

Glenwood Springs – Main Office
201 14th Street, Suite 200
P. O. Drawer 2030
Glenwood Springs, CO 81602

Aspen
0133 Prospector Rd.
Suite 4102J
Aspen, CO 81611

Montrose
1544 Oxbow Drive
Suite 224
Montrose, CO 81402

Office: 970.945.2261
Fax: 970.945.7336
[*Direct Mail to Glenwood Springs](#)

DATE: June 14, 2024
TO: Planning & Zoning Commission
FROM: Karp Neu Hanlon, P.C.
RE: Battle Mountain request to form metropolitan districts

June 14, 2024 update:

In April 2024, Staff and the applicant Battle Mountain presented to Council about a proposed service plan for metropolitan districts as part of the Bolts Lake/ Maloit Park development. Town financial consultant Jim Mann had provided email comments on the draft service plan. Battle Mountain's consultants prepared and submitted a responsive memorandum to which Jim Mann did not have an opportunity to respond. Council continued the hearing on the Service Plan to a later date.

On May 17, Jim Mann consolidated his comments into a memo (attached). The memo was provided to Battle Mountain to obtain responses that hopefully would narrow the issues and concerns. Battle provided responsive materials on June 4. Battle included more detail on the scope of public improvements to be financed by the districts, the basis for calculating estimated costs, and updates to the Service Plan that limited the property to be included in the districts.

Battle Mountain's attorney, Bill Ankele, discusses in Battle's responses that it is common to have conceptual level design and engineering and associated cost estimates when districts are formed. The reason is that districts are frequently formed at the beginning of a development project and the Town (as is the case here) has not yet been presented with final subdivision plans where complete design and engineering is conducted. The Town will ultimately approve construction plans and cost estimates for all of the infrastructure at Battle Mountain (except the water treatment plant which will be approved by ERWSD).

In addition to more detail on the cost estimates for public improvements, Battle has provided an analysis of operating expenses for the districts. Initially, this amount is estimated at \$96,000 for administration and public works. This amount will fluctuate based on the amount of parks, roads, and landscaping that the Town authorizes to be owned and maintained by the districts. Battle estimates that the total annual revenue that can be generated by the 20 mils assessment is \$600,000 per year – so tax funds available for this purpose.

On page 3 of Jim Mann's memorandum, he discusses the taxes that will be assessed by the districts. For a free market house with an estimated value of \$1,850,000 the 50 mils debt service levy will generate an additional \$6615 in taxes. For an affordable housing unit valued at \$850,000, the 35 mils debt service levy will generate an additional \$2000 in taxes. Council needs to consider the tax implications for future residents of this development.

Any individual unit cannot be assessed more than the 50 mils (35 mils for affordable housing), together with up to 20 mils for operations, provided for in the Service Plan. That means that bond holders cannot look to individual owners to pay exorbitant tax amounts to retire district debt. Bond holders are limited to the tax revenue generated by the debt repayment mill levies collected over 30 years. It also means that the developer cannot issue debt until adequate assessed value exists in the development or the developer front ends debt payments.

Questions have been asked about what happens if the districts file for bankruptcy. Exhibits A and B to the Service Plan identify parcels that: (a) cannot be in the districts (e.g. parcels the Town receives at Closing of the settlement), (b) parcels for inclusion in the districts (Battle Mountain development property), and (c) Restricted Parcels (environmental contaminated parcels that may be owned by or included in the districts for purposes of managing environmental remediation). The Service Plan contains language that the Restricted Parcels cannot be pledged as security for debt. In the event of a district bankruptcy, bond holders would only have the right to look to taxes assessed pursuant to the mill levies in the Service Plan to repay the debt. There is no right of a bond holder to foreclose on property either owned by a district or included in a district boundary. Council will observe that Town Parcels received at the time of Closing together with the processing parcel are not eligible for inclusion into the districts. The OTP, wetlands parcel and CTP may be included in the districts to manage environmental conditions.

With this memo you will find:

- A. Jim Mann's May 17 Memo
- B. Battle's response to Jim Mann's May 17 Memo (Battle comments underlined in document)
- C. Battle's Response Memo dated April 15
- D. Redline of Service Plan from version presented in April
- E. Resolution 16, Series 2024 approving the Service Plan
- F. Updated Service Plan with all exhibits

Minturn financial consultant Jim Mann and Battle Mountain metropolitan Districts attorney Bill Ankele will be present at Council meeting to answer questions.

April 12, 2024 Memo:

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.