



OFFICIAL MINUTES
Town Council Regular Meeting 5:30 PM
Wednesday, April 17, 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/83189555251>

Zoom Call-In Information: 1 651 372 8299 or 1 301 715 8592 **Webinar ID:** 831 8955 5251

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 5:34pm.

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, Brian Rodine (zoom) and Kate Schifani. Note: the quorum stood at 7 members. Terry A. did not run for re-election and was not present.

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

3. 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. 04-03-2024 Minutes

Motion by Kate S., second by Gusty K., to approve the Consent Agenda of April 3, 2024 as presented. Motion passed 7-0.

4. APPROVAL OF REGULAR AGENDA

Opportunity for amendment or deletions to the agenda.

Motion by Gusty K., second by Eric G., to approve the Agenda of April 3, 2024 as presented. Motion passed 7-0.

5. DECLARATION OF CONFLICTS OF INTEREST

Gusty K. updated on the Minturn Fitness Center meeting he attended.

Eric G. updated on a Housing Authority Board meeting as well as Climate Action Collaborative board.

6. 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.

7. COUNCIL COMMENTS & COMMITTEE REPORTS

8. STAFF REPORTS

A. Manager's Report

Main Street Intersection Bulb Outs

With the costs to install permanent bulb outs at the primary intersections along Main Street increasing due to needed stormwater drainage improvements that would be required for such an undertaking, staff sought the guidance of the CDOT Grand Junction office to determine any possibility for finding approvals of a temporary solution. Staff is now working, with the guidance of the Grand Junction office, toward a temporary bulb out design that is more likely to receive CDOT approval.

Eagle Valley Transit Authority (EVTA)

I attended the Eagle Valley Transit Authority board meeting on Wednesday, April 10th. The staff is moving quickly to complete the transition from ECO Transit to EVTA. One of the biggest

takeaways from the meeting was the need to temporarily move to a two-week meeting cycle whereby the board will meet every two weeks until the transition is complete. These additional meetings will be conducted via a virtual platform and the public is encouraged to attend.

The Value of Community Plans; Newsletter Insert

Community Plans are the guiding references when local government officials determine their decision-making objectives and determinations. The Town of Minturn wants to thank every resident who has taken the time to participate in these important documents as this is the most equitable way to ensure everyone's voice is heard. With the leadership teams of the planning commission, historic preservation commission and town council utilizing plans like the Imagine Minturn 2023 Community Plan and the 2023-25 Minturn Strategic Plan, it ensures all residents have had an opportunity to be heard because these plans are the voice of the community.

Leadership hearing from their neighbors on particular topics is valuable, but the Town wants the residents of Minturn to know that everyone is listened to, and you don't have to be the neighbor or friend of a person in leadership to have your voice heard. Minturn wants to take a fair equitable approach to local government and the Town will continue working to improve the community plans which are created by everyone and updated regularly! Thank you to everyone who participates in these processes, Minturn wouldn't be the amazing community it is without you!

Railroad Ave Pedestrian Safety Improvements

The kickoff meeting for the Railroad Ave Pedestrian Safety Improvements was held on Wednesday, April 10th. At that meeting we discussed with CDOT the need for the project approval by the Public Utilities Commission which seemed to be acceptable to the CDOT representatives even though it was not a recognized step in the application submitted by the Town. I am now waiting to hear back from the PUC representative to start that process.

Community Survey

The community survey is live! Residents are encouraged to participate via a text message link, the town website or by picking up a paper copy at town hall. Thank you to everyone who has completed the survey thus far, your time and feedback are greatly appreciated!

Out of Office

I will be out of the office June 17-21 and not attending the June 19th Council meeting. Mike Sawyer will attend that meeting in person.

Gotta Brick?

Through the continual research of looking for ways to improve vehicular and pedestrian safety along the HWY 24 corridor, I came across the following concept: crosswalk users in Vancouver are now encouraged to carry bricks as a form of visibility. Waving the bricks and showing them to cars who might dare to not stop for those crossing. Minturn is not recommending this as an option to increase pedestrian safety along HWY 24, but it is a unique idea. Here's a like to the concept: https://youtu.be/ZJ0HBd_u-Fs?si=hApUskvTumcwW1dC

Minturn HWY 24 Corridor

I recently reached out to the CDOT Grand Junction office to understand the ability for local jurisdictions to overtake the jurisdictional responsibilities of a highway through their community. Similar to the concept where the towns of Eagle and Gypsum now have ownership of HWY from I70 through Grand Avenue, I wanted to better understand, knowing this would be an exorbitant financial burden requiring an increase in taxes, for Minturn to do something similar. CDOT considers such requests when there lies a rational terminus which does not create, effectively, a hole in the middle of their service areas. With the Gypsum to Eagle transaction, no hole is created where CDDOT operations must maintain areas of road both before and after the acquired section of HWY. CDOT identified in the Minturn case, there is no scenario where a “hole” in CDOT services would not be created and therefore CDOT would be very unlikely to approve such an acquisition by the Town. To further the concern, CDOT expressed the exceptionally high cost of maintenance and labor for taking over a section of HWY which requires 24/7 plowing operations in the wintertime with HWY-grade plowing equipment.

9. SPECIAL PRESENTATIONS

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

A. Castle Peak Senior Life & Rehab Update - Shelly Cornish (10 min)

Ms. Shelly Cornish was present and updated on the Castle Peak Senior Life Center located in Eagle.

Earle B. thanked Ms. Cornish and the center for their continued work. Discussion ensued about how the center and programs work.

10. 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 04 - Series 2024 (Second Reading) An Ordinance Amending Chapter 19 of the Historic Preservation Code to allow for Noticing of Demolition Prior to Permitting.

Michelle M. presented.

Council reviewed this ordinance at their last meeting, March 20, 2024. One amendment was requested to be added - that the permit be eligible for extension for up to another 6 months, totaling that the permit may be good for 365 days. Also modified is the request from HPC’s review of the ordinance at their meeting of March 19, 2024 adding a clause that all sign posting placements be approved by staff

The way the Town Code is currently written, it doesn’t contemplate partial permit applications, it just says “permit application” which means the whole complete application needs to be submitted to the Town before Section 19-9-10 is triggered and the two week stay notifying people that an application for alteration, relocation, or demolition has been submitted starts. The described flaw

hasn't been exposed up until now as most times this section comes into play it's been for minor building permits (ex. A re-roof) that don't need a lot of information for submission of the application, so it hasn't been an undue hardship for people to make a complete application. Where this flaw has been exposed is that the complete demolition application requires proof that water, sewer, gas, electric, etc. have all been disconnected, as well as an asbestos report and a permit from CDPHE to mitigate any asbestos. If an applicant submits a complete demolition permit application, triggers the two week stay, and gets nominated and then designated, then that house has been sitting there without power which could negatively impact this now Historically Designated property. As a response to this, staff has attached a draft ordinance that is being presented to HPC on March 19th and Council March 20th. Due to input from Dr. Lindsey Flewelling, staff has taken inspiration from Boulder, but fashioned a more streamlined process. This ordinance is intended to create a separate permit form that people can apply for describing what they are doing and kick-starting that two week stay without having to provide a complete application for demolition or other permit forms such as Design Review Board. Also attached is the form that Boulder uses that staff anticipates amending and making our own as referenced in the ordinance.

Public Hearing Opened
No Public Comment
Public Hearing Closed

Motion by Tom P., second by Eric G., to approve Ordinance 04 - Series 2024 (Second Reading) An Ordinance Amending Chapter 19 of the Historic Preservation Code to allow for Noticing of Demolition Prior to Permitting to the April 17, 2024 Council Meeting as presented. Motion passed 7-0.

B. Resolution 15 - Series 2024 A Resolution Approving the Bellm Bridge Feasibility Public Service Agreement

Michelle M. presented with the assistance of Town Engineer Jeff Spanel.

Bridge inspection reports, conducted by third-party engineering firms contracted by the State of Colorado, are provided to Minturn for the evaluation of the off-system bridges within town limits; Cemetery Bridge which leads to Little Beach Park and beyond, Bellm Bridge in the downtown area, and the bridge for CR14 at the northernmost area in town. It is the most recent Bellm Bridge report which has led to the need for a Feasibility Study. The Bellm Bridge inspections have identified scouring issues for many years and work was done to mitigate these concerns, in accordance with the State, such as inserting boulders upriver of the piers to mitigate continued impacts. This was a temporary solution and Minturn was following a "monitor" recommendation by the State. That requirement was in place until the most recent inspection report from the State was received toward the end of 2022 and identified a requirement to make improvements while simultaneously continuing the monitoring of the bridge. At this juncture, Minturn sought an understanding of what would be required to fix the identified scour repairs (see included Bellm Bridge Temporary Scour Stabilization Design Memo). The scour repairs needed are extensive and do not cover the extent of the overall improvements needing to be made to the bridge. With a goal of maximizing efficiency for the Town's funds, staff and consultants look to better understand the value in a repair of the issues addressed by the State, or a more holistic approach to addressing all

the bridge's issues with a complete repair or replacement. This Feasibility Study looks to provide the Town with such an understanding. The Feasibility Study project was publicly noticed in the Vail Daily, and the Town website. Interviews were conducted for all three proposals received and as all three firms were well qualified, staff determined SEH provided the optimal project timeline at a reasonable proposed cost. Proposal costs came in at \$117,951, \$69,943 and \$59,000 respectively.

Jeff S. stood for questions. He noted they have been monitoring the bridge due to a CDOT concern that the bridge may be moving; it is not. He noted the bridge is not in good condition but is currently safe and not an immediate collapse concern. This allowed the necessary time to RFP the work and apply for grants. Michelle M. stated the goal is to get the feasibility study completed, apply for grants in 2024 then construction in 2025.

Motion by Gusty K., second by Kate S., to approve Resolution 15 Series 2024 A Resolution Approving a Feasibility Study for Bellm Bridge conducted by Short Elliott Hendrickson Inc. (SEH) as presented. Motion passed 7-0.

C. Ordinance 05 - Series 2024 (First Reading) An Ordinance Approving the Battle North Development Agreement

Mike S. presented.

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.

Mr. Tim McGuire, Lindsay Lyda, and Munsey Ayers were present to answer questions. It was noted the agreements will become active once the courts dismisses or vacates the lawsuit. It was

clarified that the ordinance will become effective 30days after passage but will then follow the court vacation.

The Council asked clarifying questions. All were happy to see us moving forward. Next steps and what-if's were discussed. It was noted that the agreement could be amended in the event it was agreeable to both parties.

Public Hearing Opened
No Public Comment
Public Hearing Closed

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

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

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.

Mr. William Ankele and Ms. Laci Knowles and Trish Harris were present for the developer. Mr. Ankele presented a PowerPoint and stood for questions. This presentation is included in the official minutes of this meeting.

Discussion ensued on how various scenarios would be handled under the Operations Plan. Concern was expressed about these metro districts being held to a more expensive taxation. Brian R. expressed concern that this could create a voting block and defeat town wide issues. It was noted this Plan creates a series of restrictions to over taxation.

Public Hearing Opened
No Public Comment

Mike S. noted that if anyone had a comment or question to please contact the town and we will get it answered.

Public Hearing was continued to May 1, 2024

Motion by Tom P., second by Gusty K., to continue to the May 1, 2024 Council Meeting 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. Note: this was continued to ensure all questions were answered and to allow the public ample time to make comments.

E. Ordinance 06 - Series 2024 (First Reading) An Ordinance Amending the Nuisance Code Relating to Wildlife

Michelle M. and Town Attorney Rob Marsh presented.

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.

Discussion ensued as to how trail closures and other circumstances might fall into this definition. It was noted this is intentionally broad to allow for prosecutorial discretion.

Public Comment Opened

No Public Comment

Public Hearing Closed

Motion by Eric G., second by Kate S., to approve Ordinance 06 - Series 2024 (First Reading) An Ordinance Amending the Nuisance Code Relating to Wildlife as presented. Motion passed 7-0.

F. Ordinance 07 - Series 2024 (First Reading) An Ordinance Amending the Fence Code

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.

It was noted that preexisting fences are not exempt from this proposal. The threshold is the need for a "demonstrable risk" to wildlife.

Public Comment Opened

No Public Comment

Public Hearing Closed

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

G. Ordinance 08 - Series 2024 (First Reading) An Ordinance Amending Chapter 8 of the Minturn Municipal Code for Civil Infractions

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.

Discussion ensued that this does not nor is it intended to restrict one's potential right to a jury trial, this is for misdemeanor and traffic tickets.

Public Comment Opened

No Public Comment

Public Hearing Closed

Motion by Kate S., second by Gusty K., to approve Ordinance 08 - Series 2024 (First Reading) An Ordinance Amending Chapter 8 of the Minturn Municipal Code for Civil Infractions as presented. Motion passed 7-0.


11. DISCUSSION / DIRECTION ITEMS

12. FUTURE AGENDA ITEMS

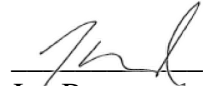
- Water irrigation discussions will be in May.
- Downtown Development Authority will be in May.
- Eagle Valley Childcare

13. ADJOURN

Motion by Gusty K., second by Eric G., to adjourn the meeting at 8:46pm.



Earle Bidez, Mayor

ATTEST:


Jay Brunvand, Town Clerk



INFORMATIONAL ONLY ITEMS

Upcoming Council Meetings:

- May 1, 2024
 - May 15, 2024
- Council Retreat:
- May 9, 2024