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DATE: March 1, 2024
TO: Town Council
FROM: Karp Neu Hanlon, P.C.
RE: Battle Mountain Code Amendments

The comments in red are updates from the March 15, 2024 memo presented to Council.

Ordinance 1 Series 2024 – code amendments pertaining to Battle Mountain – has been amended after First Reading to make a gas station a conditional use as opposed to a use by right.

The Ordinance has not been amended with respect to having a “club” use be a use by right in the Mixed Use district. The question was raised at the last meeting if club would include other non-profit uses such as lodges and churches. With respect to churches, there is a possibility that a club use by right would include churches under the federal Religious Land Use and Institutionalized Persons Act. The club use has been retained in the Ordinance.

March 15 Memo

As members of the Council will recall, the Town entered into a settlement agreement with Battle Mountain to resolve litigation that the Town had filed. The litigation arose from Town approvals granted between 2006 and 2008 to implement a ski resort development concept. Those approvals included both agreements as well as land use approvals for a large resort concept located in the Maloit Park, Bolts Lake and Battle Mountain areas.

The settlement agreement (attached) contemplates that the Town will consider approval of a much scaled down development concept. Specifically, the settlement agreement identifies a maximum density of 250 residential units, a destination spa and wellness facility, and up to 50,000 square feet of commercial development. In order to implement these settlement terms, the settlement agreement identifies various changes to the Town Code (see section 2 on pages 3-8). The Ordinance presented for your consideration at the February 21 meeting (with proposed second reading on March 6) would implement the code changes identified in the settlement agreement. It is important to note that the settlement agreement did not guarantee that these code changes would be adopted. Rather, the settlement agreement creates a process by which the Town through its Planning and Zoning Commission and Town Council will consider applications for development approvals to implement the concept identified in the settlement agreement.

An important part of the settlement agreement is the requirement that Battle Mountain obtain water service for its proposed development from Eagle River Water and Sanitation District (“ERWSD”). Battle Mountain has an agreement that was executed at the time that the Bolts Lake reservoir site was sold to ERWSD that requires the District to provide water service. This likely will be in the form of a new water treatment plant taking water from the Eagle River and specifically providing it to the proposed Bolts Lake development. Section 4 of the ordinance includes utility code amendments specific to the Bolts Lake area that recognize that the Town will not provide water for this development and will not operate or maintain the water treatment plant providing such service period.

Section 5 of the ordinance implements additions to the Town's zoning code specific to the Bolts Lake development. This includes the addition of certain definitions specific to the Bolts Lake zone districts and the establishment of four new zone districts. The Bolts residential zone district is characterized by residential, non-commercial land uses. The Bolts mixed-use zone district includes higher density residential and certain low impact commercial business uses. The Bolts open space and recreation zone district is specific to non-developed areas within the Bolts Lake property. The Bolt holding zone is a zone district that will be applied to properties the Town will receive but for which there has not been a formal planning process to establish eventual uses. The locations of these zone districts are included in a graphic in the ordinance.

The proposed land use table is included at section 16-10.5-70 and describes the types of land uses allowed in the various zone districts. One use type that requires some attention is the temporary processing area use which is designated as a use by right in the Bolts open space and recreational zone. This particular use contemplates that material excavated from the Bolts Lake reservoir will be transferred to certain parcels for processing and eventual coverage of the old tailings pile area to complete remediation of that site. Normally, material processing would be subject to a conditional use permit requirement to ensure that impacts are addressed. The developer is requesting that this be a use by right but subject to a covenant whereby the Town could include certain mitigation requirements. The covenant has not been drafted yet and will be subject to review and approval by the Town Council. Council should be mindful that in the first Intergovernmental agreement between the Town and ERWSD, the Town agreed not to apply its 1031 permitting authority to the placement of fill at the OTP. The second IGA with ERWSD does require the District to submit information related to “Nuisance. Descriptions of noise, glare, dust, fumes, vibration, and odor levels anticipated to be caused by the project,” air quality, visual quality, surface water quality, and ground water quality. The second IGA also requires approval of a “monitoring and mitigation plan” to avoid potential adverse impacts.

The dimensional use table can be found at 16-10.5-90. This table has been reviewed by planner Scot Hunn.

Section 6 of the ordinance involves changes to the subdivision code. The main provisions involve the use of exemption plats to create parcels within the Bolts Lake property that have a minimum size of five acres. The exemption plats are only subject to an administrative review. The plats will create

parcels that can be conveyed to third parties. It is anticipated that the exemption plats will be used to create parcels that will be conveyed to the Town and also parcels that the developer may choose to convey to third parties interested in developing portions of the Bolts Lake area. The approximate locations for the initial exemption parcels will be presented by Battle Mountain during the hearing. In section 17-6-80 (7) A, we are still working with the Town engineer to determine which of the Town's final plat requirements will apply to the exemption plats. That issue will be clarified prior to final approval by the Town Council. Parcels created by exemption plat will have no development rights. Instead, before an exemption plat parcel can be developed, the owner will have to come through either the site plan review process or a formal subdivision process. That way, impacts can be addressed and formal review of the development concept for these exemption plat parcels can be obtained. The exemption plats will further note that water service will not be provided by the Town of Minturn.

Section 7 involves certain minor amendments to the building code. The code changes provide that impact fees are not addressed at time of an exemption plat but rather at the time of a further subdivision or development application for set parcel.

The Planning and Zoning Commission did make one recommendation of approval. It is contained in the dimensional use table. The original draft had maximum building heights for the Open Space and Recreation District and the Holding Zone. The recommendation is to make building heights and setback decisions at the time of a design review, CUP, or location and extent review. The only building currently contemplated in this zone district is the water treatment plant to be constructed by ERWSD. Before that can occur, ERWSD will have to undertake a location and extent review with the Town and these dimensional limitations can be imposed. If Council would like to revert to the prior dimensions, we can do that for second reading.