



## **OFFICIAL MINUTES**

### **Town Council Regular Meeting 5:30 | Executive Session 4:30**

**Wednesday, May 01, 2024**

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

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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](http://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/86140470818>

**Zoom Call-In Information:** 1 651 372 8299 or 1 301 715 8592 **Webinar ID:** 861 4047 0818

**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 (zoom), Gusty Kanakis, Tom Priest, and Brian Rodine. Note: Kate Schifani was absent due to a Conflict of Interest.

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

### **3. EXECUTIVE SESSION (4:30pm)**

- A.** An executive session for a conference with the town attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402 (4)(b) - discussion of amendments to SFE schedule in context of pending water court litigation.

Council convened in Executive Session at 4:30pm.

No direction was given as a result of the Executive Session.

The Council convened in Regular Session at 5:30pm for the public portion of the meeting.

### **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.** 04-17-2024 Minutes
- B.** West Vail Pass Sign On Letter of Support
- C.** Resolution 18 - Series 2024 A Resolution setting the fee for Engine Compression Braking (Jake Braking) in the Town of Minturn
- D.** Resolution 19 - Series 2024 A Resolution setting Check Signers for the Town of Minturn
- E.** Liquor License - Liquor License: 131 Main St – The Minturn Country Club annual renewal of a Hotel and Restaurant Liquor License, Tom Ricci, owner/manager

Motion by Gusty K., second by Eric G., to approve the Consent Agenda of May 1, 2024 as presented. Motion passed 7-0.

### **5. APPROVAL OF REGULAR AGENDA**

Opportunity for amendment or deletions to the agenda.

Motion by Eric G., second by Gusty K., to approve the Agenda of May 1, 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.

Mr. Daren Tucholke, 533 Taylor St., discussed the Minturn North project. He expressed concern with the placement of the construction fence. He also expressed concern that 4<sup>th</sup> St will be closed and reopening in the fall of 2025 thereby limiting the access for residents to Taylor St. and that

this might be a safety concern for emergency vehicles. He also noted the project shows 18 parking spaces at the north end of Taylor but they have created 54 spaces.

## **8. COUNCIL COMMENTS & COMMITTEE REPORTS**

Earle B. updated on the recent Transit meeting he attended. They are working on a 10year capital plan and outlined what that will include and who is anticipated to be included.

## **9. STAFF REPORTS**

### **A. Manager's Report**

#### **Congressman Neguse Community Meeting**

I attended the community meeting of Congressman Neguse on Wednesday, April 24<sup>th</sup> where the Congressman graciously took questions from the audience. I took this opportunity to ask the Congressman for help in scheduling a meeting between local representatives and CDOT Director Lew for the purpose of discussing the West Vail Pass project. Minturn's desire to keep I-70 traffic out of our small community is imperative to Minturn's safety needs and completing this project is one element toward pushing that needle forward. The Congressman indicated his office was willing to help in this area and we hope to hear more soon.

#### **Certified Local Government - Grant Award**

Madison Harris completed and was awarded on behalf of the Town a grant to cover \$25,000 toward the costs of a Resource Survey for the Town. This Resource Survey analyzes the structures in Minturn and provides valuable historical insight for each property as appropriate. This Resource Survey will be a valuable addition to Minturn's Historic Preservation Program. This will work toward educating residents and property owners of the historic nature of the Town's structures. The grant award letter has been included for reference.

#### **Intermountain Transportation Planning Region (IMTPR)**

I represented Minturn at the IMPTR meeting and annual retreat on April 19<sup>th</sup>. At this meeting the voting members approved updated bylaws, discussed the West Vail Pass project, and then started the retreat process which will be ongoing for at least the next meeting. IMPTR is considering sending a West Vail Pass Project support letter to CDOT Director Lew and Governor Polis on behalf of the Planning Region which includes all the municipalities, counties and regional transit agencies for Summit, Eagle, Pitkin, Garfield, and Lake counties.

#### **Water Tank – Pressure Reducing Valve (For full use of both water tanks)**

Minturn has received the list of action steps from the State of Colorado for the execution of installing a pressure reducing valve in an already-existing building. This will include a historic survey and environmental assessment in addition to following all BABA and Davis Bacon requirements. To summarize, going through the State to use the remainder of the water tank loan funds for this work will cost Minturn more than should the Town pay cash. I have asked Jarod Linke to provide a cost estimate for this project once he has reached sufficient design level to determine if this project as a cash expense is a better opportunity for the Town. The lining of the

old tank will already be a cash project, it is just a matter of determining the pressure reducing valve installation costs. More to come.

### **Minturn North Development**

The Minturn North team is preparing to start work on the grading and utilities portion of the newly approved project. There will be an illuminated message board by the project, as well as additional signage with a QR code for where to find project information and contact numbers. The Town will share this information via the Town website as well. The developer has assured the Town that parking for the Game Creek trailhead will remain open except for when specific utility work to that area is conducted.

### **Out of Office**

I will be out of the office June 17-21 and not attending the June 19<sup>th</sup> Council meeting. Mike Sawyer will attend that meeting, in person, in my absence.

Kate S. asked about information for the Minturn North Project. It was noted they have started a website to include project information and they will be using variable message sign boards.

## **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. 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. Ordinance 05 - Series 2024 (Second Reading) An Ordinance Approving the Battle North Development Agreement**

Michelle M. presented. She noted there were no changes from First Reading.

For Council's consideration is a proposed Development and Vested Property Rights Agreement ("Development Agreement") to implement the Bolts Lake development concept and the Settlement Agreement with Battle Mountain. Council will recall that as part of the ski/resort development concept from 2008, the Town and Battle Mountain entered into a lengthy Battle Mountain Annexation Agreement and Vested Property Rights Development Agreement approved by Ordinance No. 10 – Series 2008 ("2008 Annexation Agreement"). Pursuant to Section 1.4, the Development Agreement would supersede the 2008 Annexation Agreement, together with the Wastewater Agreement, Water Service Agreement, various Escrow Agreements, and the 2012 Agreement Regarding Escrows and Funding. Adoption of the Battle Mountain Code Changes (Ordinance No. 1 – Series 2024) replaced the prior Battle Mountain Preliminary PUD Plan (Resolution 18 – Series 2008). Between the adoption of the Battle Mountain code changes and the Development Agreement, all prior agreements and approvals for the 2008 Battle Mountain ski/resort development for the Bolts Lake property will be superseded by new approvals and agreements.

As provided for in the Settlement Agreement and outlined in Section 1.2 of the Development Agreement, the Development Agreement and associated approvals do not become effective until the Settlement Agreement closing happens and a stipulation for dismissal of the pending lawsuit is approved. At that time, the Development Agreement and other approvals will be recorded in the public records.

Conceptually, Council should think about the Development Agreement as accomplishing the following matters: (a) memorialize various promises and commitments made by Battle Mountain as part of the approval process, and (b) create a system of vested property rights allowing Battle Mountain (and its successors) to pursue the development in accordance with the approved zoning for a period of 30 years.

Section 2.1 implements certain guidelines for the zoning approved by the Council earlier this year. Section 2.1 b. identifies the presumptive methodology for implementing a river setback for purposes of the Town's watershed protection plan. With the implementation of best management practices, a 30 foot setback from the ordinary high watermark would be used to protect the Town's water supply. Section 2.1 c. identifies the need to allocate the costs of infrastructure improvements that Battle Mountain may develop with other beneficiaries of that infrastructure. This is particularly relevant for Maloit Park Road which will be upgraded as part of the Bolts Lake development but will also serve the school district property. While the Town agrees to work on such allocations, it does not guarantee that allocation of infrastructure improvement costs will ultimately be achieved.

Section 2.2 largely restates provisions contained in the zoning approved for the Bolts Lake area. Section 2.3 identifies that with the exception of Maloit Park Road and associated pedestrian paths, ownership of roads within the Bolts Lake development will be private or dedicated to one of the metropolitan districts. This will relieve the Town of maintenance obligations for these internal roadways.

Section 2.4 requires a restrictive covenant to be recorded against the Maloit wetlands area property preserving it in an undeveloped state. Battle Mountain will reserve the right to install, operate and maintain infrastructure within the wetlands area as well as to undertake various passive winter recreation activities consistent with EPA and or CDPHE guidelines. The Town similarly would have the right to approve recreational uses. Section 2.5 requires that Battle Mountain record a fishing easement along Cross Creek at the time that a final plat is recorded in that area. Access to Cross Creek will be at defined locations identified in the easement. Section 2.6 provides that no open space dedications will be made as part of future plats. As Council will remember, a large part of the Battle retained parcels is zoned as open space. Neighborhood parks can be required as part of future residential land use decisions.

Section 2.7 deals with water service to the Bolts Lake development area. As identified in the previously adopted code changes, water service to Town parcels and certain of the restricted parcels would need to be accomplished with Town water resources. Water service to the Battle retained parcels (the development property) will be undertaken by a separate water treatment facility constructed in accordance with the reservoir agreement with ERWSD (where ERWSD will operate the plant). The Development Agreement contains an express waiver of the right to receive

Town water for the Battle retained parcels and a waiver of the right to disconnect any portion of the Battle retained parcels due to the Town's failure to provide municipal water service. Plat notes to this effect will be included on all plats for the Bolts Lake area. The Development Agreement acknowledges that a separate water system will be constructed to serve the Bolts Lake development. As previously adopted in the code changes, the construction of the Bolts water treatment system will not be subject to the Town's 1041 regulatory powers. The Town further agrees that it will not review and approve the technical aspects of the Bolts water treatment plant as those will be reviewed and approved by both ERWSD and CDPHE. The Town may review and approve the location, character and extent of the Bolts water treatment plant as provided by state statute. In the event that a dispute arises as to the Town's authority to review and approve a portion of the Bolts water treatment system, the Town consents in section 4.10 to an alternative dispute resolution where 3 water law technical experts would be appointed to decide the question. It is important to note that this alternative dispute resolution only applies to the limited situation of a dispute involving the Town's ability to review and approve an element of the Bolts water treatment system.

Article 3 deals with vested property rights for the Bolts Lake development. The easiest way to think of vested property rights is that it provides a guarantee that the government will not issue new land use regulations that diminish or conflict with the approvals granted for a property for a specific period of time. In other words, the government cannot change the rules surrounding the development of the property for a period of time in which the developer has the ability to implement the development plan. In the case of the vested property rights for Bolts Lake, section 3.3 establishes that the vesting period is for 30 years. This lengthy period of time reflects the complexity of implementing the Bolts Lake development together with the number of units that will be developed. A copy of ordinance No. 1 - Series 2024 adopting the Bolts Lake zoning is attached to the Development Agreement establishing the land use rights granted to Battle Mountain.

There are a limited number of Town code amendments contemplated to be addressed in the next few years without violating the vested property rights. Section 2.1 b. provides that the Town may amend the Community Housing guidelines to lower the top cap for affordable housing to no lower than 140% AMI. Further, the Town has the right to amend procedural elements of the code so long as they do not diminish or conflict with the rights granted under the Bolts Lake zoning. As the Council is aware, Town staff intends to undertake a revision to the Town land use code as part of implementing provisions in the community plan adopted last year. Finally, section 3.5 acknowledges the Town's ability to adopt updates to technical codes, implementation of federal or state mandates, the adoption of impact fees of general applicability, and modifications to processing requirements and appeal procedures.

Article 4 deals with events of default under the Development Agreement and remedies of the parties. I would point out that it is unlikely that Battle Mountain will default under this agreement. They have a limited number of commitments that will largely be fulfilled at or shortly after closing on the settlement agreement. Therefore, the remedies section is largely based around a future Town action that could impact the vested property rights. The Town will not be deemed in default under the Development Agreement under a scenario where a natural hazard is discovered that would limit development or if the action impairing the vested rights is due to an act of a third person.

Barring those scenarios, section 4.4 provides Battle Mountain with the remedy of specific performance. This means that Battle Mountain (or successor property owners) could go to court and seek an order compelling the Town to abide by the land use approvals and vested rights. If the Town failed to comply with the order, an injunction could issue against the Town. Under section 4.4 c, if a court were to determine that specific performance was not an available remedy, damages could be awarded against the Town. The Town, however, would have the right to remove the offending regulation and avoid the payment of monetary damages in such a situation. A goal of the Development Agreement is to prevent the Town from being liable for monetary damages. Section 4.5 creates a series of waivers intended to avoid monetary damages as a remedy and to bolster specific performances as the sole remedy. Battle Mountain specifically waives the right to receive monetary damages from the Town and the Town waves its right to pay monetary damages for a violation of the vested rights. Only if Battle Mountain is denied the remedy of specific performance would monetary damages against the Town be awarded. In any dispute involving the Development Agreement, the prevailing party will receive its attorney's fees and costs from the other party. Both parties waive their right to a jury trial in any action involving the Development Agreement.

The Development Agreement will be approved by ordinance. This means that there will be 2 opportunities for Council review and public comment. I look forward to discussing your questions and comments on this document at the upcoming meetings.

Lynn F. asked what would happen if the project falls through and would the vested rights be affected. Michelle M. noted that no documents will be recorded and official until the agreement is approved.

Public Hearing Opened  
No Public Comment  
Public Hearing Closed

Motion by Gusty K., second by Tom P., to approve Ordinance 05 – Series 2024 (Second Reading) An Ordinance Approving the Battle North Development Agreement as presented. Motion passed 7-0.

**B. Resolution 16 - Series 2024 A Resolution approving the Battle North Service Plan**

Michelle M. presented. She noted Staff is requesting this be continued. We are working on a staff memo from our consultants. She asked continue to May 15

As the council is aware, part of the Battle Mountain settlement agreement contemplates that the council will review a request for the formation of metropolitan districts as part of the proposed Bolts Lake development. Battle Mountain has submitted a draft service plan for the council's consideration. The service plan contemplates the formation of four metropolitan districts in order to primarily finance public improvements but also to operate and maintain certain improvements specific to the subdivision.

Late last year, we presented on metropolitan district topics including the potential adoption of a code section governing the formation of metropolitan districts. We can bring that ordinance back to council for further consideration. However, having the ordinance in place is not required to approve the Battle Mountain metropolitan districts. A request to allow metropolitan districts to be created within a municipal jurisdiction is at the discretion of the council. Therefore, any items that the Town would otherwise require if an ordinance were adopted can be imposed as part of the current approval process. The proposed service plan and intergovernmental agreement uses the form adopted by the town of Silt which was presented to council at the earlier meeting. Therefore, many of the items identified by council as provisions that should be incorporated into an ordinance are included in the proposed Service plan.

Battle Mountain proposes the formation of four metropolitan districts to finance public improvements and to maintain certain limited improvements. Four districts are proposed so that various partitions of the development can pay different amounts toward the financed debt and have potentially additional services provided by a specific district. One district will be the finance district that issues the debt. The other three districts will have agreements with the finance district to impose taxes and repay the debt. One district will be formed specifically to include land that is to be developed for affordable housing so that a lower mill levy can be applied to those parcels.

Under Section V of the service plan, the powers of the district are enumerated. As you will see, the districts will have the authority to finance as well as maintain certain private streets, limited water infrastructure, storm and sanitary sewer service, and parks, recreation and open space improvements. The service plan specifically precludes the districts from operating and maintaining the potable water treatment system and the raw water diversion facilities that provide water to it. Instead, those facilities will be owned, operated, and maintained by Eagle River Water and Sanitation District (ERWSD) pursuant to the Reservoir Agreement between Battle Mountain and ERWSD.

Financially, the service plan imposes various limits on how the districts can issue debt and provide for repayment. In section V.B.7, the district is limited to issuing debt in the amount of \$62,000,000. Section VI B. imposes caps on the interest rates that can be incurred on district debt. Prior to the issuance of debt, the metropolitan district must obtain a certificate from a municipal finance advisor stating that the proposed debt issuance is reasonable in light of current market conditions. Section VI.C limits the mill levies that can be imposed on properties. For metropolitan district Nos. 1 - 3, a maximum of 50 mills can be imposed. For metropolitan district No. 4, the affordable housing metropolitan district, the maximum mill levy is limited to 35 mills. As a further protection against excessive debt, the service plan limits debt repayment to 30 years. The combination of a maximum indebtedness, mill levy cap, and term of debt combine to provide guardrails on debt issuance and repayment to protect future land owners. At the public hearing, Battle Mountain will present to the council hypothetical taxation burdens on various types of property within the development.

It is worth noting that the town made comments to Battle Mountain about limiting the interest rate that can be charged on developer debt. Developer debt is issued by the developer but repaid by the metropolitan district. Under state statute, developer debt can be no more than 400 basis points (4%) above what general obligation government debt would be. We had attempted to limit



developer debt to 200 basis points above GO debt. Battle Mountain's special district attorney noted to us that the developer debt interest rate question was extensively deliberated by the state legislature a few years ago. The 400 basis points above GO debt has now become the industry standard. As such, the draft service plan reflects what the state statute allows.

Exhibit B to the service plan constitutes a description of the public improvements anticipated to be financed by the metropolitan districts. You will note that these improvements are broken out in different categories. Of particular note, specific amounts have been budgeted for the potable water treatment plant, road improvements including to Maloit Park Road and Hwy. 24, and various trails. At the public hearing, Battle Mountain will provide more detail on the scope and location of the public improvements to be financed. Town staff would note that it believes that certain of the cost estimates for public infrastructure are low. What that means is that if there are cost overruns in certain categories of improvements, the districts would not be able to finance the construction of other improvements listed. That is due to the fact of the debt cap of \$62 million. As such, any improvements that could not be financed by the districts would need to be financed by the developer.

Protections of the Town in the service plan include statements that district debt shall not be considered debt of the Town of Minturn. The metropolitan districts are further restricted from applying for grants from entities such as Great Outdoors Colorado that would be in competition with the Town. The Service plan provides that Parks and Recreation facilities financed by the district will be open to the public as a whole. The districts shall not have the power of eminent domain absent a separate approval from Town Council. Any material amendments to the service plan require that the districts come to the Town for a future approval. In addition to the service plan, the districts will enter into an intergovernmental agreement with the Town of Minturn that will grant the Town the ability to seek specific performance from a court in the event that the districts act outside of the service plan limitations. Under such circumstances, the Town would be awarded its attorney's fees against the districts.

At the meeting last December when we discussed metropolitan districts a few questions were asked. First, whether the governing body for a metropolitan district can exclude second home residents from being on the board. The answer is that under state statute an eligible elector for a metropolitan district includes second homeowners who can serve on boards. Second, what happens in the event of a bankruptcy of one or more of the districts. The service plan includes language specifically noting that district debt shall not be considered municipal debt. In the event of a bankruptcy, a trustee would likely be appointed who would continue to collect tax revenue consistent with the service plan and to repay bondholders to the greatest degree possible. Third, whether the districts can enforce homeowners association covenants or architectural guidelines. The service plan contains specific language that the districts do not have the authority to enforce private covenants or Town zoning.

In addition to the Town staff presentation, Battle Mountain will also be making a substantive presentation about the draft service plan. Further, Town municipal finance advisor Jim Mann directed a number of comments to Battle Mountain primarily related to the content of Exhibits B and C. On Monday, Battle Mountain will be providing a responsive memo to Jim's comments. We will supplement the packet with this memo.

The council has the flexibility to take two meetings to make a decision on the service plan. Therefore, if council continues to have questions or requests further information related to the metropolitan district requests, this matter can be continued to May 1 for additional consideration.

Motion by Gusty K., second by Kate S., to continue to 5/15 Resolution 16 – Series 2024 a Resolution of the Town Council of the Town of Minturn approving the Consolidations Service Plan for Battle North Metropolitan District Nos. 1-4 as presented. Motion passed 7-0.

**C. Ordinance 06 - Series 2024 (Second Reading) An Ordinance Amending the Nuisance Code Relating to Wildlife**

Michelle M. presented. There were no changes from First reading

Section 7-2-10 of the Town code defines the term “nuisance.” Other provisions of the code enable to Town to, among other things, require property owners to abate or remove circumstances that constitute or have been declared nuisances.

An amendment to Section 7-2-10 of the Town code is proposed to include within the definition of a “nuisance” any act, condition or use of property that creates a hazard to the safety of wildlife, including but not limited to circumstances that cause a demonstrable risk of wildlife injury or fatality. Other minor amendments are included to conform the existing definition to nuisance law generally. The proposed amendments clarify and strengthen the Town’s ability to require removal or abatement of hazardous conditions to protect the health, safety, and general welfare of its residents and visitors and eliminate demonstrable risks of wildlife injuries or fatalities. Consistent amendments to the Town’s fencing regulations are simultaneously proposed under separate cover.

Over the years there have been various injuries to and/or fatalities of wildlife within the Town caused by fences. These events in proximity to the Town’s residents and visitors create a variety of risks, including but not limited to attracting predators, foul or offensive odors, growth or propagation of disease-carrying insects, and psychological or emotional trauma from witnessing dead or dying animals. Various areas within the Town are also frequented by wildlife and/or constitute their accustomed fawning/calving grounds.

The amendments clarify that portions of the code other than Chapter 7, Article 2 can identify nuisances subject to abatement under Chapter 7, and that any condition declared a nuisance by a state agency may also be considered a nuisance by the Town. The words “welfare” and “morals” are also added to the definition to conform the regulation to nuisance law generally and strengthen the Town’s ability to protect the wellbeing of its residents and visitors.

The remaining changes are to make clear that conditions that are hazardous to wildlife also present identifiable risks to the human residents and visitors to the Town and, therefore, those wildlife hazards are also nuisances. The amendments are consistent with the positions of Colorado Parks and Wildlife regarding areas frequented by wildlife or constituting their accustomed fawning/calving grounds.

Public Hearing Opened  
No Public Comment  
Public Hearing Closed

Motion by Tom P., second by Gusty K., to approve Ordinance 06 - Series 2024 (Second Reading) An Ordinance Amending the Nuisance Code Relating to Wildlife as presented. Motion passed 7-0.

**D. Ordinance 07 - Series 2024 (Second Reading) An Ordinance Amending the Fence Code**

Michelle M. presented, there were no changes from first reading.

Section 10-8-280 of the Town code, entitled “Barbed wire fences prohibited,” makes it unlawful to construct or maintain within the Town barbed wire and certain other types of fences. The ordinance is not clear, however, regarding whether the term “maintain” as used in that section refers to repairs of a fence (i.e., physical repairs or alterations of an existing fence) or allowing an otherwise unlawful fence to remain in place.

An amendment to section 10-8-280 is proposed to clarify that: (1) all of the types of fencing prohibited by the section, not just barbed wire, are unlawful within the Town; (2) allowing an unlawful fence to remain in place is a violation of the code without regard to whether the owner actually constructs or physically maintains the fence; and (3) fencing creating a demonstrable risk to the health or safety of the public, or of wildlife injuries or fatalities, are nuisances subject to prosecution and abatement under Chapter 7, Article 2 of the code.

Over the years there have been various injuries to and/or fatalities of wildlife within the Town caused by fences. These events in proximity to the Town’s residents and visitors create a variety of risks, including but not limited to attracting predators, foul or offensive odors, growth or propagation of disease-carrying insects, and psychological or emotional trauma from witnessing dead or dying animals. Various areas within the Town are also frequented by wildlife and/or constitute their accustomed fawning/calving grounds.

The proposed amendments do not expand the kinds of hazardous fences prohibited within the Town but clarify and strengthen the Town’s ability to require removal or abatement of hazardous fencing to protect the health, safety, and general welfare of its residents and eliminate demonstrable risks of wildlife injuries or fatalities.

The proposed amendments require the risks that render a fence a nuisance to be “demonstrable.” Therefore, abatement or removal of a hazardous fence would require some actual evidence of a risk, as opposed to a purely hypothetical concern. What form that evidence would take would depend upon the specific circumstances at issue in each enforcement action. Its necessity, however, will prevent undue burden on property owners from enforcement actions without such “demonstrable” basis, while enabling the Town to effectively require abatement of hazardous

circumstances creating identifiable risks to wildlife and/or the Town's residents or visitors. Consistent amendments to the code's definition of the term "nuisance" are simultaneously proposed and presented under separate cover.

Public Hearing Opened

No Public Comment

Public Hearing Closed

Motion by Tom P., second by Kate S., to approve Ordinance 07 - Series 2024 (Second Reading) An Ordinance Amending the Fence Code as presented. Motion passed 7-0.

**E. Ordinance 08 - Series 2024 (Second Reading) An Ordinance Amending Chapter 8 of the Minturn Municipal Code for Civil Infraction**

Michelle M. presented and noted no changes from First Reading.

Amendments of Minturn Municipal Code sections 1-2-10 (concerning the definition of "misdemeanor"), 2-5-20 (concerning municipal court procedures), and 8-1-50 (concerning interpretation of the traffic code) are proposed to clarify that, notwithstanding any other provisions of the code, the Model Traffic Code, or the Municipal Court Rules to the contrary, violations of the Town code constitute civil matters and are not criminal offenses.

Section 1-4-20 of the code provides that violations of its terms constitute "misdemeanors." Code section 1-2-10 defines the term "misdemeanor" as a "violation" and specifies that it is "not intended to mean crime or criminal conduct." Other sections of the code, the Model Traffic Code as adopted by the Town, and the Colorado Municipal Court Rules applied in Minturn's court, however, include language commonly associated with criminal offenses and criminal procedures. Related questions have arisen that resulted in unnecessary delay, expense and inconvenience for the Town and individuals involved in municipal court proceedings. Such unresolved questions may also have been used by defendants in municipal court matters to attempt to gain advantage by increasing the burden and expense to the Town of resolving their cases.

To avoid continuing issues, Section 2 of the proposed ordinance amends section 1-2-10 of the code, which defines the term "misdemeanor." The existing definition is deleted entirely and replaced with a new definition clarifying that, despite any terms of the code to the contrary, misdemeanor violations of the Town code are civil infractions. The new definition is consistent with the intent expressed in the existing language, but clarifies and strengthens the definition.

Section 3 of the proposed ordinance amends section 2-5-20 of the code, which requires that procedures in Minturn's municipal court will be in accordance with the Municipal Court Rules of Procedure. Those rules provide that trial shall be to the court unless a defendant is entitled to jury trial by the Constitution of the State of Colorado, an ordinance or charter of a municipality, or by Colorado state law generally.

The proposed amendments to section 2-5-20 clarify that, despite any provisions of the Town Charter, the code, or the Municipal Court Rules to the contrary, trials in the Minturn municipal

court will be to the court, and there shall be no jury trial unless required by the state Constitution or applicable state law, and a defendant timely demands a jury trial in accordance with that law. The amendments should eliminate questions concerning whether the Town Charter or any provision of the Town code requires or enables jury trials in the municipal court.

Demands for jury trials are rare in Minturn's courts. When a jury trial has been necessary, however, it has been burdensome and sometimes practically impossible for the municipal court to efficiently and effectively summon a group of Town residents for jury service, and to administer a jury trial.

In addition, the majority of matters in Minturn's municipal court are traffic infractions. Colorado law indicates that jury trials are not required for non-criminal violations of municipal traffic codes. The proposed amendments clarifying the civil nature of code violations and limited availability of jury trial are consistent with state law. They are also expected to reduce the number of jury demands received in the municipal court, with corresponding benefits to the efficiency of the court in resolving matters presented to it.

Without regard to the proposed amendments, jury trial will remain available to defendants in the municipal court in some circumstances. Where the conduct at issue is also unlawful under a state statute, and a conviction could be punishable by imprisonment under state law, jury trial will remain available as a matter of controlling state statute. There may also be extreme circumstances where conduct in violation of the Town code would be considered criminal despite the terms of the code to the contrary. Although those circumstances are expected to be extremely rare if encountered at all, the state Constitution includes a right to jury trial in all criminal matters.

Consistent with the above, Section 4 of the proposed ordinance adds language to section 8-1-50 of the Town's traffic code specifying that violations of the traffic code are civil matters and not crimes or criminal offenses.

Public Hearing Opened  
No Public Comment  
Public Hearing Closed

Motion by Eric G., second by Gusty K., to approve Ordinance 08 – Series 2024 (Second Reading) An Ordinance Amending Chapter 8 of the Minturn Municipal Code for Civil Infraction as presented. Motion passed 7-0.

#### **F. Resolution 20 - Series 2024 Appointing Planning Commission Member**

Earle B. noted that Darell W., appointed recently as the Alternate, asked if he should be moved up to position from Alternate. This Resolution will be for the Alternate seat.

Madison H. outlined the process to solicit applications and the process that will be utilized to appoint the single applicant. The first candidate with four votes will be seated as a Commissioner.

Darell Weigert, Planning Commission Alternate, spoke stating that in the past the current alternate was moved up to the full seat, and the new candidate was appointed as the new Alternate. It was noted that this has happened but is not a precedent.

Ms. Tracy Andersen, applicant, spoke. She noted that, if appointed, she would be on both the HPC and the PC commission. She said that, because there is a second applicant, she would withdraw her name to avoid being on both commissions. She stated she would rather stay on the HPC.

Mr. Eric Rippeth was allowed time to introduce himself, why he would like to serve, and a Round Robin interview by the Council with questions including town outlook, Battle Mtn lands, code changes, and preferences.

The qualified applicants were:

- Eric Rippeth (1951 Hwy 24 #23)
- Tracy Andersen (1016 Mountain Drive) – withdrew her application

Discussion ensued as to seating. It was agreed by Council and amongst the parties that Darell W. will be the 1 yr Commissioner and Eric will be the two-year alternate.

Motion by Tom P., second by Kate S., to approve Resolution 13 – Series 2024 as presented appointing Eric Rippeth as the two year Alternate and Darell W. as the one year Commissioner through March 31, 2025 as presented. Motion passed 7-0.

Mayor Bidez swore in Eric R. as the Alternate Commissioner. Darell W. was not sworn in as he is already an active and appointed Commissioner. They will assume their seats at the May 8, 2024 Planning Commission meeting.

**G. 161 Main Street - Request Exemption from Sec. 16-17-110. - Underground utilities.**

Madison H. presented.

The property owners of 161 Main Street recently received approval to construct a shed structure on their property to conduct a tasting room out of as they draft plans for a permanent structure. The plans show a temporary overhead electric utility line attaching off the pole at the back of the property. The property owner would like to request temporary exemption from Sec. 16-17-110 - Underground utilities.

Mr. Spence Newboure, applicant, was available for questions.

Motion by Eric G., second by Kate S., to approve 161 Main St request a Variance for exemption from Sec. 16-17-110. - Underground utilities as presented. Motion passed 7-0.

**H. Resolution 17 - Series 2024 A Resolution Approving a New Maintenance and Storage Building with Wildlife Conditions**

Review of Planning Commission actions from their regular meeting of January 24, 2024. The following actions were taken by the Planning Commission, acting as the Minturn Design Review Board, which may be called-up for further review by the Minturn Town Council: 806 Cemetery Road • Final Plan DRB Application for New Maintenance and Storage Building.

At the February 21, 2024 Town Council meeting, Council requested referral guidance from Colorado Parks and Wildlife regarding a recommendation on the proposed building window given the entirety of the Cemetery is located within a wintering elk corridor. Correspondence from Devin Duval, District Wildlife Manager, Colorado Parks and Wildlife indicated comfort with a closure that mirrors adjacent trail networks to minimize disturbance and impacts to migratory and wintering wildlife with a construction window of June 22 through November 22 annually.

Brian R. asked if this followed the requirements placed on the bike park and those closures. He felt this should be standardized for that area. Discussion ensued on this and comparable areas.

Lynn F. felt strongly that we follow the recommendations from the Colorado Parks and Wildlife as presented.

Mr. Pedro Campo, spoke as the applicant representative, noting the need for consistency in the area. He noted the outdoor ware on the equipment and the need for this shed.

Mr. Kunal Parikh, Cemetery Clerk, spoke in support and felt this was retribution on this issue due to a separate issue between the town and the Cemetery.

Ms. Tracy Andersen, 1016 Mtn Drive, spoke opposed to the applicant in that the elk population is dwindling and felt we should defer to the expertise of Mr. Devin Duval, Colorado Parks and Wildlife.

Earle B. echoed this sentiment.

Kate S. asked for clarification on what trail closures this would mirror.

Lynn F. noted we could ask for clarification from Colo Parks and Wildlife

Motion by Kate S., second by Lynn F., to continue to May 15, 2024 Resolution 17 - Series 2024 A Resolution Approving a New Maintenance and Storage Building with Wildlife Conditions as presented. Motion passed 7-0.

**I. Ordinance 09 - Series 2024 (First Reading) An Ordinance Amending Chapter 16, Article 11 Lionshead Character Area to Create the Cemetery Zone District**

Madison H. presented.

Review and approve Ordinance 09 - Series 2024 Amending Chapter 16 of the Minturn Municipal Code to Create the Cemetery Zone District and Associated Use and Development Standards within the Lionshead Character Area on first reading. One of the conditions of approval set by the

Planning Commission for 806 Cemetery Road for a new maintenance and storage building, was that the Applicant would work with staff to draft zoning standards and allowable uses for the cemetery, as that zoning does not currently exist.

Earle B. asked re the use code by right of accessory buildings and structures. Madison H. clarified this would include the proposed shed. Earle B. felt this was potentially too broad.

Lynn F. commented that we could add the term “accessory” before structures.

Public Hearing Opened

No Public Comment

Public Hearing Closed

Motion by Gusty K., second by Lynn F., to approve Ordinance 09 - Series 2024 (First Reading) An Ordinance Amending Chapter 16, Article 11 Lionshead Character Area to Create the Cemetery Zone District adding the term “accessory” structures as presented. Motion passed 7-0.

## **12. DISCUSSION / DIRECTION ITEMS**

### **A. Residential Tiered Water Rate Structure**

Michelle M. presented and introduced Mr. Jim Mann, Town Consultant.

In response to your request to evaluate the implementation of a tiered rate structure for single family water users, and to modify the tiered rate structure for the municipal and sprinkler rate classes, below is a proposed methodology and accompanying analysis of the concept. It is my understanding that this is in response to a recommendation identified in the Minturn Water Nexus Report and Action Plan (Resolution 05, Series 2024 approved on February 7, 2024) that suggested a tiered residential rate structure would further encourage residents to conserve the finite water resource.

#### **Residential Tier Rate Structure**

Currently, the rate methodology the Town is using for residential water users three-fold: base rate, debt repayment rate, volumetric rate. A summary of the rate components is as follows:

- Base Rate – monthly rate that covers the basic operation of the water treatment plant and system up to the point that water is being delivered to the customer (think before the meter). Current 2024 rate is \$116.77/month per SFE
- Debt Repayment Rate – monthly rate that is meant to cover the annual debt service payments and annual debt service coverage on the outstanding debt of the utility. Current 2024 rate is \$17.37/month per SFE
- Volumetric Rate – use rate per 1,000 gallons of water use (think after meter) that is meant to cover the added cost of water production for delivery. Current rate is \$8.82/1,000 gallons of use
  - For residential customers, the current volumetric rate structure will generate \$178,226 based on the test year data



- SFE Multiplier – for non-municipal/sprinkler accounts, a SFE multiplier is used that applies to the Base and Debt Repayment rates (i.e., if you are a 2.0 SFE customer, the Base/Debt calculation would be as follows:  $(\$116.77 + \$17.37) \times 2.0 = \$268.28$ )
- Municipal Code defines an SFE (single family equivalent) as “...the basic unit for determination of water charges and usage. One (1) SFE shall be equal to the water required to serve up to three thousand (3,000) square feet of building area as measured from the exterior dimensions of development and two thousand (2,000) square feet of outside irrigated area.”

In looking at the concept of implementing a tiered rate structure, Town staff met with representatives of the Eagle River Water and Sanitation District to understand the revised rate methodology that they are looking into that is similar in nature. In that meeting, ERWSD indicated that they were looking to eliminate the SFE multiplier on the volumetric calculation, however we pointed out that may produce a result that is punitive to certain users, therefore the Town is looking to utilize the multiplier on single-metered structures with multiple dwelling users. For the residential side of the implementation, we looked at establishing a three-tiered rate structure that becomes more costly the more water that is consumed. The goal of the structure was to generate the same volumetric revenues as are currently produced. Based on the average residential customer utilizing approximately 3,000 gallons/month, the following was developed:

- Tier 1 – 0 – 3,000 gallons                      \$ 6.75/1,000 gallons
- Tier 2 – 3,001 – 6,000 gallons                \$ 9.75/1,000 gallons
- Tier 3 – 6,001 or more gallons                \$12.75/1,000 gallons

Further, any single-family residence that is greater than 1 SFE calculation, the SFE multiplier is only applied to the base and debt rates. The SFE multiplier does not apply to the Fer allowance in gallons. Utilizing the same 2 SFE example, the base and debt rates are doubled, however the gallon allowance in the tiers remain as stated above (there is no multiplier).

This methodology, if implemented, would generate \$177,049 in volumetric revenues, a drop of \$1,177, which is based on the test year data. Our goal was to not increase the overall volumetric burden. Most customers will see a reduction in their annual water liability, while a few heavy users will see increases.

Currently, the Town utilizes a tiered rate structure for irrigation and sprinkler only accounts. It is my understanding that the irrigation and sprinkler only accounts are only charged the volumetric water rates for the period of time when the meter is hooked up (sprinkler accounts are generally hooked up May through October).

Town staff has identified that the irrigation and sprinkler class of accounts was not paying the monthly Base or Debt fees and was utilizing a SFE multiplier on the tiers resulting in few accounts moving out of the lowest Fer for volumetric usage. The current rate structure generates the following revenues, based on the test year:

- Irrigation Base                                      \$ 24,125.20
- Sprinkler Base                                      \$ -

- Irrigation Volumetric \$ 10,851.20
- Sprinkler Volumetric \$ 71,647.50
- Base Year Revenue \$106,643.90

To correct the above, the following tiered rate structure was developed to address the above:

- Charge all accounts the Base and Debt fees, multiplied by their appropriate SFE
- Leave Tier usage same for Irrigation and Sprinkler, but eliminate the SFE multiplier

Irrigation Rates would be as follows:

- Tier 1 – 0 – 8,000 gallons \$12.50/1,000 gallons
- Tier 2 – 8,001 – 16,000 gallons \$20.00/1,000 gallons
- Tier 3 – 16,001 – 24,000 gallons \$27.50/1,000 gallons
- Tier 4 – 24,001 – 32,000 gallons \$35.00/1,000 gallons
- Tier 5 – 32,001 or more gallons \$42.50/1,000 gallons

Sprinkler Rates would be as follows:

- Tier 1 – 0 – 20,000 gallons \$13.25/1,000 gallons
- Tier 2 – 20,001 – 30,000 gallons \$21.00/1,000 gallons
- Tier 3 – 30,001 – 40,000 gallons \$28.75/1,000 gallons
- Tier 4 – 40,001 – 50,000 gallons \$36.50/1,000 gallons
- Tier 5 – 50,001 or more gallons \$44.25/1,000 gallons

This methodology would generate the following revenues based on the Test Year data:

- Irrigation Base \$ 24,125.20
- Sprinkler Base \$ 25,352.46
- Irrigation Volumetric \$ 11,185.50
- Sprinkler Volumetric \$ 85,521.76
- Base Year Revenue \$146,204.92

Due to the Irrigation and Sprinkler Class of accounts previously not being charged the monthly Base and Debt Fees, the amount of revenues anticipated from this class is the majority of the increase.

A couple of notes that should be considered prior to finalizing the tiered structure for Residential, Irrigation and Sprinkler:

- Total SFEs should be scrubbed and checked. There are a variety of accounts within the Test Year data that did not have an SFE calculation
- There are a number of accounts that showed zero usage for the entire Test Year that should be evaluated

Brian R. supported the changes and felt this was fairer for the customers.

Lynn F. felt this was much different from the current ERWSD program and felt this was double dipping against the large homeowners.

Gusty K. felt this would cause people not to water their lawns and that was not a good change. He encouraged a higher use allowance in the lower tiers.

Earle B. asked to see how many would be affected up or down based on their use. Lynn F. added that it might be useful to pull out second homeowners since they are not here and would have skewed averages.

Tom P. expressed a revisit to changing the tier allowances cost and increase the costs to higher users.

Lynn F. stated the main concern of the moratorium was nonrecycled water, water that is not returned to the system due to outdoor water use. Her concern was that outdoor water use is a larger impact and should pay for that.

Michelle M. in response to a question, that average Minturn home lots are much smaller than the ERWSD average.

Brian R. discussed the potential to further differentiate between full-time and part-time residents. He asked about peak use rates or peak months use.

Discussion ensued as to recommendations to the proposal.

## **B. Downtown Development Authority (DDA)**

Michelle M. and Jim Mann presented and introduced Mr. Bill Shrum from Downtown Colorado Inc.

The Town of Minturn has been considering the values a DDA could bring to this community off and on for almost three years. In this time, staff and some business owners of Minturn's downtown area have investigated this option with the culmination of the attendance at the 2022 DCI Conference in Colorado Springs. From there the Town returned with an action plan for the potential to create a DDA from which we have slowly been progressing ever since. The Town most recently left off with the need for a secondary financial analysis to better understand the potential income revenues of a DDA, which is what has brought us here today.

A Downtown Development Authority functions as a "quasi-municipal corporation which is intended to halt or prevent deterioration of property values or structures in a Central Business District."<sup>1</sup> To this end, a DDA is focused with finding ways for improving real estate development, infrastructure, and operations of a downtown area. It does this by leveraging any future increase in assessed property valuations within the approved DDA boundary. The Town could also assess a mill levy however feedback throughout this process has indicated a local DDA should be able to support these objectives by solely relying on the Tax Increment Financing This allows the DDA to reinvest in Minturn's Downtown and keep money in Minturn which would have otherwise gone

to the bevy of other organizations that see revenue through property taxes such as the School District, Cemetery District, Library District, Eagle County, and others. The complete mill levy breakout can be found on electronic page 81 of the 2024 Minturn Budget. This is all done through a mechanism called tax increment financing (TIF). For those that want to take a deeper dive into the mechanics of TIFs, here is an excellent, albeit long, presentation by Troy Bernberg with Northland Public Finance. Also attached to this memo is a TIF FAQ.

Staff is recommending the above concept which includes no increase in tax rates. To form a DDA, firstly, the Council must approve the concept. An election of the property owners included in the DDA boundary is then required. If approved, a DDA has a lifespan of 30 years with the potential to be extended by an affirmative action of the Council. An important understanding to consider before moving forward with a DDA is the amount of tax increment funding from the eventual increase in property values that could be brought in by the DDA. Prior to formation, a financial analysis is conducted to determine if a potential DDA area could bring in funds providing enough value to create a financially healthy DDA. Jim's findings have determined that even though reinvestment in Minturn's Downtown is unknown at this time, there are a variety of different scenarios which create opportunities for increased revenues supporting a financially healthy DDA.

Discussion ensued as to how this DDA might grow to encompass more of the town than just the 100 block. Once the boundaries are established by a public vote of those initially included in the original DDA district. To grow you must be contiguous and once the DDA is established a property would need to petition into the DDA and be accepted by the DDA.

Mr. Larry Stone, 152 Main St, commented how a transit hub could be beneficial and asked if a bike path or transit system could qualify as infrastructure for the DDA? Yes, it can be included.

Michelle M. asked for direction if the Council is interested in continuing this project and potential election in November.

Jim Mann outlined potential estimates of revenue for the DDA.

Discussion ensued about how the DDA might and might not conflict with the historical preservation and the towns small town feel that currently exists.

Ms. Krista Driscoll, 113 Nelson, asked about sales tax. It was clarified that no sales tax increase is being considered. She asked how the DDA dissolves. It is a 30year approval, which can be dissolved or extended. After 50years of existence, you can continue to revenue with the approval of Council. The baseline value does change based on the property value growth. Further, the DDA does not receive sales tax.

Direction given to continue to proceed with research and study.

### **13. FUTURE AGENDA ITEMS**

**14. ADJOURN**

Motion by Kate S., second by Eric G., to adjourn the meeting at 9:08pm.

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Earle Bidez, Mayor

ATTEST:

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Jay Brunvand, Town Clerk

**INFORMATIONAL ONLY ITEMS**

Upcoming Council Meetings and Events:

- May 4, 2024 - Highway Cleanup
- May 9, 2024 - Council Retreat
- May 15, 2024 - Town Council Meeting
- June 1, 2024 - Town Cleanup Day
- June 5, 2024 - Town Council Meeting
- June 19, 2024 - Town Council Meeting