading north. Signage along the street is already plentiful, but just a friendly reminder that cyclists, children and dog walkers all utilize this street and to ensure everyone's safety, motorists need to please follow the rules of the road. Thank you!

First Friday

The Town is partnering with Minturn businesses to host First Fridays beginning this fall. The first one will be held on Friday, September 6th at the newly remodeled Eagle River Inn. "Whisky and Wine by the River" will run from 4-6pm, and will feature live music by Jen Mack, light snacks, and whisky tastings by Eagle River Whisky. Beer and wine will also be available.

Boneyard Open Space

Public Works will be removing dead and downed trees at the Boneyard Open Space in the coming weeks. Please be advised of safety precautions in the area and give room to crews as they remove and clean up debris. Thank you so much.

Liquor License Renewals

Through Colorado State Statute, liquor license renewals can be handled at an administrative level. If the Council is so inclined, a Resolution can be brought before the board for consideration of this direction.

High Five Media Board Representation

Just a reminder that the Council needs to appoint a member to the High Five Media Board.

Radar Feedback Signs

Two new illuminated signs will be installed along HWY 24 notifying drivers of their speed. These signs were donated by CDOT and will hopefully encourage vehicular traffic to slow down. Once sign is being installed at the S-curve near the entryway to downtown and the second is replacing the smaller illuminated signs near the Boneyard Open Space.

Michelle M. noted several trees in town that are being removed and citizens may see the work and wonder what it was about.

B. Town Attorney Report

On June 24 the U.S. Supreme Court granted certiorari in the case styled Seven County Infrastructure Coalition v. Eagle County, Colorado, Docket No. 23-975, on appeal from the D.C. Circuit Court of Appeals. The case arises from the Surface Transportation Board's (STB) approval of the Uinta Basin Railway proposed in Utah for the purpose of exporting waxy crude oil to refineries on the Gulf Coast. The question presented in the petition is whether the National Environmental Policy Act (NEPA) requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority. Minturn joined other Colorado local governments in the D.C. Circuit case as amicus curiae by raising important issues under NEPA – such as oil spills and wildfire risks from increased oil train traffic through Colorado – that the STB had omitted from its analysis. The D.C. Circuit agreed with these arguments as well as those forwarded by environmental groups that the STB should have analyzed greenhouse gas emissions from the refineries where the Uinta Basin waxy crude would be processed, much further afield and attenuated than possible impacts in Colorado.

There are two separate issues at play in this case revolving around the proximity of potential environmental effects. Further attenuated are the effects from refining and transporting oil in the Gulf Coast states where refineries suitable for heavy crude are located. But more proximate are the potential effects that Eagle County and other Colorado local governments alleged such as oil spills and wildfire risks. The latter precedent is of greater interest to local governments in western Colorado that tend to be surrounded by federal lands and have linear features such as rivers and rail lines that can be impacted by actions occurring hundreds of miles away.

To that end, the City of Glenwood Springs has retained Eubanks & Associates, PLLC (the same firm that wrote the D.C. Circuit brief) to represent the City and other amici before the Supreme Court. The brief drafters are NEPA experts who have requisite experience at Supreme Court level. The purpose of this brief would be to explain in practical terms, with examples of how local

governments engage in NEPA proceedings, the importance of keeping such tools providing for indirect effect analysis available.

C. Town Treasurer - 2025 Budget Schedule

10. SPECIAL PRESENTATIONS

Presentations are limited to 5 minutes. Invited presentations are limited to 10 minutes if prior arrangements are made with the Town Clerk.

11. DISCUSSION / DIRECTION ITEMS

A. Bulb Out Review

Minturn residents and businesses have been requesting slower driving speeds on Main Street/HWY 24 for quite some time. As the years have passed, motorists utilizing Main St/HWY 24, especially commuters from nearby communities have increased. Along with the concerns about speeds on Main Street, have been difficulties for drivers to have a safe line of sight when attempting to pull onto Main Street from any of Minturn's side streets. With parked cars lining Main Street, seeing oncoming traffic can be difficult and Minturn is fortunate more accidents have not occurred. Similarly, with the limited line of sight, it is difficult for motorists on Main Street to see pedestrians and cyclists standing at intersections waiting to cross the road.

These ongoing issues arose as part of the town's master plan update as well as feedback received in the 2024 Community Survey. Imagine Minturn, Minturn's updated master plan, thus provided a recommendation to install bulb outs at the primary intersections of Main Street to increase safety for all roadway users. Bulb outs are curb extensions, and a traffic calming measure (slower driving speeds) used to improve the safety of all modes of transportation that share a section of the road. Safety benefits of bulb outs include:

Pedestrians

- Shorter crossing distances
- Decrease in time exposed to vehicular traffic
- High visibility of pedestrians a corner
- Larger refuge space when waiting to cross

Cyclists:

- Elimination of gap between cars and concrete corner where bicyclists would be confined
- Greater visibility to drivers
- Increased sightlines of oncoming traffic when turning onto the corridor
- Decreased vehicle speeds in bike/vehicle conflict zones

Drivers

- Speed moderation
- Protection of parked cars on side streets from vehicles turning
- Increased sightlines of oncoming traffic when turning onto the corridor

Options: it was noted this is a US Hwy and there are a lot of things we can not do including many options. In addition, CDOT has denied previously shorter bulb outs due to limited line of sight.

Shorter bulb outs

- Planters
- Speed bumps/speed limits
- Traffic lights
- Create one-way street pattern (does not help pedestrians or cyclists).
- Town ownership of the Hwy
- Combination or other items

Michelle M. noted that the new bulb outs are not aesthetically pleasing. She reviewed the CDOT vs Town Code requirements and noted that CDOT allows less line of site than town requirements.

Mr. Robert Creasy, 472 Pine St, asked to pull the bulb outs and asked to move the stop sign out to the hwy side of the bulb out. It was noted we can look into this but it is a CDOT approval that would make changes in the roadway.

Mr. Larry Stone, 152 Main St, felt we should remove the bulb outs and add more flashing light pedestrian crossings.

Ms. Liz Campbell, 512 Main St, spoke in support. She stated true bulb outs would hamper the water drainage causing water to back into driveways. Implementation of a gutter within the bulb out might work.

Mr. Mark Tamberino, 474 Main St, stated the bulb outs are negatively affecting his business.

Mr. Dan Purtell, 291 Main St, understood the safety but felt it removed all parking in front of his store and negatively affected his business.

Mr. Chris, 291 Main St, felt the measurements were wrong and not equitable.

Ms. Lynn teach, 253 Pine St, was concerned that fire hydrants were within the bulb out and if that was an issue.

Mr. George Crowder, 341 Main St, spoke opposed and that it took spaces from his store front parking.

Ms. Jan Aiello, 30 Mann Ave, spoke opposed.

Mr. Kelly Toon, 531 Main St, felt traffic flow was way too fast. He felt the bulb outs did little and more enforcement was needed.

Deputy Peterson, ECSO, spoke of the issues and the need for slower traffic through the use of alternative uses including the bulb outs. He stated there are specific times when volume is high and they are running enforcement and writing tickets. The bulb outs do reduce traffic speed especially at intersections. Ghost police cars and speed trailers will be implemented in addition.

Mr. Daren Tucholke, 550 Taylor St, said speed was the problem and tickets are the solution. He was opposed to the bulb outs. He stated how a ticket to a trucker DOES have a big affect on the driver.

Mr. Michael Gottino, 110 Taylor, spoke opposed to the bulb outs stating we need more parking and profitable businesses, speed enforcement tickets.

Letters from the Public submitted by packet deadline:

Ms. Susan Morris, 272 Main St, opposed
Ms. Laruen Gotthelf, 541 Main St, support
Ms. Sherri Wilson 76 Meek, felt they were ugly
Ms. Abby Loucks, 653 Boulder St, support but felt the were too big and ugly
Ms. Tracy Andersen, support
Mr. Jay Mechling, 654 Main St, opposed and were ugly
Mr. George Brodin, 264 Pine St, support
Ms. Sonya Greider, received after packet publication, opposed
Ms. Megan Golden, received after packet publication 616 Main St, opposed
Mr. Ken Halliday, received after packet publication, opposed
Mr. Jeffrey Schneider, received after packet publication 452 Pine St, opposed

Council Comments:

Brian R. stated they have a long list of traffic control needs; open roads promote speed, tight roads slow traffic. Lots of items have been denied by CDOT over many years. He encouraged all to write their legislators and ask for control of our roads. He spoke opposed to the bulb outs.

Lynn F. spoke opposed to the bulb outs. However, CDOT, speed, and line of sight are the issues.

Tom P. this information has been public for a year but feels, seeing them now, this plan resulted in an unworkable solution and will be corrected.

Kate S. felt this was a good test, it was a miss in this case. She noted trying something and finding it didn't work is always better than doing nothing.

Gusty K. felt the goal was safety but this option does not work for the businesses. He noted that anything on Hwy 24 must be approved by CDOT.

Eric G. agreed with the citizens and the council.

Earle B. noted this solution is not working.

Direction given: remove the white poles, reduce the yellow no-parking, and investigate which curbs are most critical and address them, and check with CDOT for pedestrian bulb outs and possible delivery trucks being able to use the yellow areas.

B. Water Treatment Plant 30% Design Review & Cost Discussion

This project has been ongoing since the Water Infrastructure Capital Improvement Plan was approved in 2019. Delays have centered primarily around cost concerns. The most recent cost estimate, included in the packet, is based on a 30% design drawing created by HDR with the extensive consultation of Minturn water treatment plant operator, John Volk. The 30% design took a "reuse whatever we can approach" with the goal of minimizing costs wherever possible. John Volk, Jarod Limke, James Mann and Glacier Construction will all be available to answer questions. The 30% design package included with this packet is the most detailed work thus far and is accompanied by an estimate provided by a water treatment plant construction company, providing a high level of assurance this estimated cost is accurate.

With the estimated cost of the water treatment plant at \$12M-\$14M, I provided directions to James Mann to base a water rate analysis on a worst-case scenario cost of \$14M. Additionally, I directed the option of a "Senior's Program" to be included in the water rate analysis which ensures any Minturn senior citizens who have lived in their homes for at least 20-years and meet the 100% AMI criteria, will not be subject to any water rate increases stemming from the construction of a new WTP.

Most of the analysis will be discussed the evening of the Council meeting. The consultants continue to reiterate their recommendation for a membrane water treatment plant. John Volk has been recommending a membrane water treatment plant since 2012. None of the experts believe the rehabilitation of the slow sand filters is a wise use of funds, either for an intermediate or long-term option. Costly infrastructure is almost always a difficult conversation. We see this occurring throughout our region with the Town of Gypsum most recently bonding for \$90M toward a wastewater treatment plant. People don't enjoy making costly improvements to their home and this project is similar for a town. The request is for a building that the public will almost never see, but for a product, water, that is necessary to sustain a community. It's not sexy, but it's vital.

Staff strongly encourages the Council to support moving forward with the construction of a membrane water treatment plant. For this recommendation to have the best opportunity of success, and to ensure the Town has done everything to keep water rates as low as possible, we further request time to review any remaining cost-saving measures available, including, pending a settlement, the opportunity to discuss WTP cost share options with Battle Mountain. Water infrastructure and affordability was one of the top five issues/priorities or problems identified in the 2024 Community Survey, that Minturn needs to address in the next two to three years (2024 Minturn Community Survey, pg. 6). Community input remains critical to this infrastructure conversation and subsequent solutions.

Gusty K. asked about the Congressionally Directed dollars; yes that has been accounted for in the proposed rates.

Lynn F. asked about the existing facility, would it be large enough to work for the town. Jarrod Limke. stated this is the highest technology for water purification. Lynn F. asked what the new plant would involve. Jarrod L. stated John V. is certified to operate the proposed plant and it would cost more to operate the proposed plant. Lynn F. asked about the price difference between last year and this year. Jarrod L. stated the numbers are more refined based on the 30% drawings.

John V. confirmed that it should not change the current level of needed manpower.

Jim M. noted there are additional costs incorporated in the estimates to allow for annual anticipated costs. In the event this is not necessary it could be reduced. Jim M. noted in the early years, there would be a prepayment call protection penalty. Funding and funding alternatives were discussed.

Mr. Jarrod L. was asked would the plant be built big enough to accommodate pretreated water needs? No, it would not be large enough to accommodate more trains (purification processes) and would not accommodate water from other sources. In order to build to a higher use would run \$4M-\$8m, very rough estimate.

Brian R. asked about PFAS, no, the technology is only for filtered water, and this would not be included in this project. It was noted that we have tested for PFAS and have found them untraceable in our water source.

Jarrold L. stated that Filter 3 will be used to house proposed plant.

Tom P. asked about project cost offsets. If we have another party that will require the pretreatment process, we would want to have them agree to pay that portion up-front. An analysis would need to be made to define what the impact would be to ensure the new project covers their impact and not the general town impact. Tom P. confirmed that to retrofit our existing system may not be able to be permitted due to the fact that a new system covers what we need for our future needs and CDPHE viability. A short-term solution would be a significant risk.

Gusty K. asked about keeping/updating the current filters as long as possible. CDPHE does still permit such filters, but the requirements now and in the near future will not extend long term. Jarrold L. noted that sand filters work better in warmer climates. It was noted that the use of the filters does not allow for the amounts of water needed to in our community.

Earle B. noted this is a small town with a water system. Minturn has tried to keep costs down at the cost of not keeping our utility solid and viable. He stressed the point that this option is the best option to get a membrane plant now. In the event we get new projects on line that can pay for the system, we will address that option at that time.

Gusty K. felt it important to pay down the debt asap. He stressed the need to try to keep grants and other monies. Kate S. noted that if the town “finds” money, we could subsidize bills vs pay down debt at that time. She stated at this time we need a system that is safe and reliably covers our needs.

Brian R. asked about selling some of the properties with the Battle Mtn land and when that could occur. It would take time to assess the best uses for the properties and community needs. This would take a minimum of 9-12 months.

Discussion ensued as to the merits of holding off to see what the land, interest rates, etc. might do vs. moving forward. Tom P. stated this is a time to allow us to move forward with a known need in our community. We have held off making the needed decisions for decades and the need continues to grow.

Mr. Michael Gottino, 110 Taylor St, confirmed we are in a hard place but we continue to consider cost implications. It was confirmed the council will continue to look at price and costs.

Mr. Roy Vasquez, 61 Toledo St, recommended new citizens pay more. He asked if 2nd homeowners pay more than primary. It was noted the new plant would begin approximately summer of 2025 and construction to run approximately 14 months. It was noted that two of the three filters are permanently down.

Mr. Daren Tucholke, 570 Taylor St., asked when would we face fines for noncompliance. John V. stated we are currently in compliance in our system, the question is actually when is the end of life for this current plant. Although an unknown, that time frame is short term.

Mr. Hawkeye F., 160 Main St, asked if we had asked CDPHE for an exemption? He stated our plant is not as bad as everyone says and it is not on its last legs and there are other options.

Ms. Terry Armistead, 1632 Main St., spoke in support with moving forward on the new plant and encouraged the highest and best use of funds. She noted we could spend a lot of money on the filters and it still may not be enough. She noted we have experts telling us what options we have and we need to listen to those experts.

Lynn F. asked about the use of the wells in the run-off. Jarrod L. noted the wells are used in the spring to dilute the water to reduce the turbidity.

Michelle M. stated we are looking at 3yrs if we begin to move forward now. During this time we will need to have a project that is engineered, vetted, and uses our congressionally directed funds..

Direction given: move forward with the new plant as presented. Review any new possible funding, seek cost share if that is an option, acknowledge the need for pretreatment, include ongoing cost/maintenance issues. Michelle M. will report back in 3mo with a funding plan for a go/no-go decision. (6-1; Kate S. did not want to wait 3mo.)

12. BUSINESS ITEMS

Items and/or Public Hearings listed under Business Items may be old or new and may require review or action by the Council.

A. Resolution 48 - Series 2024 A Resolution Approving the Battle North Restrictive Covenant and other Documents

Background

The Town is in the final stages of implementing a Settlement Agreement with the owners of the Battle Mountain property ("Battle Mountain"). The settlement would resolve litigation filed by the Town for breach of various agreements stemming from the annexation and proposed development of the Battle Mountain property. The Settlement Agreement is attached as **Exhibit 1**. Town staff and its legal team want to provide Council with a description of the implementation of the Settlement Agreement and the due diligence undertaken by the Town with respect to property to be conveyed to the Town.

The structure of the Settlement Agreement allows Battle Mountain to apply for various Town land use approvals and, if those approvals are granted, Battle Mountain will convey certain land to the Town. Over the last 10 months, the Council has held public meetings to consider the various land use approvals identified in the Settlement Agreement and granted associated approvals. These approval documents are being held by the Town Clerk in a sort of escrow pending completion of the due diligence period provided for in the Settlement Agreement (and extended through subsequent amendments). These approvals include:

- A. Adoption of various amendments to the Town Code that provide:
 - a. New residential and limited commercial zoning for the Battle Mountain property; residential development of the Battle Mountain property is capped at 250 units.
 - b. An exception that allows the Battle Mountain property to be served with potable water by a non-Minturn water supplier (Eagle River Water and Sanitation District).

- c. A subdivision exemption process for land areas larger than 5 acres. Parcels created by the subdivision exemption process have no development right without going through a future Town subdivision or design review application process.
- B. Formation of up to 4 metropolitan districts which will finance infrastructure development, provide services for Battle Mountain property (e.g. private road maintenance and operation), and undertake ownership and coordination of environmental compliance for lands located within the superfund site.
- C. Adoption of a Development Agreement that grants Battle Mountain vested rights for a period of 30 years and guides the process for future land uses to occur.
- D. Disconnection from Minturn of the Rex Flats and Gilman areas.
- E. Exemption plat creating parcels within the Battle Mountain property (**Exhibit 2**). The exemption plat is in the process of being reviewed and approved subject to conditions recommended by staff in an administrative process.
- F. Dissolution of the General Improvement District that was created in 2008.

Upon "Closing" of the Settlement Agreement, the various approval documents will be recorded in the public records. This will result in the previous land use approvals as associated agreements (primarily adopted in 2008) being vacated and no longer binding on the parties. Also, as part of the Closing, the Town will receive deeds, easements, and options for the following parcels. **Council will see the re-appearance of a restriction to use the Town Parcels for a spa / wellness facility. Battle Mountain has explained this restriction is very important for the potential investment in such a facility as part of the Maloit Park development.**

1. A deed conveying the Highlands parcels (Parcels 1 and 2) consisting of approximately 55 acres. **The deed is subject to two restrictions: (a) the property cannot be used for a spa / Wellness facility, (b) the property cannot be used for industrial purposes which does not include municipal uses such as a public works facility. Exhibit 3.**
2. A separate access easement granting two routes over the Old Tailing Pile parcel (Parcel 3) will also be conveyed to the Town. **As council is aware, this parcel is subject to future remediation. To that end, the agreement calls for the parties to consult about the location of Rd. improvements on the old tailings pile. Battle mountain, however, does not have the right to approve those improvements. The improvements may be subject to relocation as part of the remediation of the property. This is far more likely to happen if access is obtained through the southern route (closer to the reservoir) then the northern route. Exhibit 4.**
3. A deed conveying the Reservoir South parcel (Parcel 5) which is adjacent to the Bolts Lake Reservoir site and contains approximately 13 acres. **The deed is subject to two restrictions: (a) the property cannot be used for a spa / Wellness facility, (b) the property cannot be used for industrial purposes which does not include municipal uses such as a public works facility. The deed also contains a reserved easement for utilities – but only within Tigiwon Road. Exhibit 5.**
4. A deed conveying two small parcels between the Eagle River and Highway 24 (Parcels 6 and 8) containing approximately 3 acres. **Exhibit 6.**
5. **A deed conveying the Recreation Center parcel (Parcel 11) to the town. The deed contains it limitation on use consistent with the settlement agreement for: Amusements, Community Facilities, Community-Oriented Building/Facility/Use, Day Care Center, Recreational Facility, Studio and Education Facilities for Arts and Crafts, and up to**

three Caretaker or employee housing Units. The deed conveys a restriction on the use of this parcel for a spa / Wellness facility but also includes clarifying language that the limitation does not apply to community facilities. **Exhibit 7.**

6. The conveyance of the Recreation Center parcel will not occur at closing. There remains environmental cleanup to be done on this property. The town does not want to take title and tell the environmental remediation is complete and the parcel has been delisted by the EPA. To that end, the parties will enter into a post-settlement agreement which will hold the deed conveying parcel 11 in escrow. **Exhibit 8.** This document is subject to some additional edits by Staff which will occur before Council. The deed will be released and recorded at the time that the EPA delisting occurs. The Post-Settlement Agreement obligates Battle Mountain to complete remediation and delisting from the superfund site, and removal of the RN (discussed below) prior to transfer.
7. An option agreement for the OTP (Parcel 3) and the Processing Parcel (Parcel 4). **Exhibit 9.** This document is subject to some additional edits by Staff which will occur before Council. This document has been drafted to give the town two separate options to acquire an interest in the old tailings pile and the processing parcel. Because the old tailings pile is part of the Superfund site and subject to various environmental restrictions, the possibility exists that the town might choose not to obtain fee title to the land even after remediation is completed. In that circumstance, the town would have an option to obtain an easement across the old tailings pile property for recreational purposes. Staff does not see this as a likely outcome where the town would only choose to obtain a recreational easement. However, the town wanted to retain that option if it were deemed prudent in the future from a liability standpoint.

The document also contains a grant of a purchase option for both the OTP and the processing parcel. These options can be exercised independent of each other. Both the easement option and the purchase option are for a period of 25 years. If remediation work has begun on the old tailings pile prior to the expiration of the 25 year period, the options will automatically be extended. While the purchase option is not specifically contingent upon remediation having occurred, it is anticipated this will be the circumstance under which the town would exercise its option. Consistent with the settlement agreement, the purchase option for both parcels contains the ability of battle mountain to reserve easements for the benefit of the bolts lake development. Those easements would not be identified until the option is exercised in the future. Therefore, it may be that by that time battle mountain has no easements to reserve. The document also contains provisions that allow the town to update its environmental due diligence at the time that it chooses to exercise its option.

8. An easement and option agreement for the Maloit Wetlands parcel (Parcel 12). **Exhibit 10.** This document is subject to some additional edits by Staff which will occur before Council. The easement allows for recreational uses of the property – particularly Nordic skiing. It also grants an option for the Town to purchase the Maloit Wetlands parcel once it has been remediated and delisted. The parcel is approximately 17 acres in size. The purchase price is \$1.
9. An easement for recreational use of the Consolidated Tailings Pile parcel (Parcel 10) and an option granting the right to lease the Consolidated Tailings Pile parcel for a solar array development. **Exhibit 11** This document is subject to some additional edits by Staff which will occur before Council. The easement grants the right to use the

parcel as a solar array. The option to lease is specific to how solar purchase agreements require a lease with the landowner. The lease price is \$1

10. A restrictive covenant that covers the Restricted Parcels (OTP, Processing Parcel, CTP and Maloit Wetlands). **Exhibit 12** The covenant contains the following limitations:
 - Limitation on operating heavy equipment between the hours of 7:00 a.m. and 8:00 p.m. Monday through Saturday and excluding public holidays.
 - requirement to obtain a Town approved mitigation plan for (i) noise and vibration; (ii) dust, smoke and airborne particulates; (iii) erosion and sedimentation into water bodies; (iv) wildlife; and (v) public roads (debris and damage).
 - no vertical improvements (excluding temporary job site buildings) may be constructed or placed on the Restricted Parcels without the Town's prior written consent.
 - the Restricted Parcels will not be used for: Concrete or asphalt batch plant, Material processing, Industrial purposes, Mining, Waste collection, processing or recycling, Vehicle repair or storage.

The restrictions must be implemented in a manner consistent with CERCLA and the intent of building Bolts Lake Reservoir and remediating the OTP. The restrictive covenants must be enforced by either the Town or Battle Mountain as the Declarant.

Environmental Due Diligence

Environmental Background

An environmental risk and liability discussion is necessary because the nine parcels listed above are located within or around Operable Unit 3 ("OU3") of the Eagle Mine Superfund Site ("Site"). The Site is an abandoned mining and milling facility located along the banks of the Eagle River near the Town. The Site is impacted by heavy metal contamination from past mining activities. Contaminants include arsenic, cadmium, copper, lead, and zinc in the soils, structures, surface water, sediments, and groundwater. The Site consists of three operable units, but only OU1 and OU3 are relevant to the discussion here.

OU1 was established to control the transport of toxic metals in surface water (Eagle River) and in groundwater. OU1 contains engineered features designed to capture and treat mine waste in surface water and groundwater. A former Site owner and operator, Paramount Communications, Inc., ("Paramount") is the responsible party implementing the OU1 remedy.

The regulatory and environmental enforcement history of OU1 is complex. In broad strokes, the State became concerned about mining-related contamination at the Site in the 1980s and the predecessor agency to the Colorado Department of Public Health and Environment ("CDPHE") was the lead agency at the Site in the 1980s. The State pursued prior owner and operator, Gulf + Western Industries, Inc. (Paramount's predecessor) for natural resource damages, ultimately requiring Paramount to remove, redistribute, and cap certain mining tailings and other waste materials, and take action to control runoff of mine waste in surface and groundwater, as memorialized in a 1988 Consent Decree.

EPA had placed the Site on the National Priorities List in 1986, and became more involved over time as it became clear that the initial remedial actions were not sufficient to control and remediate mining waste in OU1. EPA sued Viacom International, Inc. (Paramount's successor) in 1995, resulting in a 1996 Consent Decree whereby Viacom was required to perform additional remedial work. Ultimately, in 2018, EPA issued a unilateral administrative order to

TCI Communications, LLC (Paramount & Viacom's successor) to compel it to perform additional cleanup work, and filed suit in 2020 to enforce the administrative order; a Consent Decree settling that lawsuit was later entered and is currently in force. Performance of the remedy is ongoing. EPA and the State coordinate their respective activities at the Site, and a 2018 agreement between the agencies provides for meaningful State involvement even while EPA leads on enforcement and oversight.

OU3 was created out of OU1 due to the interest in developing the area into a residential community. It consists of 116 acres privately held by Battle North, LLC and Battle South, LLC (collectively, "Battle," and some of the entities that comprise the "Battle Mountain" group), including the Site. The cleanup focus is on reducing exposure to heavy metals in surface soil to make the area safe for residential use. In 2017, EPA identified two cleanup goals for OU3: (1) Prevent exposure to contaminants in surface soils above levels that are acceptable for current and future land use, and (2) Avoid or minimize adverse impacts to the existing engineered remedial features (those in place to treat surface water and groundwater pursuant to OU1). Battle entered into an Administrative Settlement Agreement and Order on Consent ("ASAOC") with EPA in 2018 after it purchased the OU3 property. The ASAOC designed to manage its liability risks and to guide development. The ASAOC requires land use restrictions to be placed on title to prevent human exposure to contaminants and protects the ongoing cleanup, but also allows EPA to lift restrictions to allow residential use, so long as EPA reviews and approves work plans related to future development to ensure that the additional cleanup is sufficiently protective of human health and the environment. The AOC provides liability protections to Battle so long as it complies with the terms of the agreement and is transferrable to a subsequent owner with EPA approval.

Summary of Current Environmental Conditions

The Town hired Langan Engineering & Environmental Services ("Langan") to complete a Phase I Environmental Site Assessment ("Phase I ESA") of the property. Langan produced a Draft Phase I ESA on March 12, 2024, attached here as **Exhibit 4**. That document concluded that there are no Recognized Environmental Conditions ("RECs") at the Site, meaning that there is no "presence or likely presence of any hazardous substances or petroleum products in, on, or at a property." Langan determined that Controlled Recognized Environmental Conditions ("CRECs") do exist at the site, because legacy contamination is present that is controlled to the satisfaction of the regulatory agencies by environmental use restrictions ("EURs") recorded on title and discussed in more detail below. Langan also concluded there are Business Environmental Risks ("BERs"), which are environmental conditions that can impact business, including limiting planned uses and increasing costs. The BERs at the Site are the legacy contamination that requires ongoing remediation and use restrictions.

Institutional controls are in place on multiple parcels within the Property in the form of EURs. These include the following:

- **Rec Center Parcel** (parcel 11) and **Maloit Wetlands parcel** (parcel 12): both are part of the Maloit Park area and are currently subject to a use restriction prohibiting all potential uses. (RN# 201919763). Historically, the agencies have approved winter recreational hiking and Nordic skiing and associated Nordic trail grooming in the Maloit Wetlands parcel area when it is covered by snow and intend to modify the use restriction appropriately.

- **Old Tailings Pile Parcel** (parcel 3): currently subject to a use restriction prohibiting all potential uses. (RN# 202112199).
- **Consolidated Tailings Pile Parcel** (parcel 10): current use restrictions allow for only recreational use authorized by owner in consultation with CDPHE, with the exception of activities that may damage the engineered cover, which are prohibited unless authorized in a future agency decision document or an agency-approved MMP or environmental sampling plan; the current restrictions also allow for solar arrays placed on the cover in accordance with specific conditions, such as CDPHE approval and structures designed to prevent damage to the cover. (RN# 201919761).

After remediation of parcels that will be eventually conveyed to the Town (e.g. Old Tailings Pile), these EURs can be modified to allow for new uses of the property.

Potential Liability Risks & Sources of Increased Costs

Once it becomes the owner and/or operator of parcels located within OU3 of the Site, the Town will be subject to potential environmental liability for environment conditions that exist at the Site. These potential risks and liabilities are as follows:

- **CERCLA Liability.** The federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") imposes a broad liability scheme that subjects owners and operators of facilities where hazardous substances have been released into the environment to cleanup obligations and allows for cost recovery lawsuits by the government and private parties. Due to the involvement of EPA at the Site, and the fact that other liable parties have been identified and are engaged in ongoing remedial efforts, is unlikely (at this time and given current conditions) that EPA would require the Town to conduct further cleanup or sue the Town for cleanup costs. However, if conditions at the Site change, particularly if the Town were responsible for releases of contaminants, did not comply with agency directions or orders, or caused contamination to worsen in any way, that assessment could change.
- **Other Regulatory Liability.** While the State does not affirmatively require cleanup of most sites where disposal occurred prior to 1980, Colorado law prohibits the discharge or reuse of contaminated soil or groundwater encountered during soil disturbing activities (such as utility trenching for installation or maintenance, demolition of foundations, or any other subsurface excavation) without prior regulatory approval for reuse of soils and/or a dewatering permit that may require treatment prior to discharge of contaminated groundwater.¹ Otherwise, offsite disposal of both soil and groundwater at a facility authorized to accept contaminated

¹ See CDPHE Corrective Action Guidance Document, Appendix 2: Contained-out Determination Procedure for Environmental Media Contaminated with RCRA Hazardous Waste (May 2002), available electronically at: <https://oitco.hylandcloud.com/CDPHERMPop/docpop/docpop.aspx>. The "contained =-out" rules identify treatment procedures that allow soil and other media containing listed hazardous wastes to be managed as something other than a hazardous waste. State underground storage tank regulations, requiring reporting of petroleum constituents in soil, also govern this matter. See 7 C.C.R. 1101-14 (Storage Tank Regulations), § 4-2 (Suspected Release Investigation and Confirmation Steps). The Colorado Water Quality Control Commission regulates the permitting of construction dewatering discharges. It is forbidden to discharge water carrying any pollutant into state water from a point source without first having obtained a permit from the Water Quality Control Division, See 5 C.C.R. 1002-61 (Colorado Discharge Permit System Regulations), § 61.3(1) (Applicability).

environmental media will be required. These requirements impose additional costs and potential liability on the Town in the event of construction or other site management disturbs contaminated media.

- **Common Law/Third Party Liability.** If the Town's activities at the Site cause or exacerbate the migration of existing contamination onto other properties (e.g., through utility design that facilitates migration of groundwater contamination, or through improper disposal of contaminated media), the Town could face citizen suit or common law claims from other property owners requiring cleanup or reimbursement of cleanup costs or other damages, such as diminution of property value or personal injury and property damage.

Liability Management Recommendations & Status

Property rights to be acquired have been tailored to avoid "owner" and "operator" liability under CERCLA by limiting the scope of rights in contaminated parcels to easements for non-invasive recreational and open space uses until cleanup is complete. By carefully limiting the scope of rights (rather than immediately leasing or acquiring these parcels in fee title), the Town is less likely to be considered an owner or operator under CERCLA obligated to conduct cleanup or pay for the cleanup costs of others. In addition, the Town has identified and pursued the following additional strategies to mitigate environmental risk and costs.

- **Perform All Appropriate Inquiry to Establish BFPP Status.** CERCLA provides a defense to liability to purchasers of property that are not responsible for contamination on the property and perform "all appropriate inquiry" prior to purchase or lease and certain "continuing obligations" after that point.² This defense is known as the "Bona Fide Prospective Purchaser" or "BFPP" defense.³ All appropriate inquiry can be accomplished by performing a compliant Phase I ESA not more than 180 days prior to acquisition.⁴ *A final, compliant Phase I ESA has been completed and is currently being updated before the Town closes on the transfer of property interests.*
- **Transfer Liability Protections of the Battle AOC.** The AOC includes a covenant by the United States not to sue or take administrative action against Battle Mountain for existing contamination, work and future response costs, and contribution protection from third party claims against Battle Mountain with respect to existing contamination.⁵ The AOC contemplates that if Battle Mountain transfers the Property or any part thereof, it can transfer the rights, benefits, and obligations of the AOC subject to EPA's discretion (and that EPA will consult with CDPHE on such transfer).⁶ *EPA and the Town have completed negotiation of the required transfer document. The transfer of the rights, benefits, and obligations of the AOC effective upon the transfer of title to property so that the Town can succeed to the same protections from regulatory enforcement by EPA and third-party contribution lawsuits*

² *Id.* at § 9601(35)(B).

³ *Id.* at § 9601(40).

⁴ The standards for "all appropriate inquiries" are set out in 40 C.F.R. pt. 312. See, specifically, 40 C.F.R. § 312.20.

⁵ *Id.* at XX & XIV.

⁶ *Id.* at § II.9.

that Battle Mountain has with respect to the property interests acquired. A copy of the Transfer is attached as **Exhibit 5**.

- **Obtain EPA/State Comfort Letters.** CERCLA “comfort letters” can also be used by EPA or state agencies to provide property owners with some assurances regarding their regulatory liability (or lack thereof) at a property. An EPA regional office or a state agency may issue a comfort letter that communicates key information about the property’s conditions, its cleanup status, and information that may assist a party with assessing its potential liability status, to try and help interested parties with making informed decisions regarding the purchase, lease, or redevelopment of the property.⁷ These letters also outline “continuing obligations” the agencies have identified to help property owners maintain BFPP defenses discussed above. *The Town has requested, and EPA and CDPHE have offered, Comfort Letters that explain site conditions, regulatory status, and set forth the continuing obligations the Town must satisfy to maintain its CERCLA protections and status as a BFPP. These letters give the Town assurances that the agencies do not intend to pursue cleanup or costs from the Town under federal or state authorities absent contributing or exacerbating contamination at the Site or improper land use or soil and groundwater management or disposal practices. EPA’s letter has been finalized and the CDPHE letter is still being finalized as of the date of this memorandum.*
- **Governmental Immunity Protections.** The Colorado Governmental Immunity Act (GIA) provides the Town, as a public entity, with certain protections against private party tort lawsuits. It provides that any “public entity”⁸ is immune from liability in “all claims for injury[⁹] which lie in tort or could lie in tort.”¹⁰ Thus, the Town would be protected by the GIA if faced with tort claims arising out of environmental contamination, such as claims by property owners, individuals, or purchasers that are injured by onsite or migrating contamination. Claims barred by the GIA include third-party suits alleging harms to property related to negligence, nuisance, trespass or failure to disclose¹¹ that are related to environmental contamination.¹² In addition, the Town would be immune to claims to recover compensatory relief for bodily injury,

⁷ See EPA, Memorandum re: 2019 Policy on Issuance of Superfund Comfort/Status Letters (Aug. 2, 2019), available at https://www.epa.gov/sites/default/files/2019-08/documents/comfort-status-ltr-2019-mem_0.pdf

⁸ “Public entity” is defined to be “the state, the judicial department of the state, any county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract or cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.” Colo. Rev. Stat. § 24-10-103(5). Under this definition, Thornton is a “public entity” covered by the GIA.

⁹ “Injury” is defined as “death, injury to a person, damage to or loss of property, of whatsoever kind, which, if inflicted by a private person, would lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant.” Colo. Rev. Stat. § 24-10-103.

¹⁰ *Bd. of Cnty. Comm’rs of Summit Cnty. v. DeLozier*, 917 P.2d 714, 715-16 (Colo. 1996) (holding that a claim for promissory estoppel against government, which lies in contract law and not tort law, is not barred by the GIA when the claim could not be a tort claim for purposes of analysis); Colo. Rev. Stat. § 24-10-106(1).

¹¹ Failure to disclose claims can arise in tort or contract, depending on the context.

¹² *E.g., Lawrence v. Buena Vista Sanitation Dist.*, 989 P.2d 254 (Colo. App. 1999) (holding that claims against sanitation district for trespass, negligence, and negligence per se, related to migrating contamination, were barred by GIA); *Jilot*, 944 P.2d at 571 (nuisance and trespass claims related to migrating contamination from underground storage tanks lies in tort); *Aztec Minerals*, 940 P.2d at 1025 (claim alleging negligence on the part of the state for failure to inform plaintiff of risks associated with environmental contamination was barred by GIA).

and may be immune from tort claims arising out of diminution in property value (though no Colorado court has yet addressed this specific issue).¹³ *The protections of the Colorado GIA are automatic; the Town need not take any steps to obtain these protections.*

- **Obtain Environmental Legal Liability Insurance.** Also often known as “pollution legal liability” insurance, PLL policies typically provide coverage (subject to site-specific exclusions) for cleanup costs, for third party claims as well as certain indemnification obligations. Environmental insurance is unlikely to provide coverage for costs of cleanup or management of contaminated media during cleanup and redevelopment, but typically will cover third party claims in similar circumstances. In instances where there is regulatory approval existing for contamination controls (like here), such coverage may include additional cleanup of newly discovered contamination or if the government re-opens a regulatory closed site and requires additional remedial action. *Battle Mountain has a PLL policy covering the Site. The Town is currently negotiating with Battle Mountain and the insurer so that the Town may become listed as an additional named insured on the Battle Mountain policy. If coverage is not available under the Battle Mountain policy, or is not sufficiently broad for the Town, the Town will continue to pursue coverage that would take effect at the time it takes title or leasehold interests to individual properties—i.e., when the risk of “owner” or “operator” liability exposure is more likely to arise. Because of the cost and variations in coverage available in the market over time, any purchase of such coverage would be subject to separate Town Council approval.*

While there may be expenses and regulatory processes associated with the management and use of property within the Site as a result of historical contamination, the liability protections discussed above are expected to substantially limit the likelihood that the Town will face material environmental liabilities or expenses associated with its planned acquisition of easements, leasehold interests, or fee title to properties within the Site.

Valuation Due Diligence

The Town commissioned an appraisal of the parcels that it will receive in fee or in which it will obtain easement rights. Jonathan Lengel is a licensed appraiser who specializes in complex valuations in and around Eagle County. A copy of his appraisal report **was previously provided**. A summary of the appraisal valuation is below. It is important to note two variables. First, the appraisal makes assumptions about the future uses of the parcels. The Code amendments zoned the parcels that the Town will receive in fee as “holding zone.” This means that before any land use can occur on these parcels, there will be a public process to determine how the land should be used. As such, the value associated with each parcel could change depending on the future zoning designation. Second, the valuations are in current dollars and contemplate a current conveyance to the Town. Some parcels with meaningful valuation will not be transferred to the Town until the Bolts Lake Reservoir is completed and environmental

¹³ *City of Colorado Springs v. Conners*, 993 P.2d 1167, 1173 (Colo. 2000) (recognizing that the GIA provides immunity from actions seeking compensatory damages for personal injuries in cases as diverse as: (1) a plaintiff seeking to recover compensatory money damages from the Department of Highways even though the Department had breached a duty under the Excavation Requirements Statute; (2) an action for replevin seeking return of a vehicle and compensatory damages for its unlawful detention, loss of use, and physical damage; and (3) an action seeking damages from harm to the plaintiff's professional reputation and ability to earn a living, pain and suffering, and destruction of the value of his professional education).

remediation undertaken. As such, the future value that the Town will obtain could be discounted to account for time.

Market Values

PARCEL NAME	PARCEL ID	ZONING	CONCEPTUAL USAGE	DATE OF VALUE	MARKET VALUE
Highlands 1	Parcel A	Holding District	Low Density Residential	January 15, 2024	\$6,700,000
Highlands 2	Parcel B	Holding District	Low Density Residential	January 15, 2024	\$9,800,000
Old Tailings Pile	Parcel C	Holding District	High Density Residential	September 1, 2028	\$26,000,000
Recreation Center	Parcel D	Holding District	Public arts/recreation Restricted Residential	January 15, 2024	\$796,000
Reservoir South	Parcel E	Holding District	Reservoir access for public	January 15, 2024	\$25,000
Highway Tract B	Parcel F	Holding District	Recreation	January 15, 2024	\$30,000
Highway Tract D	Parcel G	Holding District	Recreation	January 15, 2024	\$8,000
Consolidated Tailings Pile	Parcel H	Bolts OS/Rec. Dist.	Recreation/public utility	January 15, 2024	\$525,000
Soil Processing	Parcel I	Bolts OS/Rec. Dist.	Recreation/reservoir access for public	September 1, 2028	\$3,700,000
Maloit Wetlands	Parcel J	Bolts OS/Rec. Dist.	Recreation	January 15, 2024	\$30,000

The combined value of the parcels and property interests that the Town will eventually acquire is around \$47,600,000. This is a substantial value to the Town. The Settlement Agreement provides that the land obtained in the settlement also compensates the water enterprise fund. To that end, proceeds from the sale of a portion of the property can be used to assist with costs associated with a water treatment plant.

Legal Due Diligence

The Town will obtain title insurance for the parcels conveyed to it. The Town attorney has undertaken a review of the title commitment and is working with the title company to have any inapplicable exceptions removed. The Town is paying the costs of the title insurance policy. There are no water rights conveyed as part of this transaction.

Matters Required for Closing

Closing is scheduled to occur on September 9. At Closing documentation will be executed that terminates the pending litigation “with prejudice” meaning that the claims cannot be re-filed.

Public Hearing Opened

Mr. Ken Mentz, 167 Williams St, asked if there was an appraisal of the properties. Michelle M. noted in the packet there is a table that shows a current highest and best use of approximately \$47m.

Public Hearing Closed

Mr. Tim McGuire presented for Battle Mtn. He updated on the EPA submittal status for the site. He discussed the ability to proceed with mitigation yet this fall, it was felt this was still a good timeline, but the plan is under review and has not been approved by the EPA as yet.

Tom P. inquired what happens if nothing with the reservoir or other properties is completed to the schedule? There is not a requirement that ERWSD do the project but once begun it would be completed. If nothing is done and the timeframes run their course, then the property can be purchased at that time.

It was noted that some of the changes in the documents are listed but there is some minor work to be done up to the closing date of next week. Mike S. stated that any such changes would be covered in this agreement.

Motion by Eric G., second by Gusty K., Resolution 48 - Series 2024 A Resolution Approving the Battle North Restrictive Covenant and other Documents as presented. Motion passed 7-0.

Conditions:

- Accept the substitution of the four documents (LIST THEM HERE)
- Re-add the 30yr clause.
- Sec 2.1a be modified that once the town assumes ownership of the parcels that the town can modify the zoning on those parcels.
- Language was modified to say that Battle Mtn will diligently file and follow-up with the EPA but they cannot promise a date of delisting by the EPA

B. Resolution 51 - Series 2024 A Resolution Approving a Variance Request for Relief from the Rear Setback at 161 Main Street and 161 Nelson Avenue

The Applicants, Spence and Stefanie Neubauer, request review of a request for relief from the thirty foot (30') rear setback at 161 Main Street and 161 Nelson Avenue in the Old Town 100 Block A Zone District. The Applicant's Representative Robert Creasy has been proactive in meeting with Town staff prior to submitting the variance request.

The 100-Block Design Guidelines within Appendix B of Chapter 16 were adopted in 2023. At that time, the purpose and intent of requiring the rear setbacks along Eagle and Williams streets was to ensure the provision of parking for residential uses (in mixed use buildings) and, in the case of Williams Street, to create the physical conditions necessary to promote a "Woonerf" concept which allows for vehicular and pedestrian use within the same travel corridor. Since adoption, the Guidelines – specifically the rear yard setback requirement – have not been implemented as there have been no new building or major redevelopment proposals. Additionally, staff suggest that upon adoption, the rear yard setback requirement did not contemplate 100 percent commercial use (parking requirements for commercial uses were eliminated at the time the Guidelines were adopted to incentivize commercial, sales tax generating uses). Rather, the intent of the generous rear setbacks along Eagle and Williams Street - 25 to 30 feet - captured a concern by the Planning Commission and Town Council that adequate parking for residential purposes, along with adequate maneuverability space be provided along these corridors.

Findings required. The Planning Commission and Zoning Board of Appeals shall make the following findings before granting a variance:

- (1) There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same zone;
- (2) The exceptional or extraordinary circumstances of the site create a situation in which the strict, literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this Chapter;

(3) That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity and will not result in substantial impairment to the purposes of this Chapter.

(4) There is no substantial impairment to the public that would result from the granting of the variance.”

As noted above, the Town Council acting as the Zoning Board of Appeals must make positive findings for all four variance criteria. Although no one criterion should be weighted differently or considered more important, the first two criteria are typically the most difficult to establish. In this instance, the Applicant will be required to demonstrate an ‘extraordinary circumstance,’ ‘physical hardship,’ and/or ‘practical difficulty’ when the regulations are applied strictly and literally to their property.

The Applicant has reduced the total amount of relief requested as evidenced by the building design which steps up in mass and form from first floor to second floor remaining cognizant of the impacts on the pedestrian experience, and in keeping with the overall intent of the Design Guidelines. Staff does not believe that this will have a negative impact on light or air, and in fact is respectful of the shading effects on walkways around the building based on the massing presented. The proposed design does not contemplate perpendicular parking along Williams Street except for a loading dock area, and so there should be minimal conflict with the parking across the street at the Molly G Building.

Staff suggests that the intention of the 30-foot rear setback is to ensure enough area within a lot to provide adequate parking area for any second story and above residential uses. As stated within the Applicant’s letter of intent “since federal rules do not allow residential use above a distillery, we cannot utilize the code allowed height for other uses.”

With no residential uses allowed within the proposed building per federal regulations; the prioritization of economic viability and welfare within the downtown corridor by the Minturn Municipal Code Old Town Character Area purpose and intent, the 2023 Imagine Minturn Community Plan, and Town of Minturn Town Council 2023-2025 Strategic Plan; and the proposed design of the building, which otherwise complies with the Design Guidelines and goals for activation on Williams Street, there may be a case for physical hardship and/or practical difficulty to allow for the requested relief from the rear setback.

Lynn F. asked about the storage needs in the building. It will be approximately 15k-20k gal. and much of this would be stored off-site. Discussion ensued regarding the smell of ethanol from the distilling process. It was noted that due to size limitations, they will have an off site storage facility in addition to this site. This site will distill, the other location will store.

Mr. Robert Creasy, project architect, outlined the project and the variance request.

Public Hearing Opened

Mr. Ken Mentz, 167 Williams St, saw both negative and positive points to this project. He expressed his concerns with how this will affect this area of town and felt it could be done without a variance.

Mr. Tom Sullivan, 116 Nelson Ave., expressed this building as presented would devalue his property and would have a negative effect on the area traffic flow. He noted there is no exit for vehicles that turn on to Nelson Ave. from Main St. thereby causing a dangerous.

Ms. Krista Driscoll, 115 Nelson Ave, was opposed to the project.

Public Hearing Closed

Motion by Eric G., second by Kate S., to approve Resolution 51 - Series 2024 A Resolution Approving a Variance Request for Relief from the Rear Setback at 161 Main Street and 161 Nelson Avenue as presented with the following four findings. Motion passed 7-0.

- (1) There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same zone;
- (2) The exceptional or extraordinary circumstances of the site create a situation in which the strict, literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this Chapter;
- (3) That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity and will not result in substantial impairment to the purposes of this Chapter.
- (4) There is no substantial impairment to the public that would result from the granting of the variance.”

Note: At this time (10:44pm) the council agreed to continue the meeting to cover the balance of the agenda items not to exceed 45min.

C. Ordinance 20 - Series 2024 (First Reading) An Ordinance Amending Chapter 16 - Zoning and Chapter 19 - Historic Preservation of the MMC

The Town Council and HPC conducted a joint session on July 17, 2024 to discuss options to help give property owners certainty concerning historic preservation. ANALYSIS: At the June 5, 2024 meeting Council discussed balancing historic preservation, economic feasibility, and the utilization of property, particularly in the Town's downtown, commercial generating area. In response to this a work session was scheduled at the July 17, 2024 meeting. During the work session staff brought forth nine different ideas for Council to discuss and give direction on. Staff was directed to bring back an ordinance addressing Options 1-7:

- Option 1: Eliminate the requirement for two sets of design review guidelines.
- Option 2: Eliminating potentially redundant approval requirements.
- Option 3: Allow for historically designated structures in the downtown corridor to have the immediate ability to function as short term rentals on all floors.
- Option 4: Encourage historic preservation reinvestment as part of the Downtown Development Authority Operations Plan.
- Option 5: Require a minimum of two nominators for a structure to be nominated for historic designation.
- Option 6: Create a process whereby property owners can determine if their structure would be historically designated without necessarily “supporting” such a designation.
- Option 7: Allow residential in the Downtown Character Area on the back 50% ground floor of historically designated commercial buildings to create live/work opportunities

When discussed at HPC, they forwarded a recommendation of approval with the following changes:

- Amend the definition for alteration and the historic designation process to allow for the selection of facades (not to exceed 50% of the exterior of the structure) to be prioritized to remain the same and trigger the Certificate of Appropriateness process even if 50% of the structure is not affected.
- To add a visual example to the definition of alteration.
- To amend the intent statement of Sec. 16-6-35 - 100 Block Commercial Zones subsection (b) to add lodging as a use at the street level.
- To amend the *** clause at the end of the Old Town Character Area Use Table to specify 50% of the “proposed ground floor area” When discussed at Planning Commission, the Planning Commission forwarded a recommendation of approval with the following changes:
 - Remove Option 3: Allow for historically designated structures in the downtown corridor to have the immediate ability to function as short term rentals on all floors with the reasoning that this option does not meet the intent of the 2023 Imagine Minturn Community Plan’s guidelines for the 100 Block.

Staff presented this ordinance to the HPC at their August 20, 2024 meeting, to the Planning Commission at their August 28, 2024 meeting, and is presenting this ordinance to the Town Council for final decision. Several of these options, should they be implemented, should provide additional flexibility and stability to individual property owners within the 100 Block and throughout the rest of Town.

Tom P. felt we were taking away any incentive to preserve our history. He felt it was important to include short- and long-term rentals as well as residential.

Public Hearing Opened

Ms. Lynn Teach, 253 Pine St. discussed the flexibility needed.

Public Hearing Closed

Motion by Gusty K., second by eric G., to approve Ordinance 20 – Series 2024 (First Reading) An Ordinance Amending Chapter 16 - Zoning and Chapter 19 - Historic Preservation of the MMC as amended to reinstate option #3. Motion passed 5-2. (Nay Brain R and Tom P.)

D. Ordinance 19 - Series 2024 (Second Reading) An Ordinance Amending the Lighting Code

Ordinance No. 19, Series 2024 is being presented to the Town Council as an amendment to the Town’s existing exterior lighting regulations, Section 16-17-180 – Exterior illumination standards.

Section 16-17-180(f) includes “exemptions” from the Town’s exterior lighting standards (which otherwise prohibit uplighting) for things like illumination of the United States Flag; for holiday or ornamental lighting; and for lighting associated with Town of Minturn events. The Town recently conducted a town survey wherein respondents expressed support for certain Town led initiatives such as seasonal, aesthetic lighting of the Minturn Water Tank, a historically designated and iconic structure within the Town. For these reasons, the Town desires to provide professionally designed lighting of the water tank for seasonal celebrations and events.

Therefore, the proposed amendments to the lighting standards aim to clarify that, in addition to Town events, exemptions that may be granted to the Town of Minturn include lighting for “displays.” Such exemptions would be allowable or granted on a “seasonal” or “periodic” basis. The proposed expansion of the exemption provisions will allow the Town the flexibility to illuminate the water tank on a seasonal, periodic basis for public purposes related to and in conformance with the tank’s historic designation; to enhance community character and celebrate those things that “keep Minturn, Minturn;” for economic development; and to promote the general health, safety, and welfare of the Town

Public Hearing Opened
No Public Comment
Public Hearing Closed

Motion by Kate S., second by Tom P., to approve Ordinance 19 – Series 2024 (Second Reading) An Ordinance Amending the Lighting Code as presented. Motion passed 7-0,

13. FUTURE AGENDA ITEMS

A. Future Meeting Topics

14. ADJOURN

Motion by Kate S., second by Gusty K., to adjourn the meeting at 11:00pm.

Earle Bidez, Mayor

ATTEST:

Jay Brunvand, Town Clerk

INFORMATIONAL ONLY ITEMS

Upcoming Council Meetings & Events:

- September 6, 2024 - First Friday @ Eagle River Inn
- September 7 , 2024 - Final Minturn Market
- September 18, 2024
- October 2, 2024
- October 16, 2024