



## **AGENDA**

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 and times of agenda items listed are approximate and intended as a guideline for the Town Council.

**MEETING OF THE MINTURN TOWN COUNCIL**  
**Minturn Town Center 302 Pine Street**  
**Minturn, CO 81645 • (970) 827-5645**

**Wednesday May 19, 2021**

**Meeting to be held via Zoom Conferencing and call-in.**  
**Public welcome to join meeting using the following methods:**

<https://us02web.zoom.us/j/83965891242>

**Or join by phone:**

**US: +1 301 715 8592 or +1 651 372 8299**

**Webinar ID: 83965891242**

**Regular Session – 5:30pm**

**MAYOR – John Widerman**  
**MAYOR PRO TEM – Earle Bidez**

**COUNCIL MEMBERS:**

Terry Armistead

George Brodin

Brian Eggleton

Eric Gotthelf

Gusty Kanakis

When addressing the Council, please state your name and your address for the record prior to providing your comments. Please address the Council as a whole through the Mayor. All supporting documents are available for public review in the Town Offices – located at 302 Pine Street, Minturn CO 81645 – during regular business hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

### **Regular Session – 5:30pm**

**1. Call to Order**

- Roll Call
- Pledge of Allegiance

**2. Public comments on items which are ON the consent agenda or are otherwise NOT on the agenda as a public hearing or action item. (5-minute time limit per person)**

**3. Approval of Consent Agenda (5Min)**

*A Consent Agenda is contained in this meeting agenda. The consent agenda is designed to assist making the meeting more efficient. Items left on the Consent Agenda may not be discussed when the Consent Agenda comes before the Council. If any Council member wishes to discuss a Consent Agenda item, please tell me now and I will remove the item from the Consent Agenda and place it in an appropriate place on the meeting agenda so it can be discussed when that item is taken up by the Board. Do any Council members request removal of a Consent Agenda item?*

- May 5, 2021 Meeting Minutes Pg 4

**4. Approval of Agenda**

- Items to be Pulled or Added
- Declaration of Conflicts of Interest

**5. Liquor Authority**

- Liquor License – New Hotel and Restaurant License application: Thai Kitchen 141 Main St, Patti Wanapii Owner/Manager. Changing existing Beer and Wine License to a Hotel and Restaurant license – Brunvand Pg 15

**6. Special Presentations**

- Water History & Issues in Eagle River Valley - Linn Brooks Pg 31
- Council Comments/Committee Reports

**DISCUSSION AND/OR DIRECTION ITEMS**

**7. Discussion/Direction:** Review Amendment to the Battle Mountain Funding Agreement to allow for following the Minturn Municipal Code as to developer's costs associated with a preliminary PUD application and ratification of all prior funds spent by the Town - Metteer/Peterson-Cremer Pg 54

**8. Discussion/Direction:** Review termination of Emergency Declaration to pandemic response - Metteer/Peterson-Cremer Pg 74

**PUBLIC HEARINGS AND/OR ACTION ITEMS**

**9. Public Hearing/Action Item:** Ordinance 04 – Series 2021 (Second Reading) an Ordinance rezoning Lot 1 and Lot 2, Lucero Subdivision, from commercial to

residential in conformance with the Town of Minturn Master Plan and Land Use Code – Hunn Pg 85

**10. Public Hearing/Action Item:** Ordinance 03 – Series 2021 (Second Reading) an ordinance of the Town of Minturn, Colorado amending Article 2, Chapter 16 of the Minturn Municipal Code – Hunn Pg 95

**11. Public Hearing/Action Item:** Resolution 14 – Series 2021 A Resolution approving an Intergovernmental Agreement between Eagle County Housing Development Authority and the Town of Minturn – Hunn Pg 105

**12. Public Hearing/Action Item:** Resolution 15 – Series 2021 A Resolution Support Healthy Rivers and Watersheds – Metteer Pg 152

## COUNCIL INFORMATION / UPDATES

### 13. Staff Updates (5 Min)

- Manager’s Report Pg 155
- Future Agenda Items Pg 157

## MISCELLANEOUS ITEMS

### 14. Future Meeting Dates

a) Council Meetings:

- June 2, 2021
- June 16, 2021
- July 7, 2021

### 15. Other Dates:

- May 31, 2021 – Memorial Day – Office Closed
- June 5, 2021 – Town Clean Up Day
- July 2, 2021 – Town Independence Day Celebration
- July 3, 2021 – Minturn Summer Market begins

### 16. Adjournment



## OFFICIAL MINUTES

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 and times of agenda items listed are approximate and intended as a guideline for the Town Council.

**MEETING OF THE MINTURN TOWN COUNCIL**  
**Minturn Town Center 302 Pine Street**  
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**Wednesday May 5, 2021**

**Meeting to be held via Zoom Conferencing and call-in.**  
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**Regular Session – 5:30pm**

**MAYOR – John Widerman**  
**MAYOR PRO TEM – Earle Bidez**

**COUNCIL MEMBERS:**

Terry Armistead  
George Brodin  
Brian Eggleton  
Eric Gotthelf  
Gusty Kanakis

These minutes are formally submitted to the Town of Minturn Town Council for approval as the official written record of the proceedings at the identified Council Meeting. Additionally, all Council meetings are tape-recorded and are available to the public for listening at the Town Center Offices from 8:30am – 2:00 pm, Monday through Friday, by contacting the Town Clerk at 970/827-5645 302 Pine St. Minturn, CO 81645.

### **Regular Session – 5:30pm**

**1. Call to Order**

- Roll Call

The meeting was called to order by Mayor John Widerman at 5:38pm using the ZOOM on-line meeting format.

Those present include: Mayor John Widerman, Mayor Pro Tem Earle Bidez and Town Council members Terry Armistead, George Brodin, Brian Eggleton, Eric Gotthelf, and Gusty Kanakis.

Staff present: Town Manager Michelle Metteer, Town Planner Scot Hunn, Town Attorney Richard Peterson-Cremer, and Town Treasurer/Town Clerk Jay Brunvand.

- Pledge of Allegiance

**2. Public comments on items which are ON the consent agenda or are otherwise NOT on the agenda as a public hearing or action item. (5-minute time limit per person)**

**3. Approval of Consent Agenda (5Min)**

*A Consent Agenda is contained in this meeting agenda. The consent agenda is designed to assist making the meeting more efficient. Items left on the Consent Agenda may not be discussed when the Consent Agenda comes before the Council. If any Council member wishes to discuss a Consent Agenda item, please tell me now and I will remove the item from the Consent Agenda and place it in an appropriate place on the meeting agenda so it can be discussed when that item is taken up by the Board. Do any Council members request removal of a Consent Agenda item?*

- April 21, 2021 Meeting Minutes
- 996 Main St – Review
- Letter of Support – Eco Transit Lake Creek Apartments on route charge station

George B. requested to pull 996 Main St review and place on the agenda as item 9a.

Motion by George B., second by Gusty K., to approve the Consent Agenda of May 5, 2021 as amended. Motion passed 7-0.

**4. Approval of Agenda**

- Items to be Pulled or Added

Motion by Terry A., second by George B., to approve the Agenda of May 5, 2021 as amended. Motion passed 7-0.

- Declaration of Conflicts of Interest

**5. Special Presentations**

- Eagle County Community Wildlife Roundtable – Abigail Potts, NFF

Michelle introduced Jacci McKenna, Jessica Foulis, and Ernest Saeger. The Round Table was set up to give a voice to wildlife in order to understand the impacts on wildlife as land use is reviewed. The intent is to enhance habitats, migration paths, and human encroachment management. The presentation reviewed the goals of the Roundtable and the potentially conflicting wildlife and development needs. Information can be found at [www.eaglecountywildlife.org](http://www.eaglecountywildlife.org).

The purpose of the Community Wildlife Roundtable is to gather a group of diverse stakeholders in the valley to understand and address issues facing wildlife populations. Together they will identify a shared vision and realistic actions to protect regional wildlife, while also ensuring that these actions are supported by the community as a whole. The vision of the Roundtable is that wildlife is thriving, our community embraces the value of a diverse wildlife population and takes action to protect and enhance wildlife and their habitat for future generations.

The action plan will come back to Council for consideration of approval as a Resolution.

Earle B. asked about the habitat mapping stating it was very productive. Ms. Foulis stated this is an ongoing process and the map is updated and layered as data and migration routes change. It was noted the current map is accurate to December 2020.

- Council Comments/Committee Reports

George B. updated on Dowd Jct and the new bridge/bike path being built. They are anticipating the bridge will be open in early June. The work performed in this area and further north on the other side of the interstate viaduct are sewer line upgrades.

Terry A. updated on the Minturn Community Fund. She stated the Minturn Concert Series this summer will include seven shows beginning Thursday July 8<sup>th</sup>. Several other items were updated including the Missoula Children's Theater and School of Rock programs taking place this summer. She stated lots of kid activities.

Brian E. updated Radio Free Minturn's next Board Meeting is May 6. He noted with the ratification of the updated county wide Climate Action Plan we will need to also update the town's Community Plan. He noted as the CIP plan comes together, we should get projects to Shovel Ready status in order to be ready for grants. Eagle County is now taking walk-ins for COVID vaccinations. He thanked all those that are vaccinated already.

John W. was excited about the NAIOP program and the results are very encouraging. Michelle M. stated Minturn has all of the final submissions that we can keep on hand to review for potential development. The links will be placed on the website. John W. also noted the mural that was painted on the dumpster at Town Hall and how nice it looks.

## DISCUSSION AND/OR DIRECTION ITEMS

### 6. Discussion/Direction: Land Use Regulations and quasi-judicial review.

Richard P-C. and Michelle M. outlined the training presentation. This is a lot of information but is designed to outline the legal, quasi-judicial review, and formal procedure when land use regulations are reviewed. Land use regulations are held in Chapter 16, 17 and 18 of the Minturn Municipal Code. He stated land use regulations are developed by the Planning Commission, adopted by Council, and administered by staff.

Chapter 16 includes the Land Use regulations including zoning districts, permitted uses, sign codes

and other related subjects for development.

Chapter 17 includes subdivisions and related subjects.

Chapter 18 includes the International Building and Fire codes as adopted by Council.

Richard P-C. reviewed the issues and procedures and how to maintain a nonbiased mind and opinion as well as what is covered by the Open Meetings/Sunshine law.

This was a training session and no direction or decision was requested.

Terry A. asked about social media, it is covered under any other speech and, as a policy maker who may be adjudicating a land use question, it can become a public record.

**7. Discussion/Direction: Holy Cross Energy Franchise Agreement review**

Richard P-C. updated this.

Pursuant to Article X of the Minturn Home Rule Charter, the Town may grant franchises to public utilities to serve customers within the Town and occupy the Town's rights-of-way. Minturn's existing franchise agreement with Holy Cross Energy will expire in August, and will soon be under negotiation for renewal. Holy Cross only serves a small area within the Town, with PSCO/Xcel serving the remainder. In the packet was the existing agreement with a few updates from Holy Cross. As a regulated utility, the list of items that the Town can request in the new agreement is somewhat limited, and any increased costs will be passed on to ratepayers or the Town pursuant to the utility's tariff. Some issues that could be raised include clean energy requirements and undergrounding of utilities.

Michelle M. noted Staff is working to bring forward items such as this that will be coming back as an Ordinance or other decision in the near future. The intent is to get everyone on the same page and take questions and concerns that Staff should be looking at as the matter proceeds.

Discussion ensued as to if Holy Cross could cover more of Minturn than currently which would reduce the area of Xcel (probably not as it is at the State PUC level), and how long the agreements can be (10-20 years, it is anticipated this agreement will be 10 years). It was noted this is more of a long-term agreement, it is relatively standardized, and not necessarily the forum to discuss current issues such as the proposed Holy Cross proposed powerline or undergrounding of existing powerlines, etc.

There was no decision being requested for this item at this time, only discussion and direction. Michelle M. confirmed the proposed document is acceptable and that the terms, etc. are acceptable; they are.

**PUBLIC HEARINGS AND/OR ACTION ITEMS**

**8. Public Hearing/Action Item:** Ordinance 03 - Series 2021 (First Reading) an ordinance of the Town of Minturn, Colorado amending Article 2, Chapter 16 of the Minturn Municipal Code

Scot H. was available to walk the Council through the item.

This ordinance addresses amendments in the following sections of the Minturn Municipal Code, Chapter 16 – *Zoning*:

**Section 16-2-40 - General lot requirements and dimensional standards**

**Section 16-2-50 - Specific lot requirements and dimensional standards**

During the review of Chapter 16 over the past two years, staff and the Planning Commission have focused primarily on zone district standards and uses, as well as dimensional limitations and other specific standards applicable to all development in the Town.

**Section 16-2-40 - General lot requirements and dimensional standards**

Issue:

The current building and impervious coverage standards in some zone districts are not reflective of the built environment and/or are preventing some home owners from making modest improvements or expansions to their existing buildings, thus hindering the Town’s goals to incentivize locals to stay in Minturn, and in some cases, forcing property owners to apply for variances in order to make improvements that would add to the Town’s housing stock through the creation of Accessory Dwelling Units. Building coverage is the amount of a lot covered by the “footprint” of buildings, while impervious (or nonpermeable) coverage is the additional amount of the same lot covered by things like driveways and other hard surfaces that do not permit water from permeating into the ground. Typically, lot coverage is combined with impervious coverage to arrive at a maximum percentage of the lot that can be covered by both (so, if building coverage is limited to 40%, and an additional ten percent of the lot can be coverage by impervious materials, the building coverage is 40% and impervious coverage limit is 50%).

The current building and impervious coverage standards in some zone districts such as the Old Town Mixed Use and Old Town Residential, if increased slightly, would provide enough flexibility in most cases to allow or incentivize such improvements. Over the past two years, staff and the Planning Commission have reviewed the uses allowed as well as the dimensional limitations in each zone district and the proposed changes are reflective of those conversations and the direction given by the Planning Commission to adjust lot and/or impervious coverage limits.

Recommendation:

Staff is proposing to increase these standards by 5-10 percentage points in most zone districts in order to give people that flexibility. This will result in most residential zone districts ranging from 40-50% building coverage and 50-60% impervious coverage, except for Martin Creek which is at 20% building coverage. The commercial zone districts range from 70-80% building coverage and 80-90% impervious coverage. The two Mixed Use zone districts (Old Town and Cross Creek), which are typically more akin to a commercial district as far as intent and allowable



uses, are proposed to increase more dramatically from 45% building coverage and 55% impervious coverage, to 70% building coverage and 80% impervious coverage to encourage more dense and/or commercially oriented development in core areas of Town along Hwy. 24.

Discussion ensued how this might or might not encourage commercial vs residential vs mixed-use projects and how that compares to the goal of maintaining commercial in the commercial areas. Council was not comfortable with reducing in Town the available mixed-use or commercial by rezoning to residential. An additional concern was expressed that to increase the mixed-use and commercial to 70% density and then allow a residence in the area to be that dense was counter intuitive. Council felt keeping residential guidelines separate from commercial or mix-use was preferable. Additional concern was expressed where if a residential lot was approved in a commercial zone by Conditional Use that residence could be built with zero setbacks in the front just as a commercial unit could. It was requested we standardize the sidewalk width in order to allow commercial spillage and customer traffic on to the sidewalk without making them impassible. It was proposed that if a residence is residential allowed in the commercial zone the be required to adhere to residential setbacks that are not zero lot lines as allowed by commercial. This could be done buy allowing residential but with setbacks and that a commercial use cannot be converted to residential use in commercial zones. The direction given was that a CUP for residential would require residential setbacks. This would allow the developer/owner to pencil the setback and include in the project rather than get to CUP approval and receive denial. Also, if you are an existing Grandfathered residential, you could make some upgrades but not a complete teardown and rebuild of a residential within the commercial zoning.

### **Section 16-2-50 - Specific lot requirements and dimensional standards**

#### Issue:

The Code does not provide clear or consistent treatment when it comes to the 30-foot Live Stream Setback; a standard listed and discussed under Section 16-2-50, Specific lot requirements and dimensional standards. The intention of the live stream setback is to preserve or restore the riparian zones along the Eagle River (as well as other live streams in Town) to a natural state as a matter of environmental protection of water resources, wildlife habitat and flood protection. Establishment of this setback in [approximately] 2008 has allowed the Town to incrementally work with property owners along the Eagle River, for instance, to remove pre-existing non-conforming structures and other human made improvements (landscaping, fire pits, walls or patios) from this setback area; and, it has allowed the Planning Commission to work with property owners and their architects during the review of new or redevelopment projects to adhere to the setback and to create landscape plans that further the goals of the Town in protecting these areas. The requirements of the live stream setback currently do not permit ANY encroachment of buildings into the 30-foot setback.

Additionally, staff and the Planning Commission have discussed specific requirements affecting residential construction and redevelopment in the 100-Block Commercial area of Old Town.

#### Recommendation:

Staff is proposing the amendment of the subsections within Sec. 16-2-50 to better encapsulate the intention of the 30-foot live stream setback while addressing topics brought up in previous

Planning Commission meetings such as how minor encroachments of a roof eave - an above ground element of the structure - may or may not impact the live stream setback. Essentially, staff and the Planning Commission believe that while restricting building foundations and building walls (or other permanent structures) at ground level from encroaching into the 30-foot setback is the core intent of the live stream setback regulations, permitting minor encroachments of roof eaves will have no material or detrimental effect on the proper functioning and intent of the live stream setback.

Staff is also removing the subsection that states that any residential structure built in the commercial zone district must comply with residential standards, as there are no residential standards in a commercial zone district and the bulk, mass, form and architecture of a building in the 100 Block Commercial Zone District should not change or be impacted based on use; the buildings should, rather, conform to design standards for the 100 Block area regardless of the zoning and use.

Over the past several years, the amount and types of land use applications have increased and have become increasingly complex. As the Town continues to receive more new development and redevelopment proposals, amending these chapters is important to:

- a) Ensure proper, predictable and consistent due process for applicants and citizens.
- b) Promote accurate and informed decision making by the Planning Commission and Town Council when considering land use applications by ensuring that applications are complete and that issues identified during the completeness period are addressed to the highest extent prior to presenting applications to either decision making body.

#### ANALYSIS:

In reviewing the Ordinance, the Planning Commission considered the viability of different lot coverage and impervious coverage percentages. Since these topics have already been discussed at length during multiple public meetings over the past two years while working through the Chapter 16 Draft Update the Planning Commission is recommending approval to the Town Council of the ordinance amending Chapter 16, Article 2. Additional work remains to complete the full update to Chapter 16 and staff will continue to process changes to the Code as time permits.

Earle B. stated when this 30-foot setback was instituted he thought the County was 50-feet. He felt the 30-foot was a minimum.

#### Public Hearing opened

Ms. Rhonda Woodruff, 992 Main St, felt the new language is very detrimental to some lots when some lots are above the river area and others right at the river level. She felt no exception to use or density on the lot is highly restrictive to the property owner. It could prohibit redevelopment of dilapidated buildings if they can't use the setback area. Scot H. countered the setback is currently in the code and is NOT new. Nothing more restrictive is being proposed, however it is modifying the potential of a roof overhang allowance. Scot H. stated Grandfathered items within the setback are allowed to be maintained as is. Once they become unusable and dilapidated, they would need to be removed and not replaced.

Public Hearing closed

Scot H. confirmed he had clear direction based on the discussions to modify the Ordinance to better represent the stated goals of Council.

Motion by Terry A., second by Gusty K., to approve Ordinance 03 - Series 2021 (First Reading) an ordinance of the Town of Minturn, Colorado amending Article 2, Chapter 16 of the Minturn Municipal Code as presented, amended, and discussed. Motion passed 7-0.

9. **Public Hearing/Action Item:** Ordinance 04 - Series 2021 (First Reading) an Ordinance rezoning Lot 1 and Lot 2, Lucero Subdivision, from commercial to residential in conformance with the Town of Minturn Master Plan and Land Use Code

Scot H. introduced the Ordinance and outlined the salient issues.

**REQUEST:**

Review of the Amendment to the South Town Character Area Zoning Map Ordinance recommended to Council by the Planning Commission from their regular meeting of April 28th, 2021.

**INTRODUCTION:**

The attached ordinance is presented for consideration by the Town Council. The ordinance amends the South Town Character Area Zoning Map, specifically Lot 1 and Lot 2, Lucero Subdivision, from Commercial to Residential.

Lots 1, 2 and 3 were recently created as part of the Lucero Subdivision (Exhibit A of the draft ordinance), a re-subdivision of Lot 51, South Minturn Addition. All three lots are currently located within the Commercial Zone District of the South Town Character Area. Staff has worked for several months to assist Tom Sullivan with the subdivision of Lot 51 to create two residential lots (Lots 1 and 2) and to allow for Lot 3 (existing gas station and residential uses) to remain commercial or mixed use in nature.

During the review of the subdivision, staff advised the Applicant that the commercial zoning on all three lots could remain; South Town Commercial Zone District is the only commercial zone district in the Town of Minturn that allows - as a use by right - "single-family" residential uses. This is reflective of the stated purpose and intent of the South Town Character Area - to allow for and recognize the existing mix of single-family and commercial uses in the area. Again, the subdivider's vision for the property was to create two residential lots along the Eagle River and to maintain commercial or mixed uses along Hwy. 24 frontage.

However, the Planning Director, in his review of the subdivision, allowed for Lot 2 to be created at a non-conforming lot size (6,872 sq. ft.) - smaller than is required (7,500 sq. ft.) in the Commercial Zone District.

The Residential Zone District permits a minimum lot size of 5,000 sq. ft. Therefore, staff

proposes to rezone Lots 1 and 2 - from Commercial to Residential - to accommodate the intended residential development of both lots as well as the minimum lot sizes (Lot 1 is 8,581 sq. ft.) normally associated with *residential* lots, while allowing Lot 3 to remain commercially zoned. Lot 3 was created at just over 14,000 square feet.

The rezoning is supported by staff as the most efficient and effective means to address the subdivision oversight by the Planning Director and because a majority of the surrounding properties on the east side of Highway 24 are zoned and developed as residential. Additionally, staff is not aware of any objection to this rezoning on behalf of the property owner or the adjacent neighbors following the public notice period. Importantly, this action avoids requiring the property owner to go through an amendment to the subdivision to move property lines and adjust acreages for all three lots; all three lots are under contract and staff and the Planning Commission have recently reviewed plans for a new single-family residence on Lot 2.

#### ANALYSIS:

In reviewing the ordinance, the Planning Commission considered the need for and appropriateness of rezoning two commercial lots to residential. After learning that the intention from the outset of the subdivision application was to build single family homes on these lots as it is a use 'by right' in the South Town Commercial Zone District; after considering the surrounding zoning and land uses of similarly situated property located between Hwy. 24 and the Eagle River; and, with the intention of correcting the inadvertent creation of non-conforming lot (Lot 2) the Planning Commission recommended that Lot 1 and Lot 2, Lucero Subdivision be rezoned from commercial to residential.

Terry A. supported the changes and wanted to confirm the shared driveway access was agreeable to the parties involved as we have had concerns in that area reference the same issue; yes, the drive is agreeable and they have a written agreement. This concern was shared by Brian E. as well.

Earle B. commented he would like to see a quality review of the zoning map that would show how many properties have changed from commercial to residential over the past 20 years or so.

Public Hearing opened  
No Public Comment  
Public Hearing closed

Terry A. asked of the drainage in the area been properly reviewed, and has the subdivision been required to build sidewalk? Scot H. stated the drainage has been reviewed and is sufficient. The sidewalk is believed to be to that point. Terry A. asked if this would be required if it is not completely to the property lines. Michelle M. stated it is in the code and Scot H. will review the code. He felt that this might not qualify since this commercial area and this is covered as a PUD not a subdivision

Motion by Brian E., second by Earle B., to approve Ordinance 04 - Series 2021 (First Reading) an Ordinance rezoning Lot 1 and Lot 2, Lucero Subdivision, from commercial to residential in conformance with the Town of Minturn Master Plan and Land Use Code as presented. Motion passed 7-0.

**9a. 996 Main St – Review**

This item was pulled from the Consent Agenda for further discussion by Council.

George B. presented several questions regarding use of the lot. Scot H. addressed the questions. He stated the building meets the residential density, setbacks, 30-foot stream setback and in all ways conformed to the code for residential units in that residential zone with the exception that one lot was allowed erroneously to be less than the required 7500sf lot size. Scot H. noted the South Town Commercial Zone allows Use By Right of residential within the commercial zoning.

Motion by Terry A., second by George B. to ratify the Planning Commission approval of 996 Main St. as presented. Motion passed 7-0.

**COUNCIL INFORMATION / UPDATES**

**10. Staff Updates (5 Min)**

- Manager's Report

Michelle M. noted the draft version of the Town Clean up flyer and what we are accepting. She stated the Clean up Day is June 5.

Michelle M. stated the Town is applying for a grant to continue the sidewalks through South Minturn. She asked for letters from the community and those letters will be included in the grant packet and presented three letters that had been turned in to date from children in the area. Letters can be emailed or delivered to Town Hall.

- Future Agenda Items

Analyze how many Commercial lots changed from Commercial to Residential lots over the previous 20-30 years. Once this is done, Council would consider how this has changed and how it has impacted the zoning districts. Michelle M. noted this might be able to be incorporated in to the applied for but yet awarded grant to update the Community Plan.

After discussion it was directed this was not ready for an agenda due to a concern of overwhelming available staff time.

**MISCELLANEOUS ITEMS**

**11. Future Meeting Dates**

Council Meetings:

- May 19, 2021
- June 2, 2021

- June 16, 2021

**12. Other Dates:**

- May 31, 2021 – Memorial Day – Office Closed
- June 5, 2021 – Town Clean Up Day
- July 2, 2021 – Town 4<sup>th</sup> of July Events
- July 3, 2021 – Minturn Summer Market begins

**13. Adjournment**

Motion by Earle B., second by Eric G., to adjourn at 9:12pm. Motion passed 7-0.

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John Widerman, Mayor

ATTEST:

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Jay Brunvand, Town Clerk



To: Mayor and Council

From: Jay Brunvand

Date: May 19, 2021

Agenda Item: Public Hearing and consideration for approval – NEW Hotel and Restaurant Liquor License

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**REQUEST:**

Staff is requesting Council to review and approve the attached New Hotel and Restaurant Liquor License for The Thai Kitchen located at 141 Main St.

**INTRODUCTION:**

This location has long been a small restaurant establishment in Minturn and currently holds a Beer and Wine liquor license. This application is a CHANGE OF CLASS from a Beer and Wine to a Hotel and Restaurant license and therefore is a NEW license not a RENEWAL of an existing license. Thai Kitchen was issued a Beer & Wine (B&W) license on 8/21/18, they are in their second renewal. Due to changes in the laws, the B&W only precludes them from serving spirituous liquors, the beer and wine is full strength. There is no change of location, ownership, manager, corporate status or other change being sought. However, because this is a Change of Class it is approved much the same as a new license as far as publishing, posting, etc. Because this is as it is, I am not requiring her to get a petition as the needs of the neighborhood have already been demonstrated. There have been no issues at all at this location including passing all “stings” that have been administered of which this location was a part of.

This establishment is one of several stores, curios, and eating establishments in the central business core of Minturn. The applicant feels the Change of Class to a full-service liquor license will enhance her business footprint. The main difference between a Beer and Wine license and the traditional Hotel and Restaurant is they are limited to beer and wine, no spirits.

In addition to the business, the location includes several other commercial and residential rentals which will be unaffected by this application.

The recommended procedure to follow during the formal consideration of this agenda item should include:

- Public Hearing is Opened
- Staff Presentation
- Applicant Presentation
- Citizen comment
- Council Comment and/or questions
- Close Public Hearing
- Council vote

I have included the formal Findings of Fact for Council’s review and summarized below:

1. The Neighborhood for the application has been established by historical practice as the complete boundaries of the Town of Minturn and as such the approval of this establishment would not create an undue concentration of licensed establishments, thereby finding:

- The previous and current use of this premise is that of a restaurant serving Beer and Wine. This application is a Change of Class which would convert the license from a Beer and Wine to a full service liquor offering.
  - The granting of this license meets the desires of the adult inhabitants as evidenced by the ongoing success of the establishment. Staff has received no written or verbal concerns with this application.
  - The application has been reviewed by the Planner and was previously found:
    - i. To meet the needs of the Town of Minturn Zoning as reviewed. The Planner has confirmed that parking be provided of the scale of one parking space per six seats in the restaurant pursuant to MMC 16-16-30. The address has been reviewed and it has plenty of serviceable parking spaces to continue this additional use.
    - ii. That selling liquor in the manner currently proposed in the application is not in violation of the zoning codes as stated in the Minturn Municipal Building Code – Chapter 16.
2. That the application was filed on April 13, 2021 in the Town Clerk/Treasurer's office and a public hearing has been scheduled for Wednesday May 19, 2021. In accordance with C.R.S. 44-3-311(1) the Town must hold the application for not less than 30 days; this hearing date represents 37 days.
  3. The liquor license applied for is for that of a Hotel and Restaurant Liquor License as defined by the State of Colorado and that the type of Liquor License is appropriate for the needs and desires of the applicant.
  4. That the Notice of Public Hearing on this matter was posted on the premises by the Town Treasurer on Tuesday April 13 at least 30 days prior to the hearing, and that the publication of the hearing was published in a newspaper of general circulation on May 3, 2021 at least 10 days prior to the Public Hearing.
  5. That from the evidence submitted the applicant is leasing the premises where the proposed liquor license is proposed from MR Minturn, LLC, and that MR Minturn, LLC is the lawful owner of the premises. Further, the premise lease exceeds the term of the proposed license as required by Colorado State Law.
  6. That pursuant to C.R.S. 44-3-313(1)(d) – Restrictions for applications for new license, the building where the applicant proposes selling liquor is not within 500 feet from any public or parochial school or the principal campus of any college, university or seminary.
  7. Fingerprints of the applicant(s) holding 10% or more ownership have been previously taken and background checks have also been run as a course of license requirements and have no uncovered any issues that might impugn her character or otherwise preclude her from holding a liquor license.
  8. That Minturn Police/ECSO has conducted a background investigation on Ms. Wipannun the owner of The Thai Kitchen, LLC. During this investigation, Minturn Police/ECSO did not find any unresolved issues that would preclude obtaining a liquor license. Although, staff recommends approval by the Minturn Town Council it is recommended the following conditions to be placed on the license approval:
    - It is recommended at a minimum the licensee/manager, and a server be server trained by an authority such as T.I.P.S and that a certified server be on duty at all times while alcoholic beverages are served.
    - the Liquor Authority emphasize the requirement of operating an orderly establishment.
    - The public hearing on this application will be held on Wednesday, May 19, 2021 at 5:30pm in the Council Chambers of the Minturn Town Hall, 302 Pine St, Minturn, CO. At said hearing, the applicant shall have an opportunity to be heard regarding all matters related to this application, including all matters set forth herein.

ANALYSIS:  
Not Applicable



**COMMUNITY INPUT:**

As of this writing I have not received any remonstrances from the public in any form.

**BUDGET / STAFF IMPACT:**

The applicant has submitted the required fees for a new Hotel and Restaurant license in the amount of \$2,050.00 for state fees \$1,075.00 in Town fees.

**STRATEGIC PLAN ALIGNMENT:**

In accordance with Strategy #4 the Town will advance decisions/projects/initiatives that expand future opportunity and viability for Minturn. Both as an employer and a sales tax contributor these businesses each help further Minturn.

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Motion to approve the proposed Hotel and Restaurant Liquor License application for the Thai Kitchen, LLC as presented with the following conditions:

- The Notice of Public Hearing on this matter was posted on the premises by the Town Treasurer on April 13, 2021 at least 30 days prior to the hearing, and the publication for the hearing was published in a newspaper of general circulation on May 3, 2021 at least 10 days prior to the Public Hearing.
- That the selling liquor in the manner currently proposed in the application is not in violation of the Minturn Municipal Code.
- That pursuant to C.R.S. 12-47-313(1)(d) – Restrictions for applications for new license: the physical location where the applicant proposes to exercise the privilege of selling liquor is not within 500 feet from any public or parochial school or principal campus of any college, university, or seminary.
- That Minturn Police Dept/ECSO has conducted a background investigation on the listed owner. This investigation was not able to identify any conditions or information, which in and of itself would forbid the approval of the applicant's license. However, the following considerations will be attached to the approval:
  - The Local Liquor Authority has duly emphasized the requirement of operating an orderly establishment as related to noise and or live entertainment and the wellbeing of the neighborhood.
  - Staff recommends the establishment maintain server training certification on all servers.

**ATTACHMENTS:**

- Application and supporting documentation for the license renewal.



## Application Documents Checklist and Worksheet

**Instructions:** This checklist should be utilized to assist applicants with filing all required documents for licensure. All documents must be properly signed and correspond with the name of the applicant exactly. All documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable. **Questions? Visit:** [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor) for more information

### Items submitted, please check all appropriate boxes completed or documents submitted

#### I. Applicant information

- A. Applicant/Licensee identified
- B. State sales tax license number listed or applied for at time of application
- C. License type or other transaction identified
- D. Return originals to local authority (additional items may be required by the local licensing authority)
- E. All sections of the application need to be completed
- F. Master file applicants must include the Application for Master File form DR 8415 and applicable fees to this Retail License Application

#### II. Diagram of the premises

- A. No larger than 8 1/2" X 11"
- B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.)
- C. Separate diagram for each floor (if multiple levels)
- D. Kitchen - identified if Hotel and Restaurant
- E. Bold/Outlined Licensed Premises

#### III. Proof of property possession (One Year Needed)

- A. Deed in name of the applicant (or) (matching question #2) date stamped / filed with County Clerk
- B. Lease in the name of the applicant (or) (matching question #2)
- C. Lease assignment in the name of the applicant with proper consent from the landlord and acceptance by the applicant
- D. Other agreement if not deed or lease. (matching question #2)

#### IV. Background information (DR 8404-I) and financial documents

- A. Complete DR 8404-I for each principal (individuals with more than 10% ownership, officers, directors, partners, members)
- B. Fingerprints taken and submitted to the appropriate Local Licensing Authority through an approved state vendor. **Do not complete fingerprint cards prior to submitting your application.**  
The Vendors are as follows:  
**IdentoGO** – <https://uenroll.identogo.com/>  
Phone: 844-539-5539 (toll-free)  
IdentoGO FAQs: <https://www.colorado.gov/pacific/cbi/identification-faqs>  
**Colorado Fingerprinting** – <http://www.coloradofingerprinting.com>  
Appointment Scheduling Website: <http://www.coloradofingerprinting.com/cabs/>  
Phone: 720-292-2722 Toll Free: 833-224-2227
- C. Purchase agreement, stock transfer agreement, and/or authorization to transfer license
- D. List of all notes and loans (Copies to also be attached)

#### V. Sole proprietor/husband and wife partnership (if applicable)

- A. Form DR 4679
- B. Copy of State issued Driver's License or Colorado Identification Card for each applicant

#### VI. Corporate applicant information (if applicable)

- A. Certificate of Incorporation
- B. Certificate of Good Standing
- C. Certificate of Authorization if foreign corporation (out of state applicants only)

#### VII. Partnership applicant information (if applicable)

- A. Partnership Agreement (general or limited).
- B. Certificate of Good Standing

#### VIII. Limited Liability Company applicant information (if applicable)

- A. Copy of articles of organization
- B. Certificate of Good Standing
- C. Copy of Operating Agreement (if applicable)
- D. Certificate of Authority if foreign LLC (out of state applicants only)

#### IX. Manager registration for Hotel and Restaurant, Tavern, Lodging & Entertainment, and Campus Liquor Complex licenses when included with this application

- A. \$75.00 fee
- B. Individual History Record (DR 8404-I)
- C. If owner is managing, no fee required

Name <i>Thai Kitchen</i>	Type of License <i>LLD - City</i>	Account Number		
7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):				
a. Been denied an alcohol beverage license?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
b. Had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
c. Had interest in another entity that had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
If you answered yes to 8a, b or c, explain in detail on a separate sheet.				
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
Waiver by local ordinance? <input type="checkbox"/> <input type="checkbox"/>				
Other: _____				
11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input type="checkbox"/>		
12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input type="checkbox"/>		
13 a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?		<input type="checkbox"/> <input type="checkbox"/>		
13 b. Are you a Colorado resident?		<input checked="" type="checkbox"/> <input type="checkbox"/>		
14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee. <i>Thai Kitchen</i>		<input checked="" type="checkbox"/> <input type="checkbox"/>		
15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement? <input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____		<input checked="" type="checkbox"/> <input type="checkbox"/>		
a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:				
Landlord <i>MR. Minturn LLC</i>	Tenant <i>Thai Kitchen LLC Wipanon (Patty) Somdee</i>	Expires <i>March 31, 23</i>		
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".				
16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.				
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.				
17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:				
Has a local ordinance or resolution authorizing optional premises been adopted?		<input type="checkbox"/> <input type="checkbox"/>		
Number of additional Optional Premise areas requested. (See license fee chart)				
18. For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.				
19. Liquor Licensed Drugstore (LLDS) applicants, answer the following:				
a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? If "yes" a copy of license must be attached.				<input type="checkbox"/> <input type="checkbox"/>

Name <i>The Kitchen</i>	Type of License <i>482 - City</i>	Account Number		
<b>20. Club Liquor License applicants answer the following: Attach a copy of applicable documentation</b>				
a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
c. How long has the club been incorporated?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>21. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:</b>				
a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>22. Campus Liquor Complex applicants answer the following:</b>				
a. Is the applicant an institution of higher education?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Is the applicant a person who contracts with the institution of higher education to provide food services? If "yes" please provide a copy of the contract with the institution of higher education to provide food services.		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>23. For all on-premises applicants:</b>				
a. Hotel and Restaurant, Lodging and Entertainment, Tavern License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record - DR 8404-I and fingerprint submitted to approved State Vendor through the Vendor's website. See application checklist, Section IV, for details.				
b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit a Manager Permit Application - DR 8000 and fingerprints.				
Last Name of Manager <i>Somdee</i>		First Name of Manager <i>Wipannu</i>		
<b>24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.</b>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>25. Related Facility - Campus Liquor Complex applicants answer the following:</b>				
a. Is the related facility located within the boundaries of the Campus Liquor Complex? If yes, please provide a map of the geographical location within the Campus Liquor Complex. If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Designated Manager for Related Facility- Campus Liquor Complex		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Last Name of Manager		First Name of Manager		
<b>26. Tax Information.</b>				
a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>27. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.</b>				
Name <i>Wipannu Somdee</i>	Home Address, City & State <i>827 Greenwood, Lynden, 81631</i>	DOB <i>10/12/80</i>	Position <i>OWNER</i>	%Owned <i>100</i>
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
** If applicant is owned 100% by a parent company, please list the designated principal officer on above. ** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable) ** If total ownership percentage disclosed here does not total 100%, applicant must check this box: <input type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.				

Name		Type of License	Account Number
<b>Oath Of Applicant</b>			
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.			
Authorized Signature <i>Wipapun Somdee</i>		Printed Name and Title WIPANUN SOMDEE (OWNER)	Date 4/19/21
<b>Report and Approval of Local Licensing Authority (City/County)</b>			
Date application filed with local authority 4/13/21		Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application) 5/19/21	
The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:			
<input checked="" type="checkbox"/> Fingerprinted <input checked="" type="checkbox"/> Subject to background investigation, including NCIC/CCIC check for outstanding warrants			
That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license			
(Check One)			
<input checked="" type="checkbox"/> Date of inspection or anticipated date <u>4/13/21</u> <input checked="" type="checkbox"/> Will conduct inspection upon approval of state licensing authority			
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?			Yes No <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?			<input type="checkbox"/> <input type="checkbox"/>
<b>NOTE:</b> The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.			
<input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?			<input type="checkbox"/> <input type="checkbox"/>
The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. <b>Therefore, this application is approved.</b>			
Local Licensing Authority for <i>Town of Manitou</i>		Telephone Number 970-827-5245	<input checked="" type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Print <i>John Wisniewski</i>	Title <i>Mayor</i>	Date
Signature	Print <i>Jay Brunson</i>	Title <i>Town Clerk</i>	Date

Form 8404 Question #14

The Thai Kitchen currently holds a Beer and Wine license for this location. They desire and are requesting with this application to switch from Beer and Wine to a Hotel and Restaurant license. No change in ownership, lease, or funding is changing, only the type of license held is changing.





10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? (If yes, explain in detail.)  Yes  No

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.)  Yes  No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.)  Yes  No

**Personal and Financial Information**

Unless otherwise provided by law, the personal information required in question #13 will be treated as confidential. The personal information required in question #13 is solely for identification purposes.

13a. Date of Birth 10/12/1980	b. Social Security Number <del>XXXXXXXXXX</del>	c. Place of Birth Udon Thani, Thailand	d. U.S. Citizen <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
e. If Naturalized, state where		f. When	g. Name of District Court
h. Naturalization Certificate Number		i. Date of Certification	j. If an Alien, Give Alien's Registration Card Number
k. Permanent Residence Card Number <del>XXXXXXXXXX</del>			
l. Height 5.4	m. Weight 158	n. Hair Color black	o. Eye Color Brown
p. Gender Female	q. Race Asian	r. Do you have a current Driver's License/ID? If so, give number and state. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No # 1B-078-0786 State Colorado	

14. Financial Information.

a. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other.  
\$ \_\_\_\_\_

b. List the total amount of the **personal** investment, made by the person listed on question #2, in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid. \$ 15,000

\* If corporate investment only please skip to and complete section (d)  
\*\* Section b should reflect the total of sections c and e

c. Provide details of the personal investment described in 14b. You must account for all of the sources of this investment. (Attach a separate sheet if needed)

Type: Cash, Services or Equipment	Account Type	Bank Name	Amount

d. Provide details of the corporate investment described in 14 (a). You must account for all of the sources of this investment. (Attach a separate sheet if needed)

Type: Cash, Services or Equipment	Loans	Account Type	Bank Name	Amount
Cash	\$15,000	Personal	Wells Fargo	\$15,000

e. Loan Information (Attach copies of all notes or loans)

Name of Lender	Address	Term	Security	Amount
Prosper	221 Main Street, Suite 300, San Francisco, CA, 94105	3 YRS (36 MONTH)	-	\$15,000

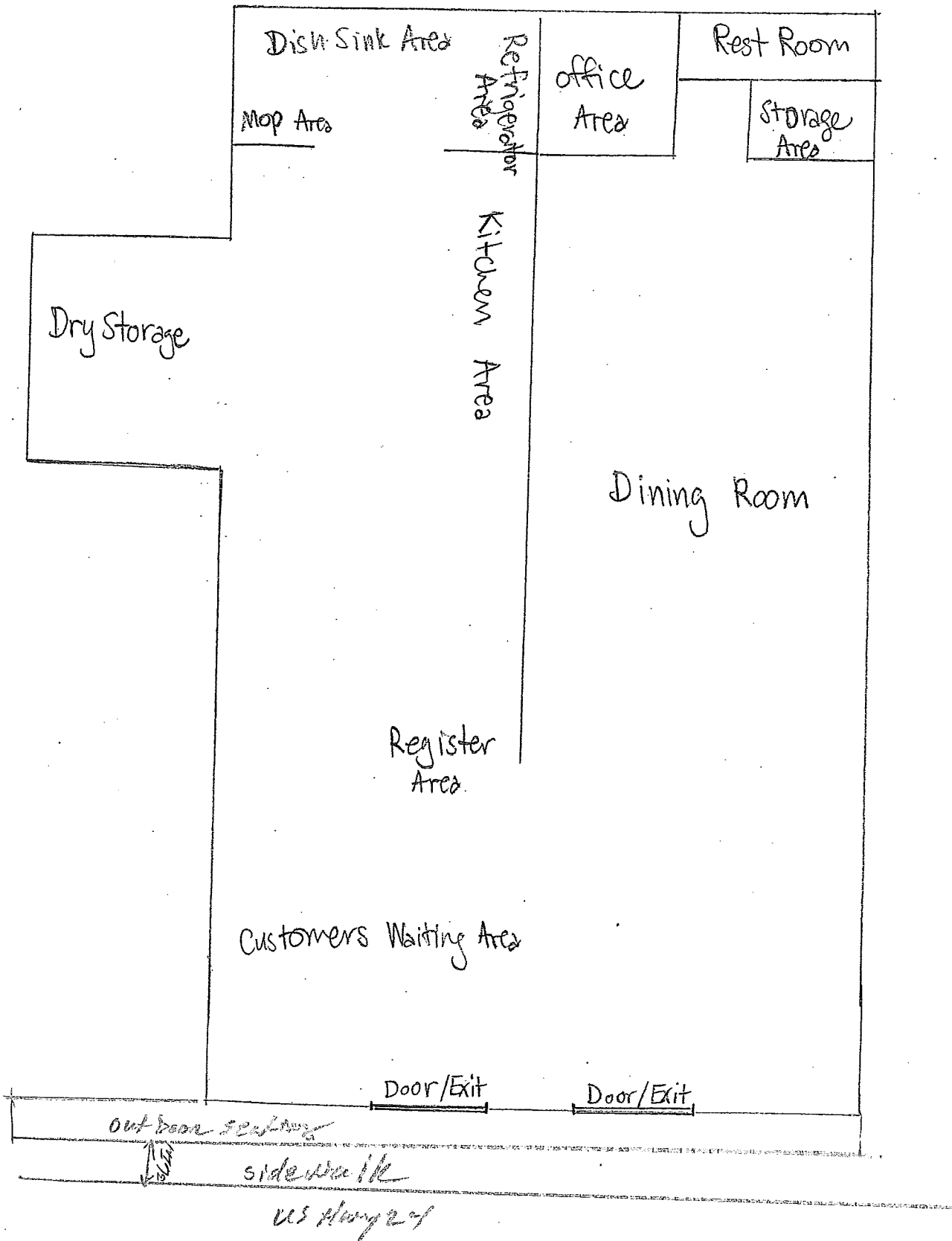
**Oath of Applicant**

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature <i>Wipanu Somdee</i>	Print Signature WIPANUN SOMDEE	Title owner	Date 4-13-18
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# Diagram of the premise : Thai Kitchen Minturn





TOWN OF MINTURN  
P.O. Box 309 (302 Pine Street)  
Minturn, Colorado 81645-0309  
970-827-5645 Fax: 970-827-4049  
treasurer@minturn.org

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**FROM THE DESK OF  
JAY BRUNVAND, TREASURER/FINANCE**

**MEMORANDUM**

To: Mike Sawyer, Attorney  
Scott Peterson, ECSO/Minturn  
CC:  
Date: 4/20/21 3:55 PM  
RE: Liquor License

Attached please find a copy of a Hotel and Restaurant Liquor License application for The Thai Kitchen LLC, Wipanun (Patty) Somdee, owner/manager, located at 141 Main St. I have reviewed the application and conducted an onsite inspection which resulted in no issues. I am forwarding it on to you for further review and your report. I will be recommending approval on the Consent Agenda to Council at the May 19, 2021 Council Meeting.

PLEASE NOTE: This application is a CHANGE OF CLASS from a Beer and Wine to a Hotel Restaurant and therefore looks more like a NEW license than a RENEWAL. Thai Kitchen was issued a Beer & Wine (B&W) license on 8/21/18, they are in their second renewal. Due to changes in the laws, the B&W only precludes them from serving spirituous liquors, the beer and wine is full strength. There is no change of location, ownership, manager, corporate status or other change being sought. However, because this is a Change of Class it is approved much the same as a new license as far as publishing, posting, etc. Because this is as it is, I am not requiring her to get a petition as the needs of the neighborhood have already been recognized. I feel that posting the premises and publishing in the paper should give ample notice for anyone to submit remonstrances and because of the Change, a public hearing is required. There have been no issues at all at this location including passing all "stings" that have been administered of which this location was a part of.

Deputy Scott Peterson, if you could please run a background on Patty. She was recently checked when she renewed and again when she initiated a temporary modification allowing her to serve on the sidewalk due to COVID-19.

Please let me know if you have any questions or concerns, which I may be able to answer.

Thanks, jay

**TOWN OF MINTURN  
LIQUOR LICENSING AUTHORITY**

Follow-up findings and report for application of a Hotel and Restaurant Liquor License.

Owner Name and Address: Wipanun (Patty) Somdee P. O. Box 6515  
Vail, CO 81658

Establishment Name and Address: The Thai Kitchen, 141 Main St  
Minturn, CO 81645

**TO THE ABOVE APPLICANT AND OTHER INTERESTED PARTIES;**

Pursuant to Colorado Revised Statutes, 44-47-312(1), the applicant is hereby advised that with regard to the application for a Hotel and Restaurant Liquor License, an investigation has been made, and based on the results thereof, the following has been determined:

That the application was filed on April 13, 2021 in the Town Clerk/Treasurer's office and a public hearing has been scheduled for Wednesday May 19, 2021. In accordance with C.R.S. 44-47-311(1) the Town must hold the application for not less than 30 days; this hearing date represents 37 days. As of this writing, I have received no concerns either written or verbal, pro or con.

That the premise being considered has previously and currently operates as a full-service restaurant and holds a Beer and Wine liquor license. They are now requesting a liquor licenses change of class to enhance their presence. This location will be a new Hotel and Restaurant licenses and will forfeit their currently active Beer and Wine license.

That the Notice of Public Hearing on this matter was posted on the premises by the Town Treasurer on Tuesday April 13, 2021 at least 30 days prior to the hearing, and that the publication of the hearing was published in a newspaper of general circulation on May 3, 2021 at least 10 days prior to the Public Hearing.

That from the evidence submitted the applicant is leasing the premises where the proposed liquor license will be utilized from MR Minturn, LLC, and that MR Minturn, LLC. is the lawful owner of the premises. Further, the premise lease exceeds the term of the proposed license as required by Colorado State Law.

That selling liquor in the manner currently proposed in the application is not in violation of the zoning codes as stated in the Minturn Municipal Building Code – Chapter 16. This section states that for a Commercial Use less than 2,500 sqft is a use by right. This establishment is leasing approximately 1,000 sqft. and that the Minturn Planning Department has confirmed this operation will not require a Conditional Use and has sufficient parking as per Minturn Code.

That pursuant to C.R.S. 44-47-313(1)(d) – Restrictions for applications for new license, the building where the applicant proposes to exercise the privilege of selling liquor at retail does not

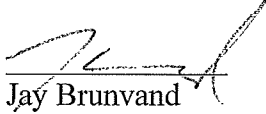
appear to be within 500 feet from any public or parochial school or the principal campus of any college, university or seminary.

1. That Minturn Police/ECSO has conducted a background investigation on Ms. Somdee, the owner and manager of The Thai Kitchen. During this investigation, Minturn Police/ECSO did not find any unresolved issues that would preclude obtaining a liquor license. Although, staff recommends approval by the Minturn Town Council it is recommended the following conditions to be placed on the license approval:
  - It is recommended at a minimum the licensee/manager, and a server be server trained by an authority such as T.I.P.S and that a certified server be on duty at all times while alcoholic beverages are served.
  - That the Liquor Authority emphasize the requirement of operating an orderly establishment.

The public hearing on this application will be held on Wednesday, May 19, 2021 at 5:30pm in the Council Chambers of the Minturn Town Hall, 302 Pine St, Minturn, CO and on-line using the ZOOM format. At said hearing, the applicant shall have an opportunity to be heard regarding all matters related to this application, including all matters set forth herein.

The applicant is advised and encouraged to read a copy of the State of Colorado Liquor and Beer Codes and Regulations.

Local Liquor Licensing Authority  
Minturn Town Treasurer

  
Jay Brunvand

Dated this 11<sup>th</sup> day of May, 2021.

# Clean Water. Quality Life.™



## Water Supply Planning:

Water history and issues in the Eagle River Valley

Linn Brooks, General Manager



# Outline

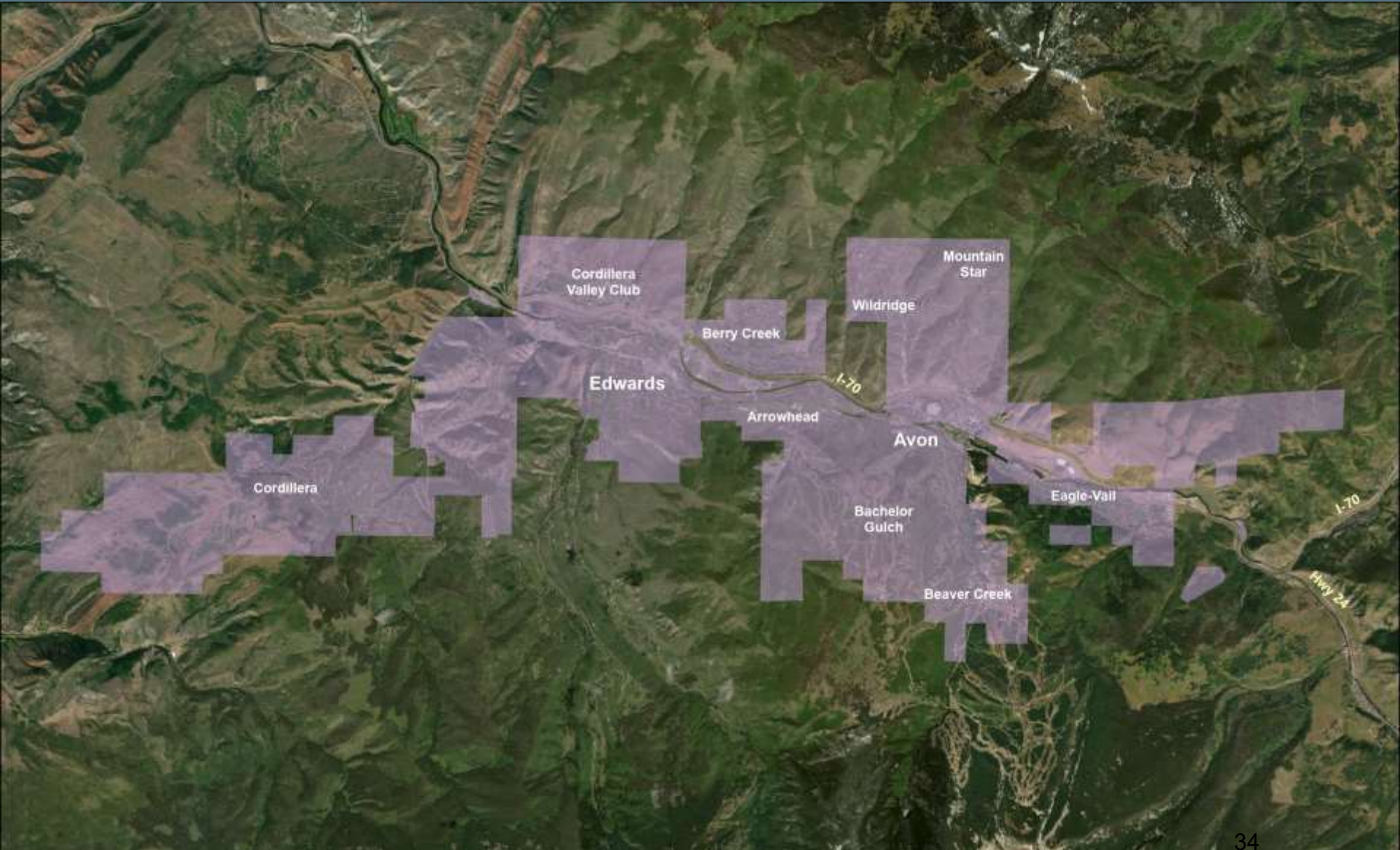
- Current political structure
- History of water in Eagle River Valley
- Where our water comes from
- How we use water
- Important future issues



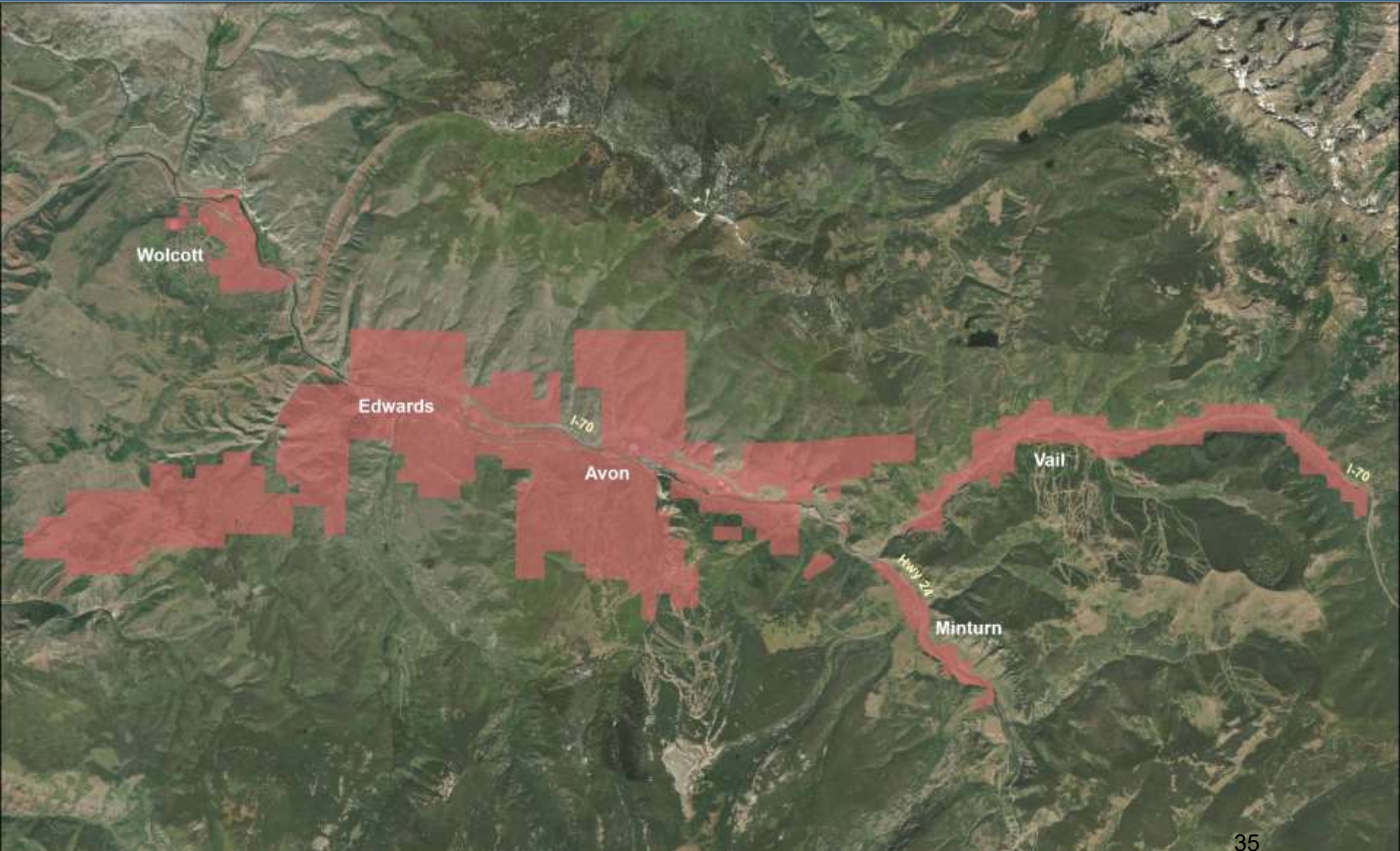
# District Water Service Area



# Authority Water Service Area



# District Wastewater Service Area

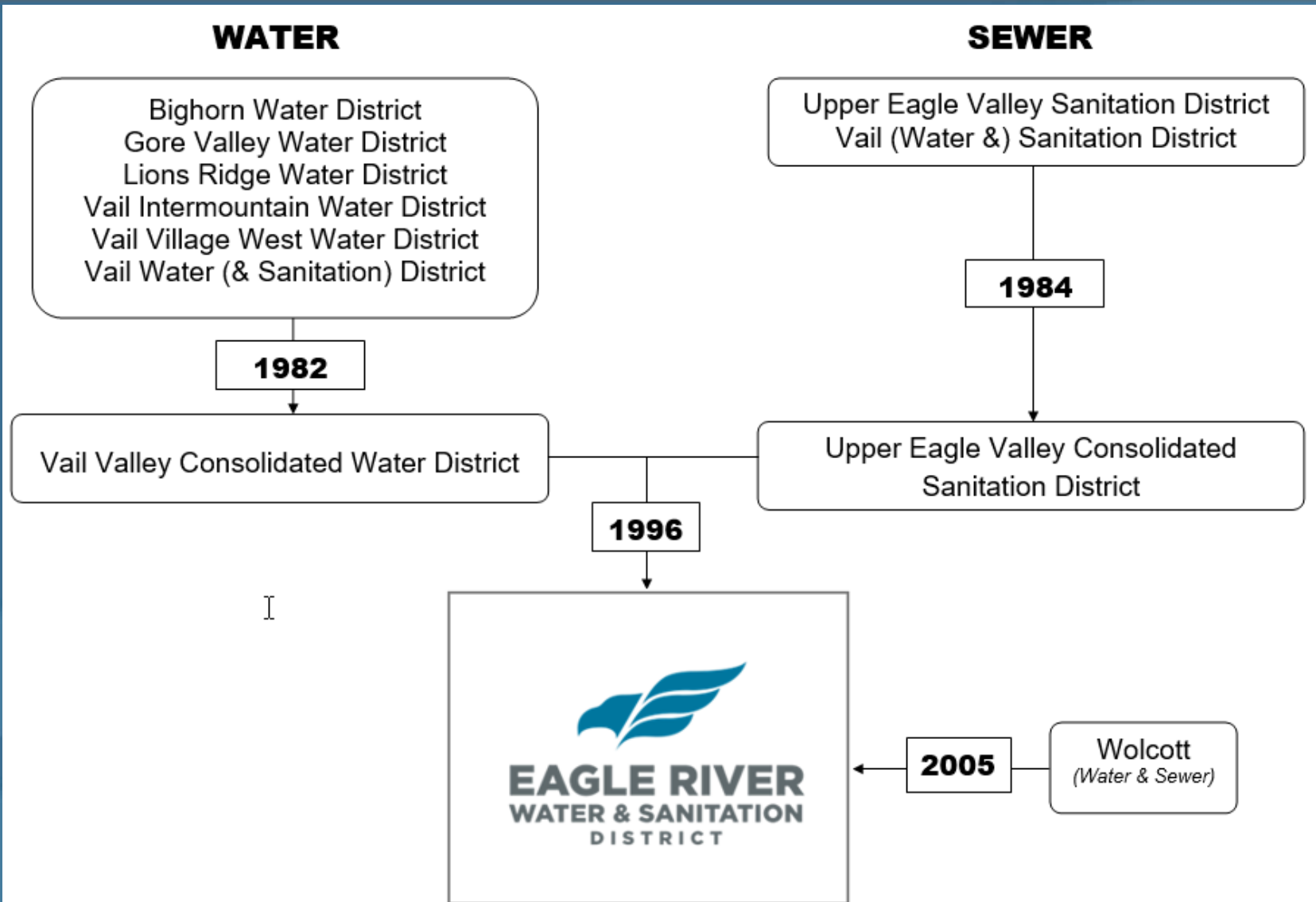


# Early Eagle County



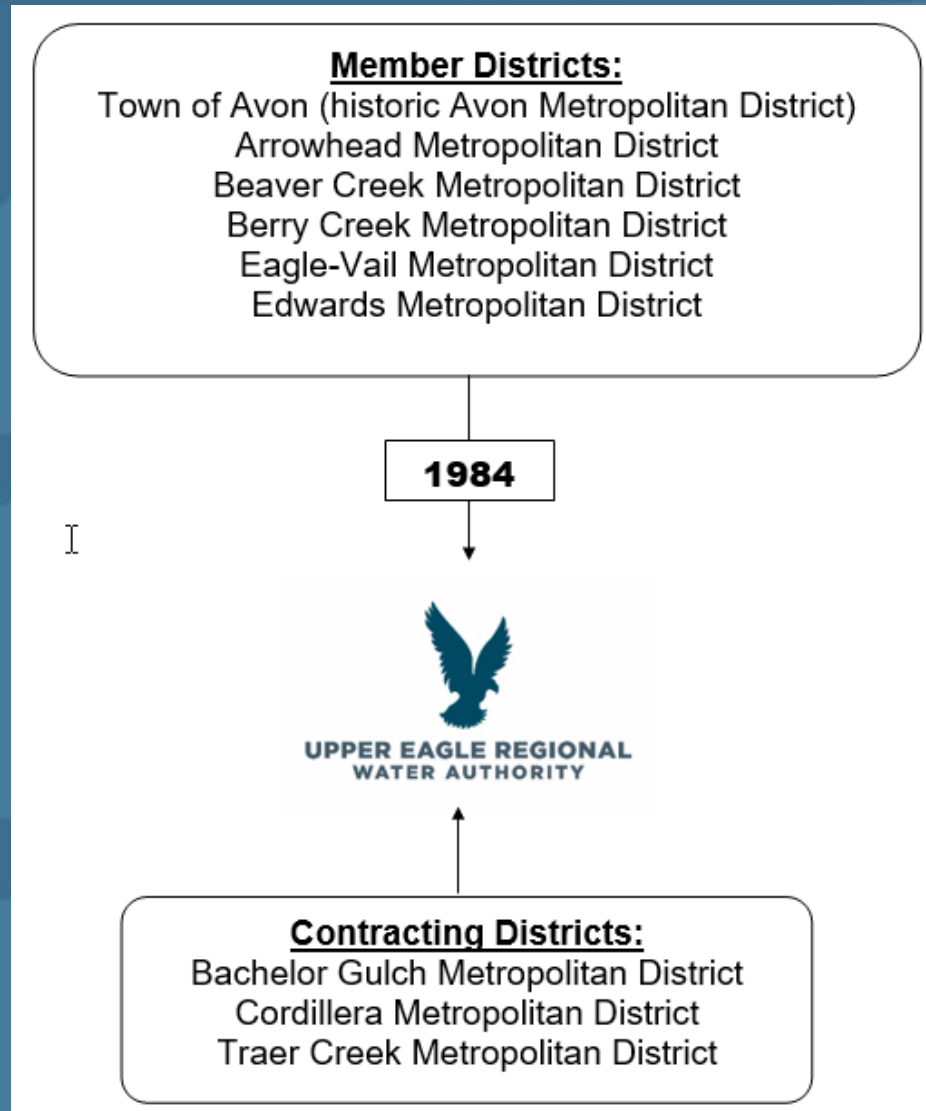
Edwards, CO; courtesy of Eagle County Historical Society

# Genealogy – ERWSD



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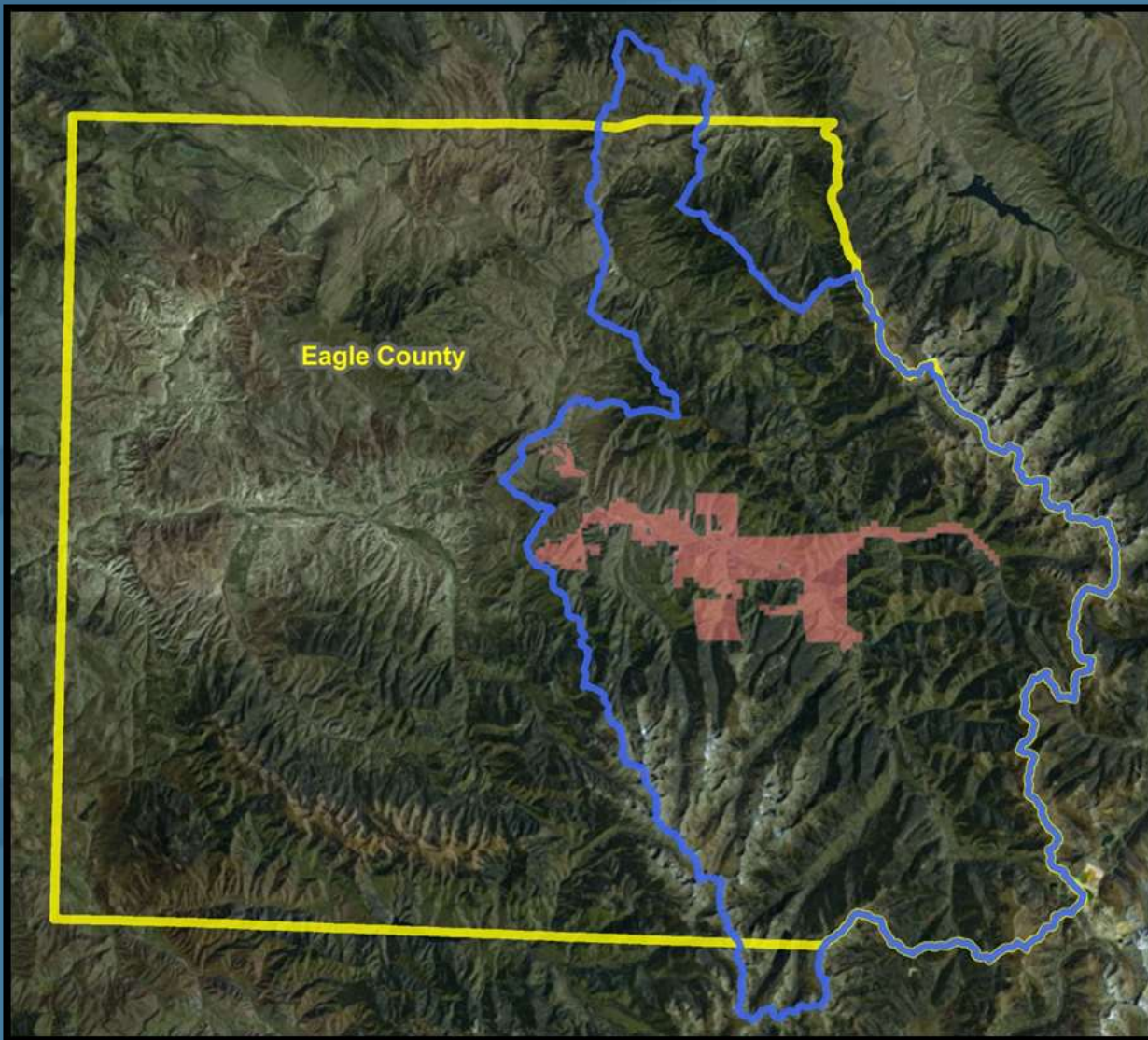
# Genealogy – UERWA



# Benefits of regionalization

- Centralized water rights administration and strategy
- Integrated water systems for flexibility and optimization
- Administrative and operational efficiency
- Development of in-basin reservoir storage

# Service area and watershed

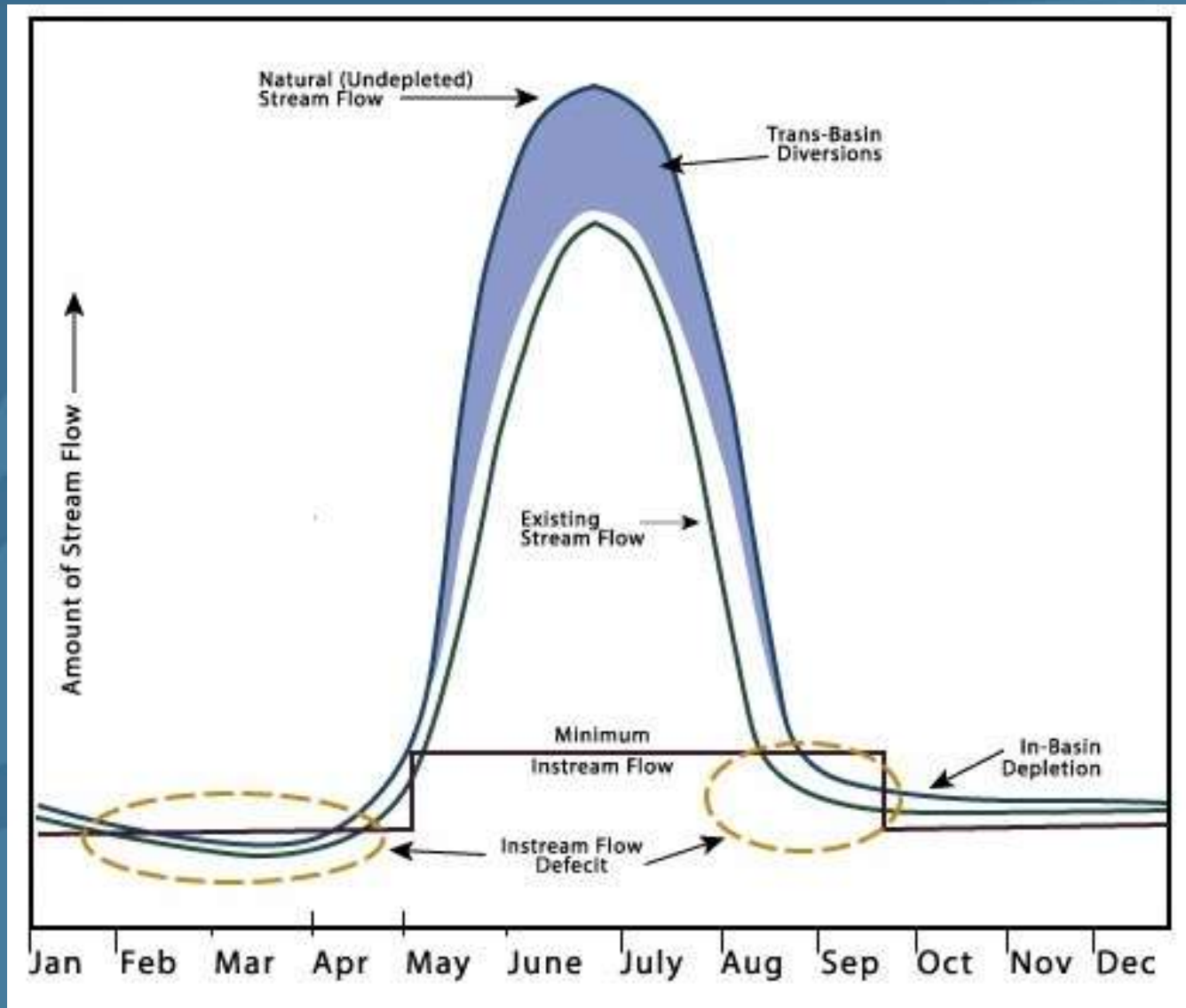




# Snowpack



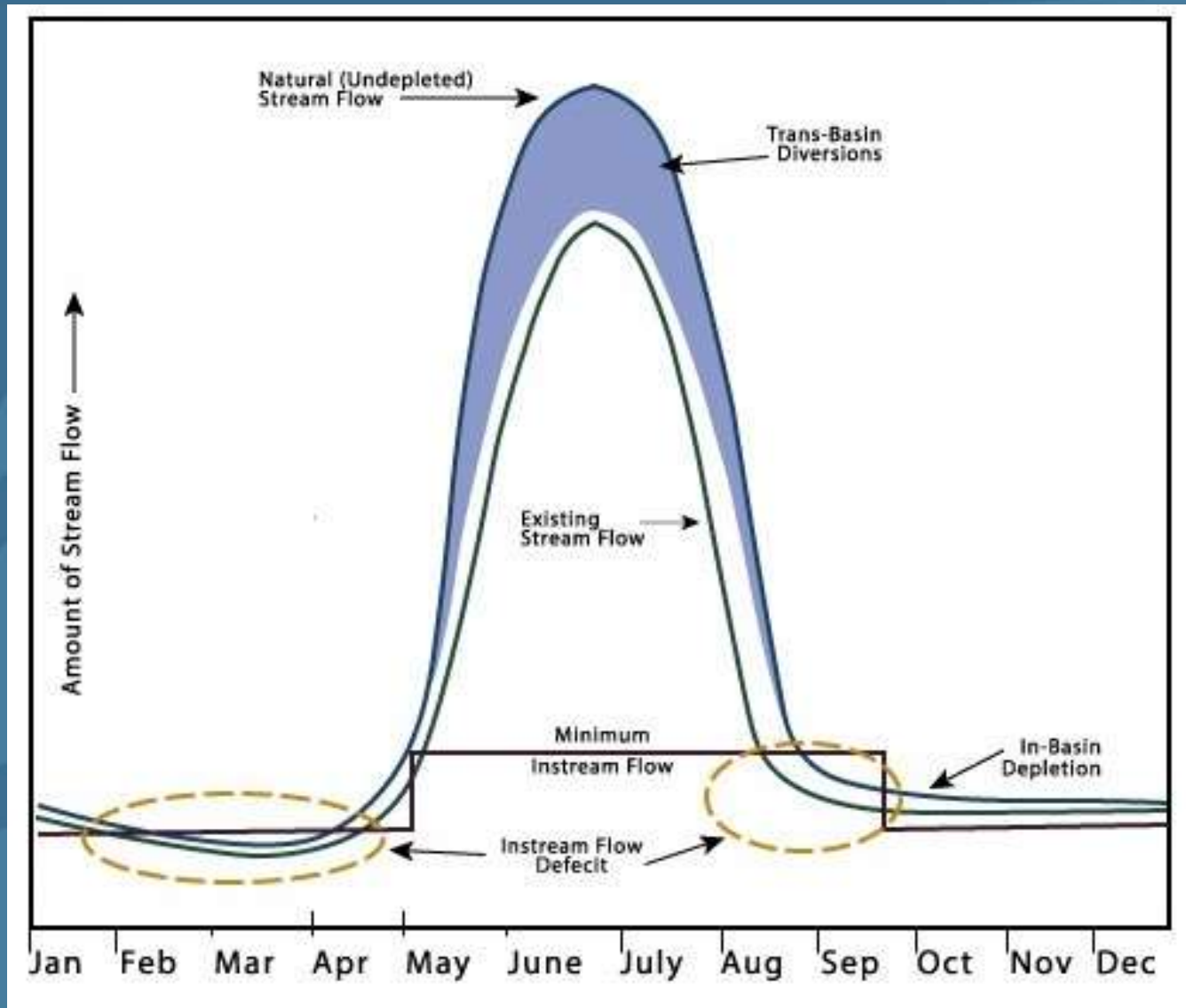
# Conceptual diagram of dry year Eagle River streamflow



# Zebulon Pike



# Conceptual diagram of dry year Eagle River streamflow



# Black Lake 1



# Eagle Park Reservoir



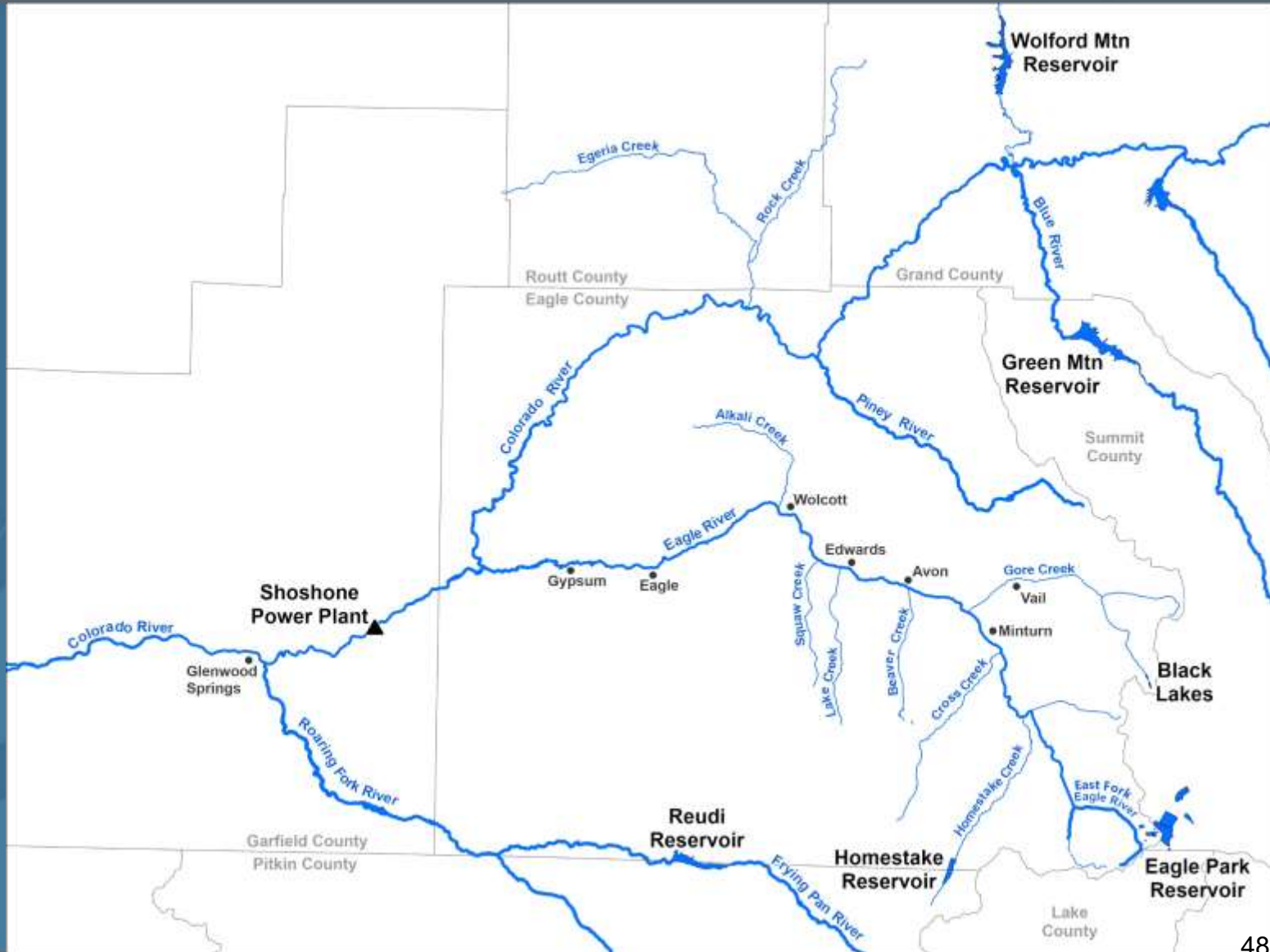
Photo: Ken Neubecker

# Homestake Reservoir



Photo: Brent Gardner-Smith/Aspen Journalism

# In-basin and Out-of-Basin Storage





# Diversions and outfalls



# Water for new development

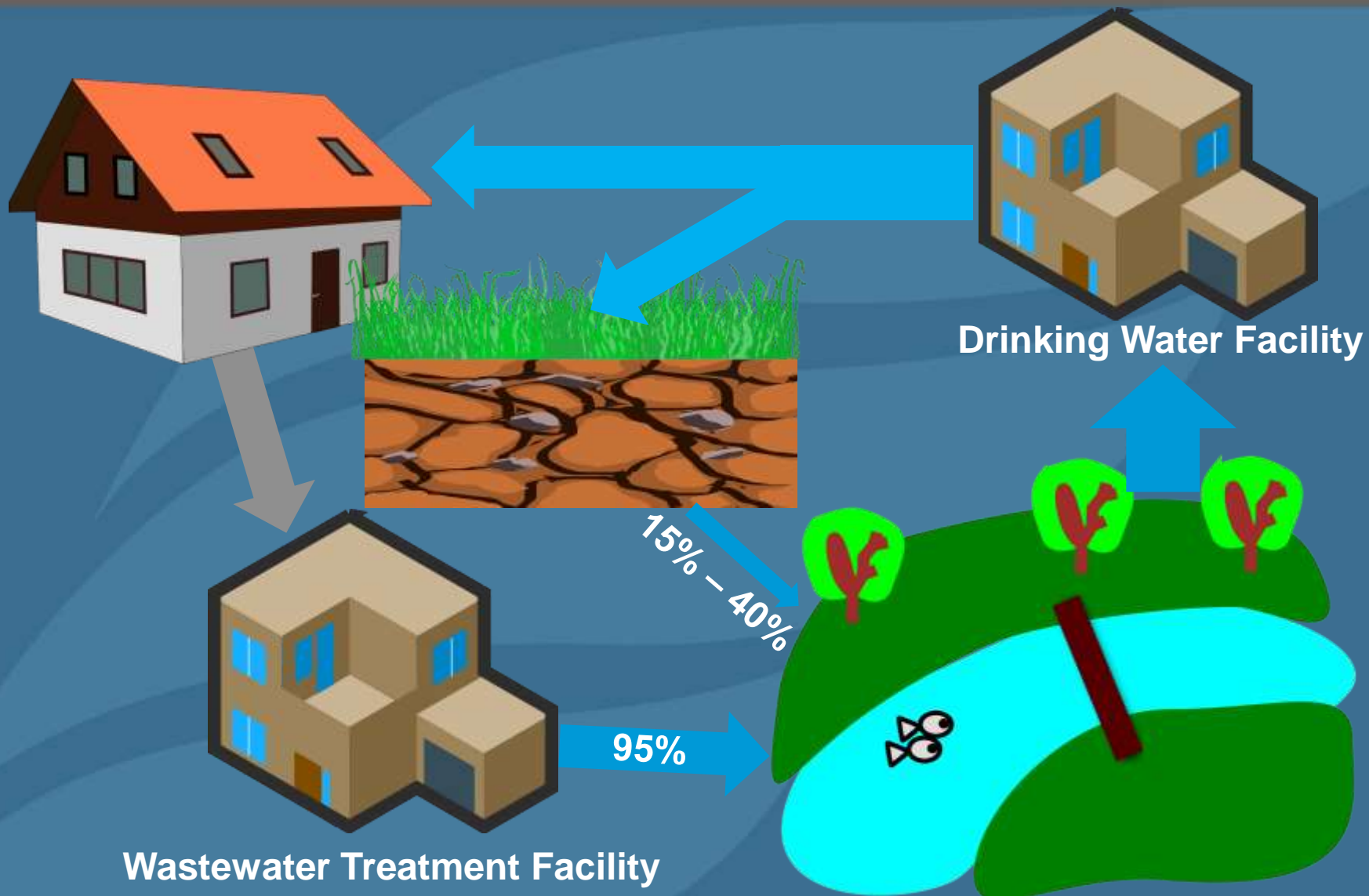
## NEW RESERVOIR STORAGE

- Developers must dedicate, or pay a fee for, an adequate supply of water.
- Creating new storage is costly and takes many years, and is not feasible for developers to accomplish.
- Reservoirs are expanded or new storage is built to serve forecasted growth.

## CONSERVATION

- Building code efficiency requirements.
- Reducing water use for landscaping.

# Outdoor water efficiency



# Topics for the next presentation

- Water supply model and conclusions
- Water supply master plan
- Proposed Programs and Projects

# QUESTIONS / DISCUSSION

Glenwood Springs – Main Office

201 14<sup>th</sup> Street, Suite 200  
P. O. Drawer 2030  
Glenwood Springs, CO 81602

Aspen

323 W. Main Street  
Suite 301  
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: May 14, 2021  
TO: Minturn Town Council  
FROM: Karp Neu Hanlon, P.C.  
RE: First Amendment to Agreement Regarding Escrow and Funding

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In 2012, Council passed Resolution No. 5 adopting an Amendment to Agreement Regarding Escrows and Funding with the Battle Mountain developer (“2012 Agreement”). That document allowed a portion of the escrow funds held by the Town to be returned to Battle Mountain because development of the property at that time was remote. The document also allowed the Town to retain \$4,362,000 in escrow funds which were to be used for administrative, legal and consulting costs regarding the Battle Mountain project, together with creation of a scholarship program (Minturn Education Fund), acquisition of USFS property (the Boneyard), Town street scape improvements (the Entryway project), and construction of a Town recreation center (Minturn Fitness Center). This money is referred to as the “Town’s Funds”.

Starting January 1, 2015, Battle Mountain started making payments in the amount of \$15,000 per month “to the Town for administrative costs” as described in the 2012 Agreement. This money was used to pay staff overhead related to processing Battle Mountain requests and otherwise dealing with issues related to the Battle Mountain property. The 2012 Agreement contemplated that Battle Mountain and the Town would eventually enter into a Future Funding Agreement to govern how Battle Mountain costs associated with modifications to the development approvals are reimbursed to the Town. In December 2018, Battle Mountain submitted a request to amend the 2012 Agreement and enter into a Future Funding Agreement. That document was ultimately not approved by Council.

As expressly called for in the 2012 Agreement, Battle Mountain has submitted a new request to adopt a Funding Agreement, a copy of which is attached. The provisions of the First Amendment to Agreement Regarding Escrows and Funding (“First Amendment”) constitute the contemplated Future Funding Agreement.

The First Amendment addresses the following points:

- A. Section 1 clarifies that the costs (e.g. legal, engineering, planning and other consulting costs) associated with the review of Battle Mountain land use applications will be recouped in the manner provided in the Town Code. Specifically, Battle Mountain will pay application fees (as set by the Council). If the Town’s costs exceed the amount of the application fee, Battle

Mountain will be billed on a monthly basis. For large review items, the Code allows the Town to require a deposit of funds.

- B. Battle Mountain will reimburse the Town for the costs of preparing the First Amendment.
- C. Settlement and compromise of obligations under the 2012 Agreement related to Battle Mountain's payment of \$15,000 per month. The Town is allowed to keep all payments previously made. In addition, an approximately \$28,000 escrow (which was created in case Tucker sued over the adoption of the 2012 Agreement) will be released to the Town for use consistent with the Town's Funds.
- D. The Town's Funds can be used for projects identified in the 2012 Agreement. Council requested that the types of projects where the Town's Funds can be applied be made broader given changes in Town priorities since 2012. To that end, an edited list of qualifying projects is included in Section 3 of the First Amendment. The list now includes streetscape and sidewalk improvements along Main Street, and a general category for "park recreation and trailhead improvements." The funds may also be used for design and planning work and preparation of grant applications. Use of the Town Funds will be for projects that "can provide a benefit to future residents of development on [Battle Mountain] property." Currently, the Town's Funds consist of \$76,942 of general funds and \$264,991 for Little Beach Park.
- E. The agreement ratifies the use of funds under the 2012 Agreement up through the date of approval of the First Amendment for both the Town and Battle Mountain. I have included language in the First Amendment that the Developer and the Town "irrevocably waive and release any right to receive an accounting of the use of such funds . . . in the future." Battle Mountain has raised the following concern: "There are a set of allowed uses of Town's Funds, but if there is a prospective waiver of the ability to verify utilization for those purposes (assuming, which is not certain, such a waiver would be enforceable) then what accountability is there for proper use of the funds?" A possible compromise would be that the Town would give Battle Mountain notice of a proposed expenditure of the Town's Funds so that Battle Mountain has some method of tracking use. Staff is amenable to language that makes the ratification only apply up through the date of approval of the First Amendment and to take out the language of a prospective release.

It is important to identify that the First Amendment does not otherwise change any escrow or payment obligations of the Developer. It is anticipated that as part of processing an amendment to the Battle Mountain PUD that a revised annexation agreement will be negotiated. Decisions about how a revised annexation agreement will correlate to the obligations associated with the 2008 annexation are topics of discussion for a future day once the impacts of the revised PUD are fully understood.

**FIRST AMENDMENT TO  
AGREEMENT REGARDING ESCROWS AND FUNDING  
AND FUTURE FUNDING AGREEMENT PURSUANT THERETO**

This FIRST AMENDMENT TO AGREEMENT REGARDING ESCROWS AND FUNDING AND FUTURE FUNDING AGREEMENT PURSUANT THERETO (“**First Amendment**”) is entered into as of this [\_\_\_ day of \_\_\_\_\_], 2021 (the “**Effective Date**”), by and among and BATTLE ONE DEVELOPER, LLLP, a Georgia limited liability partnership (“**Battle One**”), BATTLE NORTH, LLC, a Georgia limited liability company (“**Battle North**”), BATTLE SOUTH, LLC, a Georgia limited liability company (“**Battle South**” and, collectively with Battle One and Battle North, the “**Developer**”) and the TOWN OF MINTURN, a Colorado home rule municipal corporation (the “**Town**”).

**RECITALS**

This First Amendment is made with respect to the following facts:

A. Pursuant to Town Resolution 5 - Series 2012, Town Council approved, and the Town, Battle One, Battle North and Battle South executed and entered into, that certain Agreement Regarding Escrows and Funding dated as of February 15, 2012 (as defined therein, the “**Agreement**”).

B. Except as otherwise expressly provided in this First Amendment, capitalized terms used in this First Amendment have the meanings assigned to them in the Agreement or in the Minturn Municipal Code (the “**Minturn Code**”).

C. Pursuant to Article 23 of Chapter 16, and Sections 16-15-80 and 17-3-50, of the Minturn Code (collectively, the “**Fee Provisions**”), Town Council has promulgated a schedule of Fees, Rates, and Charges Imposed Pursuant to Minturn Town Code (as in effect from time to time, the “**Fee Schedule**”) that establishes the Town’s current fees for PUD Applications, Subdivision Applications, and related matters that pertain to processing of applications for land use matters.

D. In connection with Battle North’s intended development of the Bolts Lake Character Area and promptly following the Effective Date, Battle North wishes to coordinate with Town staff regarding submittal of applications for PUD Preliminary Plan and related matters including, pursuant to and in implementation of Paragraphs 10.a and 10.b of the Agreement, a corresponding amendment to the Annexation Agreement (the “**2021 Applications**”).

E. In accordance with the Town’s land use regulations and applicable Minturn Code provisions, the Town wishes to review and process the 2021 Applications and other development applications for the Project (excluding the Mountaintop Area, which is governed by the Mountain Concept Agreement (as defined in Ordinance No.2 – Series 2017) and applicable Minturn Code provisions) in a holistic manner that is consistent with and implements the Town’s policies and procedures that apply to such matters.

F. Accordingly, Battle One, Battle North, Battle South and the Town (individually, a “**Party**” and, collectively, the “**Parties**”) wish to amend the Agreement by (i) amending and restating Paragraph 14 of the Agreement to clarify that the Fee Provisions and the Fee Schedule



will govern and apply to the 2021 Applications and any subsequent land use applications; and (ii) clarifying that Paragraph 14 of the Agreement constitutes the contemplated Future Funding Agreement and establishes the means by which the Town will be reimbursed for expenses it incurs in the review of the 2021 Applications and future development applications.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and promises set forth in this First Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amendments. From and after the Effective Date:

(a) Amendment and Restatement of Paragraph 14. Paragraph 14 of the Agreement is amended and restated in its entirety to read as follows:

14. Legal and Consulting Costs/Future Funding Agreement: This Paragraph 14 constitutes a future funding agreement regarding the terms and conditions pursuant to which the Town will be reimbursed for Legal and Consulting Costs.

a. For each development application submitted for the Bolts Lake Character Area or other areas of the Project (excluding the Mountaintop Area, which is governed by the Mountain Concept Agreement (as defined in Ordinance No.2 – Series 2017) and applicable Minturn Code provisions), the Developer or other applicant will pay to the Town the then-applicable fee(s) as set forth in the schedule of Fees, Rates, and Charges Imposed Pursuant to Minturn Town Code as promulgated by Town Council from time to time (the “**Fee Schedule**”).

i. For PUD Applications (as listed in the Fee Schedule) and related matters:

(A) the application fee established pursuant to Section 16-15-80(a) of the Minturn Code; and

(B) if deemed applicable pursuant to Section 16-15-80(a) of the Minturn Code, the amount estimated necessary to pay for consultants other than Town staff pursuant and subject to the terms of Section 16-15-80(b) of the Minturn Code.

ii. For Subdivision Applications (as listed in the Fee Schedule) and related matters, the application fee established pursuant to Section 17-3-50 of the Minturn Code.

iii. For other land use related applications within the Miscellaneous (as listed in the Fee Schedule) category, the application fee established pursuant to, as applicable, Article 23 of Chapter 16 and Sections 16-15-80 and 17-3-50 of the Minturn Code.

iv. Such applications will be further subject to the general requirements and conditions of the provisions of the Fee Schedule entitled Application Review Deposit, Costs and Other.

b. The Town will utilize application fees and funds on deposit with the Town pursuant to Paragraph 14.a.i.(B) above (but expressly excluding the Town's Funds) for the purposes of processing Developer's land use applications, and will refund unused funds to the applicant pursuant to, as applicable, Article 23 of Chapter 16 and Sections 16-15-80 and 17-3-50 of the Minturn Code, and the Fee Schedule.

c. Developer shall reimburse the Town for costs actually incurred by the Town in connection with the negotiation and execution of this First Amendment.

2. Settlement and Compromise of Payments. The parties agree in settlement and compromise to release the \$28,000 in escrow described in Paragraph 4.d. of the Agreement, together with the payment of \$30,000 on March 13, 2019 and any amounts remaining from the PUD application fee paid in 2018, as constituting full satisfaction of the Monthly Payment Obligation contained in Paragraph 14.d.v. of the Agreement. The Town may use the \$28,000 released from escrow for any permitted use of the Town's Funds described in paragraph 3 below.

3. Town's Funds. Paragraph 6 of the Agreement is amended and restated as follows:

The Town may use the Town's Funds to pay for: (a) creation of a scholarship program as set forth in Paragraph 7 of the Agreement; (b) purchase of one or more parcels of land within or adjoining the Town of Minturn owned by the United States Forest Service, (c) water infrastructure improvements, (d) improvements to Little Beach Park, (e) Streetscape and sidewalk improvements along Main Street, (f) to develop a Town recreation center, and (g) park, recreation, trail and trailhead improvements. Use of the Town's Funds for the purposes described above shall be used on projects that can provide a benefit to future residents of a development on the Developer's property. The Town's Funds may also be used for design and planning work, preparation of grant application, and for matching grant funds for any of the purposes described herein. So long as a given cost meets the foregoing requirements, The Town shall have the right to use the Town's Funds to pay for such cost, in such amount and at such time as the Town shall determine, without requiring the prior consent of the Developer.

4. Ratification of Use of Funds. The Town hereby ratifies Developer's use of the Developer's Funds (as described in Paragraph 5 of the Agreement) and Developer hereby ratifies the use of the Town's Funds (as described in paragraphs 6 and 14 of the Agreement). Said ratification of the use of the Developer's Funds and the Town's Funds includes any use or appropriation of said funds which has occurred, or which will occur in the future. The Developer and the Town hereby irrevocably waive and release any right to receive an accounting of the use of such funds, review records related to the use and appropriation of such funds, or contest the other Party's right to have used said funds now or in the future.

5. Ratification of Agreement. Except as expressly provided in this First Amendment, the Agreement remains unmodified and in full force and effect. In the event of any conflict between this First Amendment and the Agreement, the terms and provisions of this First

Amendment will control. As of the Effective Date, the Town acknowledges the Developer is not in default, and the Developer acknowledges the Town is not in default, of such Parties' respective obligations under the Agreement.

6. Counterparts. The Parties may execute this First Amendment in counterparts, each of which will constitute an original, but all of which, when taken together, will constitute one agreement. Executed copies may be delivered by e-mail (pdf) or other electronic means and upon receipt will be deemed originals and binding upon the Parties.

**[Signature Pages Follow This Page]**









**RESOLUTION 5 – SERIES 2012**

**A RESOLUTION AUTHORIZING AMENDMENT TO  
AGREEMENT REGARDING ESCROW FUNDS AND  
FUNDING**

**WHEREAS**, The Town of Minturn, Colorado (the "Town") entered into three escrow agreements on or about April 7, 2008 with Ginn Battle North, LLC, Ginn Battle South, LLC and Ginn-LA Battle One, LLLP (collectively "Battle"); and

**WHEREAS**, in accordance with those agreements, known as The Scholarship and Park Escrow Agreement, The Recreation Center and Trail Escrow Agreement and The Water Escrow Agreement Battle, escrowed a total of \$11,600,000 and

**WHEREAS**, the release of the escrow funds has been delayed by litigation; and

**WHEREAS**, the parties have met since August 2011 to negotiate distribution of the Battle Funds held in escrow; and

**WHEREAS**, the parties have reached agreement regarding partial distribution of Battle's funds in escrow; payment of certain obligations to the Town for certain costs pertaining to the Battle Mountain development; and clarification of the payment of future expenses to the Town.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:**

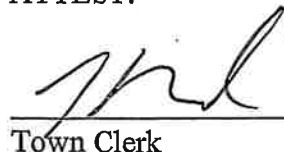
The agreement regarding distribution of Battle's funds in escrow; for payment of certain obligations to the Town for certain costs pertaining to the Battle Mountain development; and to clarify payment of future expenses to the Town attached hereto as Exhibit A, is hereby approved. The Mayor is authorized to sign the agreement.

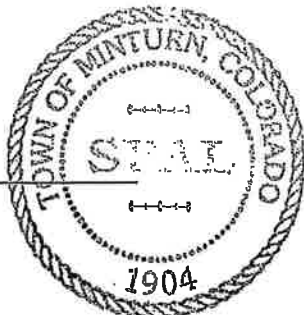
INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED THIS 15th DAY OF FEBRUARY, 2012.

TOWN OF MINTURN, COLORADO

  
Mayor

ATTEST:

  
Town Clerk





**AGREEMENT REGARDING ESCROWS AND FUNDING**

This Agreement Regarding Escrows and Funding (the "Agreement"), dated February \_\_, 2012, between Battle One Developer, LLLP (fka Ginn-LA Battle One Ltd., LLLP), Battle North, LLC (fka Ginn Battle North, LLC), and Battle South, LLC (fka Ginn Battle North, LLC) (collectively "Developer") and the Town of Minturn (the "Town"), sets forth the terms and conditions on which Developer and the Town are prepared to: (i) release certain escrowed funds to the Town and Developer, (ii) resolve all payment arrangements regarding Developer obligations to reimburse the Town for certain costs based on past letter agreements, and (iii) clarify payment agreements henceforth. This Agreement has been approved by resolution of the Town Council. Such terms and conditions are as follows:

1. **Escrow Agreements:** In April of 2008, Developer escrowed a total of \$11,350,000, and delivered an additional \$250,000 directly to the Town, pursuant to three (3) escrow agreements (collectively, the "Escrow Agreements"), commonly known as:
  - a. The Scholarship and Park Escrow Agreement;
  - b. The Recreation Center and Trail Escrow Agreement; and
  - c. The Water Storage Escrow Agreement.

The total amount held in escrow by the Town is \$11,600,000.

2. **Escrow Amendment:** In order to release the escrowed funds, each Escrow Agreement will need to be amended (collectively, the "Escrow Amendment"). Because the Escrow Agreements were initially adopted by a resolution of the Town Council, the Escrow Amendment shall also be adopted by a resolution of the Town Council (the "Resolution").

3. **Release of Escrowed Funds:** The Escrow Amendment shall provide for the release of the escrowed funds as follows and in accordance with Section 4 below:
- a. to Developer in the total amount of \$7,210,000 ("Developer's Funds"); and
  - b. to the Town in the total amount of \$4,362,000 (inclusive of the \$600,000 previously delivered to the Town pursuant to the Scholarship and Park Escrow Agreement, the "Town's Funds").
- Plus 28k for BMR legal escrow*

The Town was delivered \$600,000 (\$350,000 held in escrow) so the total amount in the non-Town held escrow accounts is \$11,000,000 with the total amount under consideration for distribution between the Town and Battle Mountain being \$11,600,000, less the \$28,000 that shall remain in escrow.

The parties shall each retain any interest that may accrue on their respective Funds and may spend the same consistent with the terms hereof and such interest shall be considered to be included as a part of such Funds for purposes hereof, including any credits due Developer under Paragraph 11 below.

4. **Funds Remaining in Escrow:**

a. All Developer Funds and Town Funds (collectively, the "Funds") will remain in escrow for at least 30 days after the Town's adoption of the Resolution.

b. If no suit challenging the Resolution is filed within such 30 days, the Funds shall be released to the Developer and the Town as described in Section 3 above within 3 business days thereafter.

c. If a suit challenging the Resolution is filed within such 30 days, the Funds shall remain in escrow until the suit is resolved.

d. If a suit challenging the Resolution is filed and Developer and the Town agree to defend the suit, (i) the first \$25,000 in costs incurred in connection therewith shall be paid from the \$28,000 remaining in escrow, and (ii) Developer shall thereafter be responsible for all costs of defending the same.

e. At any time during the suit either Developer or the Town may decide to stop defending the suit. In that case, (i) the parties will take the necessary actions to stop litigation, (ii) the Town shall adopt a resolution to rescind the Resolution; (iii) if the Funds are in escrow, the Funds will remain in escrow, and (iv) if the Funds have been released from escrow, the Funds shall be replaced into escrow as the parties shall agree.

f. If the suit is defended and lost, the parties shall return their respective Fund amounts to escrow if, as and when required by any final unappealable order of the court to do so.

5. **Permitted Uses of Developer's Funds:** Developer shall use the Developer's Funds only for costs actually incurred by Developer with respect to Battle Mountain (the "Project"), which costs may include, without limitation, Developer's overhead and any fees payable to Developer's attorneys and other consultants. Developer shall provide the Town with the list of the categories of Developer costs budgeted to be incurred in connection with the Project.

6. **Permitted Uses of Town's Funds:** The Town may only use the Town's Funds to pay for: (a) the creation of a scholarship program as set forth in Paragraph 7 below, in the amount of \$350,000; (b) the Town's actual administrative costs, in an amount equal to \$15,000 in any given calendar month, not to exceed \$540,000 in the aggregate; (c) legal and consulting costs actually incurred by the Town that are directly related to the Project ("Legal and Consulting Costs"), not to exceed \$1,240,000 in the aggregate; and (d) the following costs to the extent they are actually incurred by the Town and directly and solely attributable to the Project:

a. to purchase of one or more of the USFS parcels;

b. for water infrastructure improvements to main water lines;

c. to finish improvements to Little Beach Park;

d. for Town street and streetscape improvements (provided that if and only if Developer is not required to pay such costs for the same improvements a second time, such as in

the case of a street improvement that is reconstructed in the future to accommodate utility installation);

e. to develop a Town recreation center (if and only if the parties obtain an agreement acceptable to both with the Vail Ski and Snowboard Club for its participation in the recreation center);

f. for such other projects, activities, purchases, improvements, facilities or the like, including but not limited to a bike/recreational trail, that the parties agree upon from time to time.

So long as a given cost meets the foregoing requirements, the Town shall have the right to use the Town's Funds to pay for such cost, in such amounts and at such times as the Town shall determine, without requiring the prior consent of Developer.

7. **Scholarship Program:** The Town shall earmark and set aside \$350,000 of the Town's Funds to be used solely for the creation of a scholarship program as set forth in Section 2 of the Scholarship and Park Escrow Agreement and Section 5.6 of the Annexation Agreement (the "Scholarship Funds").

8. **Records and Reports:** Developer, with respect to the Developer's Funds, and the Town, with respect to the Town's Funds, shall each maintain complete and accurate records of all costs paid using such funds. Each party shall provide the other with monthly reports summarizing such records.

9. **Effect of De-Annexation:**

a. If pursuant to the Tucker 106 litigation, Developer's property is de-annexed from the Town, the Town shall immediately pay to Developer an amount equal to the original amount of the Town's Funds, less

i. the amount of the Town's Funds actually spent in accordance with the terms hereof as of the date of such deannexation;

ii. amounts not spent, but which the Town is contractually committed to pay to independent third parties as of the date of such deannexation, on the condition that such commitments comply with the terms hereof;

iii. \$180,000 for Town administration costs;

iv. \$200,000 for Legal and Consulting Costs;

v. \$250,000 for Little Beach Park; and

vi. the unspent balance of the Scholarship Funds.

b. If after deannexation, Developer and the Town agree to a new annexation pursuant to a new annexation agreement or pre-annexation agreement, Developer shall escrow funds if and when required by that agreement.

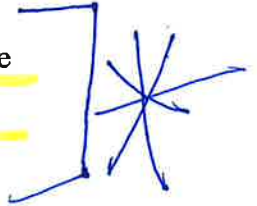
10. **Replenishment of Funds if No De-Annexation:**

a. If the parties prevail in both (i) the Tucker 106 case, and (ii) the Tucker Quiet Title case (collectively the "Tucker Cases"), the parties shall negotiate in good faith to amend the existing Annexation Agreement.

b. If the parties execute an amendment to the Annexation Agreement, Developer shall replenish the escrow if and when required therewith.

c. If the parties abandon their efforts to execute an amendment to the Annexation Agreement, Developer shall replenish Developer's Funds, less those for which Developer shall receive a credit for spending consistent with the terms of this Agreement, to escrow within one year thereafter or at the time that Developer files a revised development plan with the Town consistent with the provisions of the Municipal Code, whichever is earlier.

11. **Developer's Credits:** For every dollar of the Town's Funds used by the Town, Developer shall receive a dollar credit to be applied by Developer against any current or future obligations that Developer has to the Town under the Annexation Agreement, as it may be amended, or any new annexation agreement, as the case may be. Any credit should only be against the obligations as agreed listed above, but not as against the administrative, legal or consulting costs provided for in Paragraph 6.



12. **Disputed Obligations:** In consideration of Developer consenting to the Town's use of the Town's Funds to pay the Legal and Consulting Costs, the parties acknowledge and agree that: (a) upon the release of the Town's Funds pursuant to the Escrow Amendment, Developer shall be automatically released from all obligations, if any, under that certain letter agreement between the Town and The Ginn Development Company, dated March 4, 2005 (the "Letter Agreement"), which Letter Agreement is referenced in three (3) letters from The Ginn Development Company to the Town, dated May 16, 2008, June 20, 2008 and November 21, 2008, respectively (collectively, the "GDC Letters"); and (b) until the parties enter into the Future Funding Agreement provided for in Paragraph 14 or other appropriate subsequent funding agreement, the only funding the Town shall receive from Developer with respect to the Town's costs and expenses attributable to the Project shall come from, and the Town shall have no right to look to Developer for any funds in addition to, (i) the release and use of the Town's Funds pursuant to the Escrow Amendment; (ii), funding provided for pursuant to this Agreement; and (iii) pursuant to the budgeting and payment procedures previously agreed to by the Town and Developer for, (A) Developer's ongoing funding of the costs actually incurred by the Town in connection with the Tucker 106 litigation and the Tucker quiet title litigation and (B) Developer's funding of costs actually incurred by the Town as a result of any specific written request from Developer.

13. **Satisfaction of PDP Planning Condition #22:** Entering into this Agreement satisfies the condition set forth in Paragraph 22 of the PUD Planning Conditions of the Preliminary Development Plan approval.

14. Legal and Consulting Costs/Future Funding Agreement:

a. Developer shall reimburse the Town for all budgeted Legal and Consulting Costs actually incurred by the Town in connection with the negotiation and execution of the Escrow Amendment promptly after the Escrow Amendment is executed, not to exceed \$15,000.

b. Promptly after the parties execute the Escrow Amendment, they shall negotiate in good faith to enter into, by September 1, 2014, an agreement pursuant to which Developer shall fund certain Legal and Consulting Costs the Town incurs after January 1, 2015 (the "Future Funding Agreement").

c. The Future Funding Agreement shall provide that it will be null and void if Tucker prevails in either of the Tucker Cases.

d. If the parties fail to enter into the Future Funding Agreement by January 1, 2015 and the Developer's property is not de-annexed, then until (A) the parties enter into the Future Funding Agreement or (B) the parties abandon their efforts to amend the existing Annexation Agreement and the Tucker cases are resolved, whichever occurs first, Developer will fund budgeted fees and costs actually incurred by the Town after January 1, 2015 for:

- i. environmental approvals for the Project;
- ii. water rights to serve the Project (not the Town's separate water rights);
- iii. the Tucker 106 case;
- iv. the negotiation and execution of the amendment to the Annexation Agreement;
- v. the payment of \$15,000 each month to the Town for administrative costs;
- vi. costs actually incurred by the Town as a result of any specific written request from Developer; and
- vii. such other costs that the parties agree upon from time to time,

pursuant to quarterly budgets prepared by the Town (with input from Developer, as appropriate) and approved by Developer, which approval Developer will not unreasonably withhold; the administrative costs payment shall remain at \$15,000 per month and each budget shall reflect such amount. At such time that the Developer proceeds with the Town to process any land use applications and the Future Funding Agreement does not provide otherwise, Developer shall be obligated to pay to the Town any fees or costs required by the Municipal Code in connection with such process.

e. Developer shall reimburse the Town for all budgeted Legal and Consulting Costs actually incurred by the Town in connection with the negotiation and execution of the Future Funding Agreement promptly within 30 days after submission of invoices therefor to Developer by the Town.

f. Except as expressly set forth herein, this Agreement does not amend, modify or change any approval or other agreements between the parties relating to the Battle Mountain project.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below.

**Battle One Developer, LLLP**, a Georgia limited liability limited partnership  
By: Loda LLC, its general partner, a Colorado limited liability company  
By: Kleinkopf Battle Investment, LLC, a Colorado limited liability company  
By: David Kleinkopf  
David Kleinkopf, Member

**Battle North, LLC**, a Georgia limited liability company  
By: David Kleinkopf  
David Kleinkopf, Authorized Agent

**Battle South, LLC**  
By: David Kleinkopf  
David Kleinkopf, Authorized Agent

**Town of Minturn, Colorado**  
a home rule municipal corporation  
By: Hawkeye Flaherty  
Hawkeye Flaherty  
Title: Mayor

Exhibit B

Wiring Instructions for the Developer

BB & T  
1899 S Clyde Morris Blvd  
Daytona Beach, Fl. 32119

Routing #: 263191387

For credit: Battle One Developer LLLP

Checking Account #: 0000149600531

Exhibit C

Payment Instructions for the Town

**ACH and Wire Instructions**

**Wire Instructions**

Following are the wire instructions to wire funds into your COLOTRUST account:

Bank Name: Wells Fargo Bank NA

ABA #: 121000248

Acct #: 1018043565

FFC: Your COLOTRUST Account Number  
(e.g. CO-01-XXXX-XXXX) and Entity Name

CO-01-0094-7058

**ACH Instructions**

ACH Instructions are as follows:

Bank Name: Wells Fargo Bank NA

ABA #: 102000076

Acct #: 1018043565

FFC: Your COLOTRUST Account Number  
(e.g. CO-01-XXXX-XXXX) and Entity Name

CO-01-0094-7058

3331 12th Street, Suite 1000  
Denver, Colorado 80202

T 303.733.4029  
F 303.733.6220

clients@colotrusted.com  
www.colotrusted.com





Exhibit A-1

Resolution 5 - Series 2012  
(Re the Agreement Regarding Escrows and Funding)

See attached

DATE: May 14, 2021  
TO: Minturn Town Council  
FROM: Town Attorney  
RE: Revocation of Emergency Declaration

---

## **SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

Government guidance and restrictions related to the COVID pandemic are rapidly changing resulting in reduced or eliminated restrictions. Staff wanted to discuss with Council the potential revocation of the COVID Emergency Declaration and how that would impact Town operations and the business continuity.

In short, the current Colorado Public Health Order still requires:

- Masks to be worn in indoor spaces where 10 or more unvaccinated individuals are present. This may impact Council having in-person meetings with staff and public present.
- Social distancing of at least 6 feet from non-household contacts. Again, this may impact plans to re-convene public meetings since it may not be possible to maintain an effective 6 feet of distance for Council, staff and the public within the Council chambers.
- Town Staff to adhere to the State’s face covering requirements to protect themselves and the public they serve.
- The latest health order will expire on May 17, presumably to be replaced with another.

### **Emergency Declaration Revocation Impacts on Public Meetings**

Resolution 12, Series 2020 adopted an electronic participation policy for public meetings for use in the event of a local emergency declaration (Resolution attached). The resolution states that the electronic public participation policy shall only apply upon the adoption of a resolution by the Town declaring a local disaster emergency. As such, the revocation of Resolution 13, Series 2020 “declaring a local disaster emergency” would have the effect of rescinding the electronic participation policy. Resolution 12, Series 2020 could, however, be modified by the Council so that it applied at all times and not only during designated emergency periods.

The Town Charter does not shed much light on the use of electronic meetings to conduct business. Section 4.8 states that “The Council shall meet regularly twice each month on the first and third

Wednesday or at a day and hour to be fixed by the rules of the Council. The Council shall determine the rules of procedure governing meetings including attendance requirements.” Section 11.3 discusses that Councilpersons who are “present” shall vote on upon Town business. However, the Charter does not specifically define what it is to be “present”. Resolution 41, Series 2008 “Establishing Procedures to Govern Actions of the Town Council” does not address when a Councilperson is deemed present or whether participation can occur remotely.

The determination of whether a Councilperson may appear at a meeting electronically depends on the meaning of the term “present.” Staff believes that the Town Code can be amended to define present as including electronic participation as allowed under policies adopted by the Town Council.

In 2014, the Council enacted code provisions that provided for limited telephonic participation. Depending on the direction that the Council desires to take, this section of the Code likely will need to be amended.

### **Sec. 2-2-50. - Telephonic and electronic participation in meetings.**

- (a) A Member of the Town Council may participate and vote by telephone or electronic means at a meeting of the Town Council if the Member is unable to physically attend. Such telephonic or electronic participation privileges shall be exercised only in accordance with this Section.
- (b) For purposes of this Section, the term *Member* includes the Mayor.
- (c) For purposes of this Section, *electronic participation* means participation by video or similar electronic means which is uninterrupted and provides a Member the ability to clearly hear and participate in a discussion preceding any action by the Town Council.
- (d) Telephonic or electronic participation by a Member shall be permitted only upon the occurrence of the following:
  - (1) The Member who desires to participate by telephone or electronically must provide notice of his or her desire to participate by telephone or electronically and his or her telephone or electronic contact information to the Town Clerk sufficiently in advance of the meeting so that the Town may provide the technical means necessary to fulfill such request.
  - (2) The matter in which the Member desires to participate is one that is of significant importance to the Town. For purposes of this Section a matter is of *significant importance to the Town* when the Members physically present at a Town Council meeting determine, in their sole discretion, that the matter is of significant importance to the Town. Such determination shall be made by the vote of a majority of the Members physically present at the Town Council meeting.

(e) A Member participating in a Town Council meeting by telephone or electronic means shall not be counted toward the establishment of a quorum for any Town Council meeting.

(f) It is the intent of this Section that telephonic or electronic participation shall be an infrequent or occasional substitution for physical attendance by a Member at Town Council meetings.

(g) Notwithstanding a vote by the Members physically present at the Town Council meeting to permit telephonic or electronic participation by a Member in a Town Council meeting, the Members may discontinue the use of the telephonic or electronic participation by a Member where the telephonic or electronic participation results in unreasonable delays or interference in the Town Council meeting process. Such discontinuance shall be decided by a majority vote to discontinue the telephonic or electronic participation by those Member physically present.

(h) Application of this Section is expressly limited to meetings of the Town Council. The member of other Town boards and commissions shall not have the privilege of telephonic or electronic participation in meetings when they are considering the approval, denial, suspension or revocation of any application or permit.

The Code does not address meetings of the Planning Commission. The Council should consider whether electronic participation in Planning Commission meetings should continue after the emergency declaration is revoked.

As a practical matter, electronic participation has limitations because a Councilperson or Commissioner who is participating remotely may be precluded from adequately viewing documents presented during in person meetings, evaluating a speaker's non-verbal language in assessing veracity or credibility, and observing non-verbal explanations (e.g., pointing at graphs and charts) during a speaker's presentation or testimony. These limitations with electronic participation may produce inefficiencies in meetings, increase the expense of meetings, and may complicate the decision-making process, particularly in quasi-judicial matters. Members of the Council who participate remotely (on a repeated basis) also may be less accessible to their constituents to receive comments and input on matters affecting the Town's business. On the other hand, having to conduct remote meetings via Zoom during the declared emergency has given the Town staff and officials a lot more experience in navigating these issues and effectively holding virtual meetings. Remote participation also allows continuity in conducting the Council's business because Councilpersons can participate and receive information while they are away for periods of time.

The concerns identified above apply with less force to participation by the public using electronic media. In fact, allowing members of the public to make public comments via electronic or telephonic means could actually increase the amount of participation because the public participation could occur while attending to other important events (e.g. attending to children). Due to the public health concerns associated with COVID and that some members of the public may be more susceptible to

the virus, providing an “accommodation” to participate remotely may, in fact, be a requirement under the Americans with Disabilities Act.

We recommend that if the Council wants to allow Councilpersons, the Planning Commission and the public to participate in meetings electronically, the Code should be amended to indicate that electronic participation means that a Councilperson is “present” for purposes of the meeting. The Council may also want to implement some or all of the following restrictions when authorizing remote participation:

1. Prohibit electronic participation in a quasi-judicial public hearing or in executive session;
2. Require that electronic participation be clear, uninterrupted and allow two-way communication for the participating Councilperson or Commissioner;
3. Authorize the Council or Planning Commission to discontinue the use of electronic participation by a Councilperson or Commissioner where the participation results in delays, the communication is unclear, or otherwise interferes with the meeting;
4. Allow electronic participation only when enough Members are physically present to constitute a quorum;
5. Allow electronic participation only in specific circumstances such as illness, family emergency, and work obligations and not merely for the convenience of the Councilperson to avoid attending a particular meeting;
6. Limit the number of times per year a Councilperson or Planning Commissioner can participate remotely;
7. Establish a procedure for requesting and receiving authority to participate by electronically in advance of a meeting to ensure all requirements are satisfied and to allow the Clerk to coordinate the necessary technology.

If the Council provides Staff with guidance on a revised remote participation policy, we can modify Resolution 12, Series 2020 accordingly and bring it to the Council for adoption at the next meeting.

### **Emergency Declaration Revocation Impacts on Town Businesses**

Under the Town’s emergency declaration, the Town modified certain liquor licenses to extend the “licensed premises” where alcohol may be served to include outside seating areas. Normally, a liquor licensee must undertake a formal application process including a public hearing to change the licensed premises location. The State of Colorado has adopted a separate order allowing the administrative modification of licensed premises under the State’s emergency declaration. Liquor licenses that have been administratively modified will continue to include the changed licensed premises location until

the State repeals its order. The Town has sent a letter to local businesses who received administrative modifications to their licensed premises informing them that once the State revokes the applicable order, the boundaries of where liquor may be served will revert to their original location.

**TOWN OF MINTURN, COLORADO  
RESOLUTION NO. 12 – SERIES 2020**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN  
OF MINTURN, COLORADO, ADOPTING AN  
ELECTRONIC PARTICIPATION POLICY FOR USE IN  
THE EVENT OF A LOCAL EMERGENCY DECLARATION**

**WHEREAS**, the Town of Minturn (“Minturn” or the “Town”) is a home-rule municipality organized under Article XX of the Colorado Constitution and with the authority of the Minturn Home Rule Charter (the “Charter”); and

**WHEREAS**, Section 2-2-50 of the Minturn Municipal Code provides for electronic participation in Town Council meetings, but does not permit such attendance to constitute a quorum; and

**WHEREAS**, pursuant to Section 24-33.5-709 of the Colorado Revised Statutes, the Town Manager and Town Council have authority to declare a local disaster emergency; and

**WHEREAS**, pursuant to the powers inherent in the office, the Governor of Colorado has authority to declare a state of emergency; and

**WHEREAS**, Town government must continue to operate during a local disaster or emergency, while taking measures to protect the health and welfare of its employees and officials; and

**WHEREAS**, It is the intent of this resolution to supplement Code section 2-2-50 in the event of an emergency declaration; and

**WHEREAS**, Town Council has determined that it is in the best interest of the public health, welfare, and safety of the residents of the Town of Minturn to adopt an Emergency Electronic Participation Policy.

**NOW, THEREFORE, IT IS RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO, THAT:**

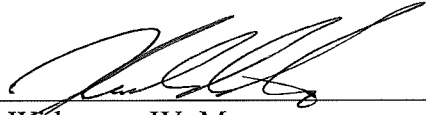
**Section 1.** The above recitals are hereby incorporated as findings by the Town Council of the Town of Minturn.

**Section 2.** The Town Council of the Town of Minturn hereby adopts the Emergency Electronic Participation Policy, attached hereto as **Exhibit A**.

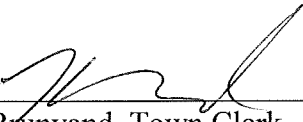
**Section 3.** The Electronic Participation Policy adopted herein shall only apply declaration of a local disaster emergency pursuant to Section 24-33.5-709 of the Colorado Revised Statutes, or the declaration of a state of emergency by the Governor of Colorado.

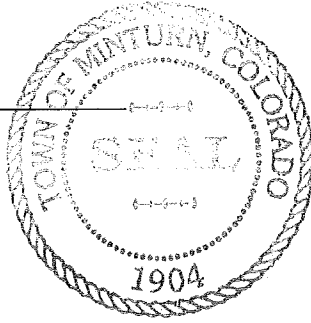
**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 18<sup>th</sup> day of March, 2020.**

TOWN OF MINTURN, COLORADO

  
\_\_\_\_\_  
John Widerman IV, Mayor

ATTEST:

  
\_\_\_\_\_  
Jay Brunvand, Town Clerk





**ELECTRONIC PARTICIPATION POLICY  
AT TOWN COUNCIL MEETINGS DURING A LOCAL DISASTER EMERGENCY OR  
STATE OF EMERGENCY**

**I. Purpose.**

The purpose of this Policy is to specify the circumstances and means under which the Town Council shall conduct regular and special meetings by telephone or other electronic means of participation, such as video-conferencing that is clear, uninterrupted and allows two way communication for the participating members ("Electronic Participation"). Electronic Participation has inherent limitations because Electronic Participation effectively precludes a member of the Town Council from contemporaneously observing documentary information presented during meetings; from fully evaluating a speaker's non-verbal language in assessing veracity or credibility; and from observing non-verbal explanations during a speaker's presentation or testimony. The Town Council finds that these limitations, inherent in Electronic Participation, may produce inefficiencies in meetings, increase the expense of meetings, and alter the decision-making process. As such, the Town Council shall only utilize the policies contained herein upon the adoption by the Town Council of a resolution declaring, or the Town Manager declaring, a local disaster emergency pursuant to Section 24-33.5-709, Colorado Revised Statutes, or by the declaration of a State of Emergency by the Governor of Colorado.

**II. Statement of General Policy.**

The Town Council or Planning Commission may conduct a regular or special meeting by electronic means only in accordance with this Policy.

**A. Emergency Situations.**

In the event a quorum is unable to meet at the day, hour, and place fixed by the rules and procedures of the Town Council because meeting in-person is not practical or prudent due to an emergency affecting the Town, meetings may be conducted by telephone, electronically, or by other means of communication so as to provide maximum practical notice. Meetings may be held by telephone, electronically, or by other means of communication if all of the following conditions are met:

1. A local disaster emergency has been declared pursuant to Section 24-33.5-709, Colorado Revised Statutes, or a State of Emergency declared by the Governor; and
2. The Town Manager or the Town Council determines that meeting in person is not practical or prudent, because of matters related to the declaration of local disaster emergency or state of emergency affecting the Town; and
3. All members of the Town Council, and at least one Town staff member can hear one another or otherwise communicate with one another and can

## Exhibit A

hear or read all discussion and testimony in a manner designed to provide maximum notice and participation; and

4. Members of the public can hear the Town Council's proceedings and are afforded opportunities to participate in public comment; and

5. All votes are conducted by roll call; and

6. Minutes of the meeting are taken and promptly recorded, and such records are open to public inspection; and

7. To the extent possible, full and timely notice is given to the public setting forth the time of the meeting, the fact that some members of the Town Council may participate by telephone, and the right of the public to monitor the meeting from another location.

### **III. Arranging for Electronic Participation.**

A. The Town Manager shall contact Council members at least twenty-four hours in advance of a regular or schedule meeting to provide notice of a meeting conducted under this policy.

B. The Town shall initiate the Electronic Participation not more than ten (10) minutes prior to the scheduled time of the meeting. Upon disconnection during a meeting, the Town Clerk shall make at least three attempts to re-initiate the connection.

### **IV. Effect of Electronic Participation.**

#### **A. Quasi-Judicial Matters.**

In the event that a pending application is scheduled for a public hearing that is quasi-judicial in nature at a meeting at which this policy is in effect, the Town shall advise the applicant of such circumstances and present the applicant with options for proceeding with the application. The applicant shall authorize the Town, in writing, to proceed with one of the following options.

1. Conduct the public hearing under this policy with accommodations made for electronic public participation; or

2. Suspend any and all review and decisions deadlines until such time that the local disaster emergency or state of emergency is lifted and the Town Council schedules a regular meeting at which a quorum will be physically present.

#### **B. Executive Sessions.**

In the event that the Town Council holds an executive session pursuant to Section 24-6-402, Colorado Revised Statutes and Section 4.10 of the Minturn Home Rule Charter, participants shall be authorized to attend via Electronic Participation. Any executive

## Exhibit A

session conducted under this policy shall be recorded electronically as provided for by statute.

### **V. Limited Applicability of Policy.**

This Policy shall only apply to regular and special meetings (including work sessions) of the Town Council and Planning Commission of the Town of Minturn. For the purposes of the Planning Commission's use of this policy, the word "Council" shall mean "Commission".

### **VI. Reasonable Accommodations.**

The Town shall provide reasonable accommodation and shall waive or modify provisions of this Policy to provide handicapped members of the Town Council and Planning Commission full and equal access to Town Council and Planning Commission meetings.

# Karp Neu Hanlon<sup>PC</sup>

ATTORNEYS AT LAW

[www.mountainlawfirm.com](http://www.mountainlawfirm.com)

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

Aspen  
323 W. Main Street  
Suite 301  
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: March 13, 2020  
TO: Minturn Mayor and Council  
FROM: Karp Neu Hanlon, P.C.  
RE: Emergency COVID-19 Resolutions

---

Attached please find two resolutions, which are intended to put the Town in the best position possible to address COVID-19 on an ongoing basis.

The Emergency Declaration resolution grants the Town Manager the authority to declare a local disaster emergency related to the COVID-19 outbreak. While the manager has this authority, it is limited to seven days without ratification. To ensure continuity of operations, it is advisable to grant the Town Manager this authority at this time. The declaration of a local disaster emergency is an administrative tool to enable the receipt and spending of certain available funds. The resolution also lifts the cap on the Town Manager's spending authority to ensure that emergency response operations can be conducted. Such expenditures will require later Council ratification.

The Emergency Electronic Participation Policy supplements the Municipal Code's existing policies regarding electronic participation. It appears likely that Town business will need to be conducted telephone and video conference for the foreseeable future. As such, it is advisable to adopt policies to permit a quorum to meet via such methods to limit in-person contacts. Furthermore, this policy makes accommodations for quasi-judicial proceedings that require presentation of materials and opportunities for public comment. This policy will only be invoked by the Town Manager's declaration of a local disaster emergency or the Governor's state of emergency, and does not modify the existing code section 2-2-50.



To: Mayor and Council  
From: Madison Harris, Planner I  
Date: April 29, 2021  
Agenda Item: Ordinance No. 4, Series 2021

---

**REQUEST:**

Review of the Amendment to the South Town Character Area Zoning Map Ordinance recommended to Council by the Planning Commission from their regular meeting of April 28th, 2021.

**INTRODUCTION:**

The attached ordinance is presented for consideration by the Town Council. The ordinance amends the South Town Character Area Zoning Map, specifically Lot 1 and Lot 2, Lucero Subdivision, from Commercial to Residential.

Lots 1, 2 and 3 were recently created as part of the Lucero Subdivision (Exhibit A of the draft ordinance), a re-subdivision of Lot 51, South Minturn Addition. All three lots are currently located within the Commercial Zone District of the South Town Character Area. Staff has worked for several months to assist Tom Sullivan with the subdivision of Lot 51 to create two residential lots (Lots 1 and 2) and to allow for Lot 3 (existing gas station and residential uses) to remain commercial or mixed use in nature.

During the review of the subdivision, staff advised the Applicant that the commercial zoning on all three lots could remain; South Town Commercial Zone District is the only commercial zone district in the Town of Minturn that allows - as a use by right - "single-family" residential uses. This is reflective of the stated purpose and intent of the South Town Character Area - to allow for and recognize the existing mix of single-family and commercial uses in the area. Again, the subdivider's vision for the property was to create two residential lots along the Eagle River and to maintain commercial or mixed uses along Hwy. 24 frontage.

However, the Planning Director, in his review of the subdivision, allowed for Lot 2 to be created at a non-conforming lot size (6,872 sq. ft.) - smaller than is required (7,500 sq. ft.) in the Commercial Zone District.

The Residential Zone District permits a minimum lot size of 5,000 sq. ft. Therefore, staff proposes to rezone Lots 1 and 2 - from Commercial to Residential - to accommodate the intended residential development of both lots as well as the minimum lot sizes (Lot 1 is 8,581 sq. ft.) normally associated with *residential* lots, while allowing Lot 3 to remain commercially zoned. Lot 3 was created at just over 14,000 square feet.

The rezoning is supported by staff as the most efficient and effective means to address the subdivision

oversight by the Planning Director and because a majority of the surrounding properties on the east side of Highway 24 are zoned and developed as residential. Additionally, staff is not aware of any objection to this rezoning on behalf of the property owner or the adjacent neighbors following the public notice period. Importantly, this action avoids requiring the property owner to go through an amendment to the subdivision to move property lines and adjust acreages for all three lots; all three lots are under contract and staff and the Planning Commission have recently reviewed plans for a new single-family residence on Lot 2.

**ANALYSIS:**

In reviewing the ordinance, the Planning Commission considered the need for and appropriateness of rezoning two commercial lots to residential. After learning that the intention from the outset of the subdivision application was to build single family homes on these lots as it is a use 'by right' in the South Town Commercial Zone District; after considering the surrounding zoning and land uses of similarly situated property located between Hwy. 24 and the Eagle River; and, with the intention of correcting the inadvertant creation of non-conforming lot (Lot 2) the Planning Commission recommended that Lot 1 and Lot 2, Lucero Subdivision be rezoned from commercial to residential.

**COMMUNITY INPUT:**

No members of the public spoke at the public hearing. Public notice was provided in accordance with the Minturn Municipal Code as a matter of posting of the official agenda and packet materials for public review prior to the hearing, as well as the requirements in Section 16-21-610 of the Minturn Municipal Code.

**BUDGET / STAFF IMPACT:**

N/A.

**STRATEGIC PLAN ALIGNMENT:**

The Town Council's review and approval of the ordinance aligns with the following key strategies:

**PRACTICE FAIR, TRANSPARENT AND COMMUNICATIVE LOCAL GOVERNMENT**

THE TOWN WILL SEEK TO MAKE **INFORMED, DATA-BASED DECISIONS** WITH A **STANDARD OF "DOING IT RIGHT."** WITH AN **HONEST** APPROACH TO ALL ASPECTS OF LOCAL GOVERNMENT AND A FOCUS ON THE **PUBLIC PROCESS**, THE TOWN COUNCIL AND STAFF ARE COMMITTED TO SERVING MINTURN WITH THE HONESTY AND INTEGRITY EXPECTED OF A SMALL-TOWN GOVERNMENT.

**ADVANCE DECISIONS/PROJECTS/INITIATIVES THAT EXPAND FUTURE OPPORTUNITY AND VIABILITY FOR MINTURN**

The ability for Minturn to approach development as **resilient, sustainable, creative and diverse** will allow the town to continue embracing what has **"made Minturn, Minturn."** The town can further leverage its crossroads location as a valley-wide benefit and **competitive advantage**.

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Approve the following ordinance:

“Ordinance No. 4, Series 2021, An ordinance of the Town of Minturn, Colorado, rezoning Lot 1 and Lot 2, Lucero Subdivision, from commercial to residential in conformance with the Town of Minturn Master Plan and Land Use Code.”

**ATTACHMENTS:**

- Amendment to the South Town Character Zoning Map Ordinance
- Zone District Map Amendment

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 04 – SERIES OF 2021**

**AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO, REZONING LOT 1 AND LOT 2, LUCERO  
SUBDIVISION, FROM COMMERCIAL TO RESIDENTIAL  
IN CONFORMANCE WITH THE TOWN OF MINTURN  
MASTER PLAN AND LAND USE CODE**

**WHEREAS**, the Town of Minturn (“Town”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Town of Minturn Home Rule Charter for which the Minturn Town Council (“Town Council”) is authorized to act; and

**WHEREAS**, the Lucero Subdivision Final Plat was recorded in the Office of the Eagle County Clerk and Recorder on March 30, 2021 at Reception No. 202107185, attached hereto as **Exhibit A**; and

**WHEREAS**, Minturn Municipal Code (the “Code”) Sec. 16-7-20 and 16-7-30 describe the South Town Residential Zone and South Town Commercial Zone; and

**WHEREAS**, Code Sec. 16-21-410 through 450 provides for the consideration of amendments to the Town’s Character Area Zoning Map; and

**WHEREAS**, the Planning Director has determined that it is appropriate and has applied for certain real property known as Lot 1 and Lot 2, Lucero Subdivision (hereinafter the "Property") located in the South Town Character Area to be rezoned from Commercial Zone to Residential Zone; and

**WHEREAS**, the existing Commercial Zoning provides for Single Family Residential uses but subject to different standards than the surrounding Residential Zone; and

**WHEREAS**; the Lucero Subdivision was intended to create new residential lots while retaining commercial uses in the existing commercial structure on Lot 3; and

**WHEREAS**, on April 28, 2021, the Town of Minturn Planning Commission considered the application for rezoning the Property and recommended that the Town Council rezone the Property from Commercial Zone to Residential Zone; and

**WHEREAS**, the Town of Minturn Planning Commission and the Minturn Town Council have held duly-noticed public hearings as required by the Minturn Municipal Code, and the Town Council now wishes to rezone the Property.

**WHEREAS**, Town of Minturn Planning Commission and the Minturn Town Council have determined that the rezoning provided for herein is in conformance with the Minturn Land Use Regulations and Master Plan.



**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:**

SECTION 1. The foregoing recitals are incorporated herein as if set forth in full.

SECTION 2. The following property is hereby rezoned to South Town Residential Zone:

LOT 1 AND LOT 2, LUCERO SUBDIVISION

As depicted on the Final Plat recorded in the Office of the Eagle County Clerk and Recorder on March 30, 2021 at Reception No. 202107185

SECTION 3. Within thirty (30) days after the effective date of this Ordinance, the Town Clerk shall cause a printed copy of the amendment to the Town Zoning District Map to be made, which shall be dated and signed by the Mayor and attested to by the Town Clerk, and which shall bear the seal of the Town. The amended map shall include the number of this Ordinance. The signed original printed copy of the Zoning Map shall be filed with the Town Clerk. The Clerk shall also record a certified copy of this Ordinance with the Eagle County Clerk and Recorder. The Town staff is further directed to comply with all provisions of the Minturn Land Use Regulations, Minturn Municipal Code Chapter 16, to implement the provisions of this Ordinance.

**INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEBSITE THE 5<sup>th</sup> DAY OF MAY, 2021. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 19<sup>th</sup> DAY OF MAY, 2021 AT 5:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.**

**TOWN OF MINTURN, COLORADO**



**John Widerman IV, Mayor**

**ATTEST:**

By:   
Jay Brunvand, Town Clerk



**THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 19<sup>th</sup> DAY OF MAY, 2021.**

**TOWN OF MINTURN, COLORADO**

\_\_\_\_\_  
**John Widerman IV, Mayor**

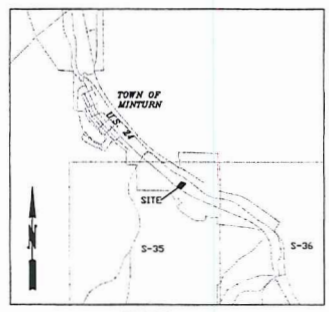
**ATTEST:**

By: \_\_\_\_\_  
**Jay Brunvand, Town Clerk**

# **Exhibit A**

Eagle County, CO  
 Reginald O'Brien  
 Pgs: 2  
 REC: \$23.00 DOC: \$0.00  
 03/30/2021  
 01:13:47 PM  
 202107185

**FINAL PLAT**  
**SOUTH MINTURN ADDITION**  
**A RESUBDIVISION OF LOT 51**  
 LOCATED IN THE NE1/4 OF SECTION 35, T5S, R81W, 6TH P.M.  
 TOWN OF MINTURN, COUNTY OF EAGLE, STATE OF COLORADO



**CERTIFICATION OF DEDICATION AND OWNERSHIP**

Know all men by these presents that 996 S. Main, LLC, a Colorado Limited Liability Company, being sole owner in fee simple, mortgagee or lienholder of all that real property situated in Town of Minturn, Eagle County, Colorado, described as follows:

996 MAIN STREET (AKA: LOT 51, SOUTH MINTURN ADDITION TO MINTURN)  
 A PARCEL OF LAND LOCATED IN THE NORTH EAST QUARTER OF SECTION 35, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF MINTURN, COUNTY OF EAGLE, STATE OF COLORADO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 1.5" ALUMINUM CAP ON #5 REBAR, LS # 38079 ON THE NORTHERLY RIGHT OF WAY LINE OF STATE HIGHWAY 24, ALSO MARKING THE MOST WESTERLY CORNER OF THE SUBJECT PARCEL AKA: LOT 51 SOUTH MINTURN ADDITION, RECORDED IN BOOK 298 PAGE 72, THENCE THE NORTH QUARTER CORNER OF SAID SECTION 35, MARKED WITH A 2.5" BRASS CAP ON 1" PIPE, BEARS N49°46'40"W 1936.09 FEET DISTANT;  
 THENCE LEAVING SAID RIGHT OF WAY LINE, N38°31'53"E 191.02 FEET TO A FOUND #5 REBAR ON LINE, BEING A WITNESS CORNER FOR LOT 50 AND LOT 51, SOUTH MINTURN ADDITION AND BEING THE BASIS OF BEARINGS FOR THIS LEGAL DESCRIPTION; THENCE CONTINUING N38°31'53"E 19.05 FEET TO THE MOST NORTHERLY CORNER OF SUBJECT PARCEL, A SET 1.5" ALUMINUM CAP, ON #5 REBAR, LS #38079; THENCE S65°42'19"E 139.89 FEET TO A POINT ON THE NORTHERLY LINE OF A PARCEL OF LAND DESCRIBED IN BOOK 296, PAGE 380, ALSO KNOWN AS A PORTION OF LOT 52, SOUTH MINTURN ADDITION; THENCE S38°52'09"W 232.39 FEET PASSING THROUGH A FOUND 1.5" ALUMINUM CAP, ON #5 REBAR, LS #11204, WITNESS CORNER TO SAID LOT 51 (6.22 W.C.) AND SAID LOT 52 (7.63 W.C.), CONTINUING TO THE NORTHERLY RIGHT OF WAY LINE OF SAID STATE HIGHWAY 24, THE SOUTHERN MOST CORNER OF SAID LOT 51, AND THE WESTERLY CORNER OF SAID LOT 52, A FOUND 1" STEEL PIPE - UPGRADED TO A 1.5" ALUMINUM CAP ON #5 REBAR, LS #38079; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE ALONG THE ARC OF A CURVE TO THE RIGHT 134.57 FEET, HAVING A RADIUS OF 2825.0 FEET, A CHORD LENGTH OF 134.56 FEET AND A CHORD BEARING N56°36'04"W TO THE POINT OF BEGINNING, SAID PARCEL BEING 0.6854 ACRES MORE OR LESS.

have by these presents laid out, platted and subdivided the same into lots and blocks as shown on this final plat, under the name and style of FINAL PLAT, SOUTH MINTURN ADDITION, A RESUBDIVISION OF LOT 51, a subdivision in the Town of Minturn, Eagle County, Colorado; and does hereby accept the responsibility for the completion of required improvements; and does hereby dedicate and set apart all of the private streets and other public improvements and places as shown on the accompanying plat to the use of the public forever; and does hereby dedicate those portions of said real property which are created as easements to the accompanying plat to the public forever as easements for the purposes shown herein, unless otherwise expressly provided thereon; and does hereby grant the right to install and maintain necessary structures to the entity responsible for providing the services for which the easements are established.

Executed this 22 day of March, A.D. 2021.

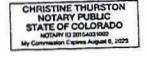
Manager: [Signature]  
 Address: 996 Main Street  
 Minturn, CO 81645

State of Colorado }  
 County of Eagle } SS

The foregoing Certificate of Dedication and Ownership was acknowledged before me this 22 day of

March, A.D. 2021 by Thomas S. Sullivan as Manager of  
996 S. Main LLC

My commission expires: 6 Aug 2023  
 Witness my hand and seal. [Signature]  
 Notary Public



**TITLE CERTIFICATE**

The Company of the Rockies  
 does hereby certify that it has examined the Title to all lands shown upon this Plat and that Title to such lands is vested in 996 S. Main LLC, a Colorado free and clear of liens, and encumbrances, except as follows: limited liability company

- NONE -

Dated this 22 day of March, A.D. 2021.

AGENT: Carl D. Paula, Senior Title Examiner

**CERTIFICATE OF TAXES PAID**

I, the undersigned, do hereby certify that the entire amount of taxes and assessments due and payable as of Jan 1, 2021 upon all parcels of real estate described on this map are paid in full.

Dated this 22 day of March, A.D. 2021.  
Christine Lyons Deane  
 Treasurer of Eagle County

**NOTES:**

- 1) DATE OF SURVEY: JUNE 16, 2020
- 2) STREET ADDRESS: 996 Main Street (U.S. Highway 24) Not Platted
- 3) Location of improvements, lot lines and easements are based upon the Quilt Title Deed, recorded in Book 298 Page 72, the Amended Plat of South Minturn Addition to the Town of Minturn, recorded at Reel No. 163774, C.D.G.I. Project No. FAP N0292-03 and Survey Memoranda filed at the time of this survey. This Conventional plat was provided for this survey.
- 4) BASIS OF BEARINGS: Between a 1.5" Aluminum Cap on #5 Rebar, LS #38079 marking the Northwestly corner of Said Lot 51 being the Southwestly corner of Said Lot 50 and a #5 Rebar Witness Corner, being a point on line for said Lots 50 and 51, bearing N38°31'53"E as shown hereon.
- 5) U.S. Survey Feet was used for this Survey.
- 6) An Improvement Survey Plat was performed and recorded at the Eagle County Engineering Office prior to the final plat.
- 7) This Property is subject to:
  - EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF SOUTH MINTURN ADDITION TO THE TOWN OF MINTURN RECORDED MARCH 1, 1978 UNDER RECEPTION NO. 163774.
  - TERMS, CONDITIONS AND PROVISIONS OF EASEMENT RECORDED DECEMBER 13, 1993 AT RECEPTION NO. 023426. SHOWN ON SHEET 2 OF 2.
  - TERMS, CONDITIONS AND PROVISIONS OF CLAIM OF EASEMENTS RECORDED DECEMBER 03, 2004 AT RECEPTION NO. 899586. SHOWN ON SHEET 2 OF 2.
- 8) NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT, IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

**LAND USE SUMMARY**

LOT	ACREAGE	STREET ADDRESS	USE
LOT 1	0.1970 ACRES	0994 Main Street	SINGLE FAMILY RESIDENTIAL
LOT 2	0.1578 ACRES	0996 Main Street	SINGLE FAMILY RESIDENTIAL
LOT 3	0.3307 ACRES	0998 Main Street	COMMERCIAL
TOTAL =	0.6855 ACRES		

**PLANNING DIRECTOR CERTIFICATE**

This Final Plat is hereby approved by the Minturn Planning Director, Minturn, Colorado, this 22<sup>nd</sup> day of March, A.D. 2021 for filing with the Clerk and Recorder of Eagle County.

[Signature]  
 Minturn Planning Director

**TOWN OF MINTURN CERTIFICATE:**

This Final Plat approved by the Minturn Town Council, Minturn, Colorado, on the 22<sup>nd</sup> day of March, A.D. 2021 for filing with the Clerk and Recorder of Eagle County and the conveyance to the Town of Minturn of the public dedications shown hereon; subject to the provision that approval in no way obligates the Town of Minturn for maintenance of roads dedicated to the public until construction of improvements thereon shall have been completed in accordance with Town of Minturn's specifications and the Minturn Town Council has by a subsequent resolution agreed to undertake maintenance of the same. This approval does not guarantee that soil conditions, subsurface geology, ground water conditions, or flooding conditions of any lot shown hereon are such that a building permit or any other required permit will be issued. This approval is with the understanding that all expenses involving all improvements required shall be the responsibility of the subdivider and not the Town of Minturn.

Witness my hand and seal of the Town of Minturn,

Attest: [Signature]  
 (Clerk)



**SURVEYOR'S CERTIFICATE**

I, Randall P. Kipp do hereby certify that I am a Professional Land Surveyor licensed to practice land surveying under the laws of the State of Colorado, that this subdivision plat is true, correct and complete Final Plat, SOUTH MINTURN ADDITION, A RESUBDIVISION OF LOT 51, as laid out, platted, dedicated and shown hereon, that such plat was made from an accurate survey of said property by me and/or under my supervision and accurately shows the location and dimensions of the lots, easements and rights of way of said plat as the same are monumented upon the ground in compliance with applicable regulation governing the subdivision of land, that such plat is based upon the professional land surveyor's knowledge, information and belief, that such plat has been prepared in accordance with applicable standards of practice, and that such plat is not a guaranty or warranty, either expressed or implied.



Randall P. Kipp  
 COLORADO PROFESSIONAL LAND SURVEYOR NO. 38079

**CLERK AND RECORDER'S CERTIFICATE**

This Plat was filed for record in the office of the Eagle County Clerk and Recorder at 1:13 o'clock P.M. on this 30th day of March, 2021, and is duly recorded at Reception No. 202103125

[Signature]  
 Eagle County Clerk and Recorder  
[Signature]  
 Deputy



<b>FINAL PLAT</b> <b>SOUTH MINTURN ADDITION</b> <b>A RESUB OF LOT 51</b> Loc. in the NE1/4 Of Section 35, T5S, R81W, 6TH P.M. Town of Minturn, County of Eagle, Colorado		<b>KIPP LAND SURVEYING</b> <b>RANDY KIPP P.L.S.</b> P.O. Box 3154 Eagle, CO 81631 (970) 390-9540 email: randy@kipplandsurveying.com web: kipplandsurveying.com
JOB NO.: 201129 SHEET 1 OF 2	DATE: 03-18-2021 DWG NAME: 201129-SMA RE 1.51	

**FINAL PLAT**  
**SOUTH MINTURN ADDITION**  
**A RESUBDIVISION OF LOT 51**

LOCATED IN THE NE1/4 OF SECTION 35, T5S, R81W, 6TH P.M.  
 TOWN OF MINTURN, COUNTY OF EAGLE, STATE OF COLORADO

0992  
 LOT 50  
 SOUTH MINTURN ADDITION  
 Henry and Linda Brightwell  
 Rec.No. 201516590

0994  
 LOT 1  
 8581.54 SQ.FT.  
 0.1970 Acres

0996  
 LOT 2  
 6872.05 SQ.FT.  
 0.1578 Acres

0998  
 LOT 3  
 14,403.38 SQ.FT.  
 0.3307 Acres

EAGLE RIVER  
 VAIL CORP  
 BOOK 217 PAGE 120

FOUND SURVEY MONUMENT  
 1.5" ALUMINUM CAP,  
 ON #5 REBAR, LS # 11204  
 STAMPED W.C.,  
 HELD AS 6.22' WITNESS CORNER

FOUND SURVEY MONUMENT  
 2.5" BRASS CAP ON 1" PIPE  
 N 1/4 CORNER SECTION 35, T5S, R81W

POINT OF BEGINNING  
 FOUND SURVEY MONUMENT  
 1.5" ALUMINUM CAP  
 ON #5 REBAR, LS #38079

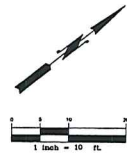
R=2825.00'  
 L=134.57'  
 CH.B.=N56°36'04"W  
 CH.L.=134.56' (M)  
 TAN = 67.30'  
 I = 2'43.96"

U.S. HIGHWAY NO. 24  
 (80' R.O.W.)  
 C.D.O.T. PAP NO.292-B

Lot 1 & 3 Curve Table					
Curve #	Radius	Length	Delta	Chord Bearing	Chord Length
C1	2825.00'	34.09'	0°41'29"	N55°34'55"W	34.09'
C2	2825.00'	100.49'	2°02'17"	S56°58'46"E	100.48'

Deed Line Table		
Line #	Direction	Length
L1	N38° 31' 53"E	210.07'
L2	S65° 42' 19"E	138.44'
L3	S38° 52' 09"W	232.12'
L4	N57° 25' 00"W	82.79'
L5	N55° 21' 00"W	50.39'

- LEGEND**
- DESIGNATES HIGHWAY MARK
  - DESIGNATES EASEMENT
  - DESIGNATES EASEMENT
  - DESIGNATES EASEMENT
  - DESIGNATES EASEMENT
  - DESIGNATES BOUNDARY LINE
  - DESIGNATES C.D.O.T. R.O.W.
  - DESIGNATES ADJACENT PROPERTY
  - DESIGNATES EASEMENT
  - DESIGNATES FEMA 100 YEAR FLOODWAY
  - DESIGNATES OVERHEAD WIRE



**FINAL PLAT**  
**SOUTH MINTURN ADDITION**  
**A RESUBDIVISION OF LOT 51**  
 Loc. in the NE1/4 Of Section 35, T5S, R81W, 6TH P.M.  
 Town of Minturn, County of Eagle, Colorado

JOB NO.: 201129      DATE: 03-18-2021  
 SHEET 2 OF 2      DWG NAME: 201129-SMA RE L51

**KIPP LAND SURVEYING**

RANDY KIPP P.L.S.  
 P.O. Box 3154  
 Eagle, CO 81631  
 (970) 390-9540  
 email: randy@kipplandsurveying.com  
 web: kipplandsurveying.com

202107185

**Ad Number**      **Ad Type**  
 0000685417-01    CMN Legal Line

**Production Method**      **Production Notes**  
 AdBooker

**External Ad Number**      **Ad Attributes**      **Ad Released**      **Pick Up**  
 No

**Ad Size**      **Color**  
 1 X 54 li

**WYSIWYG Content**

TOWN OF MINTURN, COLORADO ORDINANCE NO. 03 – SERIES 2021  
 AN ORDINANCE OF THE TOWN OF MINTURN, COLORADO AMENDING ARTICLE 2, CHAPTER 16 OF THE MINTURN MUNICIPAL CODE.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEBSITE THE 5th DAY OF MAY 2021. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 19th DAY OF MAY, 2021 AT 5:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO

John Widerman IV, Mayor  
 ATTEST:  
 By:  
 Jay Brunvand, Town Clerk

TOWN OF MINTURN, COLORADO ORDINANCE NO. 04 – SERIES OF 2021  
 AN ORDINANCE OF THE TOWN OF MINTURN, COLORADO, REZONING LOT 1 AND LOT 2, LUCERO SUBDIVISION. FROM COMMERCIAL TO RESIDENTIAL IN CONFORMANCE WITH THE TOWN OF MINTURN MASTER PLAN AND LAND USE CODE

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEBSITE THE 5th DAY OF MAY, 2021. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 19th DAY OF MAY, 2021 AT 5:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

John Widerman IV, Mayor  
 ATTEST:  
 By:  
 Jay Brunvand, Town Clerk

Published in the Vail Daily on May 8, 2021.  
 0000685417

<u>Run Date</u>	<u>Product</u>	<u>Placement</u>	<u>Rate</u>	<u>Sched Cst</u>	<u>Disc/Prem</u>	<u>Color</u>	<u>Pickup</u>	<u>Tax</u>	<u>Subtotal</u>
05/08/2021	CMN Online Regional A	LEGALS CMN	\$0.00 per Inch	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
05/08/2021	CMN Vail Daily	LEGALS CMN	\$6.24 per Inch	\$28.08	\$0.00	\$0.00	\$0.00	\$0.00	\$28.08



To: Mayor and Council  
From: Madison Harris, Planner I  
Date: May 14, 2021  
Agenda Item: Ordinance No. 3, Series 2021

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**REQUEST:**

Review of the Chapter 16 Lot Standards Amendment Ordinance recommended to Council by the Planning Commission from their regular meeting of April 28th, 2021.

As discussed during the May 5th Council meeting, residential development will conform to residential standards if it is built within a Mixed Use or a Commercial Zone. The ordinance has been amended between first and second reading to reflect this decision and to clarify Council's intent to incentivize and preserve the commercial, sales-tax generating character of the Town's Mixed Use and Commercial Zone Districts.

**INTRODUCTION:**

The attached ordinance is presented for consideration by the Town Council. The ordinance addresses amendments in the following sections of the Minturn Municipal Code, Chapter 16 – *Zoning*:

1. **Section 16-2-40 - General lot requirements and dimensional standards**
2. **Section 16-2-50 - Specific lot requirements and dimensional standards**

During the review of Chapter 16 over the past two years, staff and the Planning Commission have focused primarily on zone district standards and uses, as well as dimensional limitations and other specific standards applicable to all development in the Town.

1. **Section 16-2-40 - General lot requirements and dimensional standards**

**Issue:**

The current building and impervious coverage standards in some zone districts are not reflective of the built environment and/or are preventing some home owners from making modest improvements or expansions to their existing buildings, thus hindering the Town's goals to incentivize locals to stay in Minturn, and in some cases, forcing property owners to apply for variances in order to make improvements that would add to the Town's housing stock through the creation of Accessory Dwelling Units. Building coverage is the amount of a lot covered by the "footprint" of buildings, while impervious (or nonpermeable) coverage is the additional amount of the same lot covered by things like driveways and other hard surfaces that do not permit water from permeating into the ground. Typically, lot coverage is combined with impervious coverage to arrive at a maximum percentage of the lot that can be covered by both (so, if

building coverage is limited to 40%, and an additional ten percent of the lot can be coverage by impervious materials, the building coverage is 40% and impervious coverage limit is 50%).

The current building and impervious coverage standards in some zone districts such as the Old Town Mixed Use and Old Town Residential, if increased slightly, would provide enough flexibility in most cases to allow or incentivize such improvements. Over the past two years, staff and the Planning Commission have reviewed the uses allowed as well as the dimensional limitations in each zone district and the proposed changes are reflective of those conversations and the direction given by the Planning Commission to adjust lot and/or impervious coverage limits.

**Recommendation:**

Staff is proposing to increase these standards by 5-10 percentage points in most zone districts in order to give people that flexibility. This will result in most residential zone districts ranging from 40-50% building coverage and 50-60% impervious coverage, except for Martin Creek which is at 20% building coverage. The commercial zone districts range from 70-80% building coverage and 80-90% impervious coverage. The two Mixed Use zone districts (Old Town and Cross Creek), which are typically more akin to a commercial district as far as intent and allowable uses, are proposed to increase more dramatically from 45% building coverage and 55% impervious coverage, to 70% building coverage and 80% impervious coverage to encourage more dense and/or commercially oriented development in core areas of Town along Hwy. 24. However, as discussed with Council during their regular meeting of May 5, 2021, residential development will be required to conform to residential standards in Mixed Use and Commercial zone districts.

**2. Section 16-2-50 - Specific lot requirements and dimensional standards**

**Issue:**

The Code does not provide clear or consistent treatment when it comes to the 30 foot Live Stream Setback; a standard listed and discussed under Section 16-2-50, Specific lot requirements and dimensional standards. The intention of the live stream setback is to preserve or restore the riparian zones along the Eagle River (as well as other live streams in Town) to a natural state as a matter of environmental protection of water resources, wildlife habitat and flood protection. Establishment of this setback in 2008 has allowed the Town to incrementally work with property owners along the Eagle River, for instance, to remove pre-existing non-conforming structures and other human made improvements (landscaping, fire pits, walls or patios) from this setback area; and, it has allowed the Planning Commission to work with property owners and their architects during the review of new or redevelopment projects to adhere to the setback and to create landscape plans that further the goals of the Town in protecting these areas. The requirements of the live stream setback currently do not permit ANY encroachment of buildings into the 30 foot setback.

**Recommendation:**

Staff is proposing the amendment of the subsections within Sec. 16-2-50 to better encapsulate the intention of the 30 foot live stream setback while addressing topics brought up in previous Planning Commission meetings such as how minor encroachments of a roof eave - an above ground element of the structure - may or may not impact the live stream setback. Essentially, staff and the Planning Commission believe that while restricting building foundations and building walls (or other permanent structures) at ground level from encroaching into the 30 foot



setback is the core intent of the live stream setback regulations, permitting minor encroachments of roof eaves will have no material or detrimental effect on the proper functioning and intent of the live stream setback.

Over the past several years, the amount and types of land use applications have increased and have become increasingly complex. As the Town continues to receive more new development and redevelopment proposals, amending these chapters is important to:

- Ensure proper, predictable and consistent due process for applicants and citizens.
- Promote accurate and informed decision making by the Planning Commission and Town Council when considering land use applications by ensuring that applications are complete and that issues identified during the completeness period are addressed to the highest extent prior to presenting applications to either decision making body.

**ANALYSIS:**

In reviewing the Ordinance, the Planning Commission considered the viability of different lot coverage and impervious coverage percentages. Since these topics have already been discussed at length during multiple public meetings over the past two years while working through the Chapter 16 Draft Update the Planning Commission is recommending approval to the Town Council of the ordinance amending Chapter 16, Article 2. Additional work remains to complete the full update to Chapter 16 and staff will continue to process changes to the Code as time permits.

**COMMUNITY INPUT:**

Over the past two years, several members of the development community and the general public have been involved and have testified during publicly noticed Planning Commission work sessions and public hearings concerning proposed changes to Chapter 16. With regard to the proposed ordinance, no members of the public spoke at the public hearing held by the Planning Commission on April 28, 2021. Public notice was provided in accordance with the Minturn Municipal Code as a matter of posting of the official agenda and packet materials for public review prior to the hearing, as well as the requirements in Section 16-21-610 of the Minturn Municipal Code.

**BUDGET / STAFF IMPACT:**

N/A.

**STRATEGIC PLAN ALIGNMENT:**

The Town Council’s review and approval of the ordinance aligns with the following key strategies:

**PRACTICE FAIR, TRANSPARENT AND COMMUNICATIVE LOCAL GOVERNMENT**

THE TOWN WILL SEEK TO MAKE INFORMED, DATA-BASED DECISIONS WITH A STANDARD OF “DOING IT RIGHT.” WITH AN HONEST APPROACH TO ALL ASPECTS OF LOCAL GOVERNMENT AND A FOCUS ON THE PUBLIC PROCESS, THE TOWN COUNCIL AND STAFF ARE COMMITTED TO SERVING MINTURN WITH THE HONESTY AND INTEGRITY EXPECTED OF A SMALL-TOWN GOVERNMENT.

**ADVANCE DECISIONS/PROJECTS/INITIATIVES THAT EXPAND FUTURE OPPORTUNITY AND VIABILITY FOR MINTURN**

The ability for Minturn to approach development as **resilient, sustainable, creative and diverse** and specifically recognizing and acting on the need to permit flexibility in certain Code requirements and/or to make adjustments based on best practices will allow the town to continue embracing what has **“made Minturn, Minturn.”** The town can further leverage its crossroads location as a valley-wide benefit and **competitive advantage**.

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Approve the following ordinance:

“Ordinance No. 3, Series 2021, An ordinance of the Town of Minturn, Colorado amending Article 2, Chapter 16 of the Minturn Municipal Code”

**ATTACHMENTS:**

- Chapter 16 Lot Standards Amendment Ordinance

**TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 03 – SERIES 2021**

**AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO AMENDING ARTICLE 2, CHAPTER 16 OF  
THE MINTURN MUNICIPAL CODE.**

**WHEREAS**, the Town of Minturn (“Town”) is a Colorado home rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Town of Minturn Home Rule Charter for which the Minturn Town Council (“Town Council”) is authorized to act; and

**WHEREAS**, the Planning Director has initiated and proposed the text amendment to Minturn Municipal Code Chapter 16, the Town Land Use Regulations, Article 2, Definitions, Illustrations and Lot Standards as provided herein; and

**WHEREAS**, on April 28, 2021 the Minturn Planning Commission recommended approval of this ordinance; and

**WHEREAS**, the Minturn Planning Commission and Town Council have determined that the text amendments to the Land Use Regulations Chapter 16 as provided herein are necessary and proper.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO:

SECTION 1. The foregoing recitals are incorporated herein as if set forth in full.

SECTION 2. Article 2, Chapter 16 of the Minturn Municipal Code is hereby amended read as follows, with additions shown in double underlined text and ~~striketrough language~~ is deleted. Sections of Chapter 16 which are not expressly described in this Ordinance are deemed to continue to be in full effect without change.

**ARTICLE 2 - Definitions, Illustrations and Lot Standards**

\* \* \*

**Sec. 16-2-40. - General lot requirements and dimensional standards.**

The following Table 16-A sets forth general lot requirements and dimensional standards:

**TABLE 16-A  
Dimensional Standards**

Character Area	Zones	Min. Lot Area (sq. ft.)	Min. Lot Dimension (feet)	Maximum Building Lot Coverage (%)	Maximum Impervious Surface Area (%)	Minimum Setbacks			Live Stream River/Creek Setback (ft) <del>Not to be included in lot square footage for purposes of Maximum Building Lot Coverage and Maximum Impervious Surface Area</del>
						Front	Rear (feet)	Side	

Meadow Mountain	Fed. reg. land use	N/A	N/A	N/A		Rec. 50	N/A	N/A	Rec. 30
Grouse Creek	Commercial	5,000	50	70	<u>80</u>	20	10	10	Eagle River=30 Grouse Creek=30
Old Town	Recreation & open space	To be determined as part of conditional review							30
	Residential	5,000	50	<del>45</del> 40	<del>55</del> 50	10	10	5	
	100 Block Commercial	2,500	25	80	<u>90</u> ±10	10	10	±5	
	Commercial	2,500	25	80	<u>90</u>	0	10	5	
	Mixed-use; <u>Residential</u> <u>Commercial</u>	5,000 <u>5,000</u>	50 <u>50</u>	<del>45</del> (Note 1) <u>70</u>	<del>55</del> <u>80</u>	10 <u>10</u>	10 <u>10</u>	5 <u>5</u>	
South Town	Residential	5,000	50	<del>45</del> 40	<del>55</del> 50	20	10	5	30
	Commercial	7,500	50	<del>80</del> 70	<u>90</u>	20	10	5	
	Fed. reg. land use	N/A	N/A	N/A		Rec. 50	Rec. 20	Rec. 10	
Martin Creek	Residential estate	87,120 or 2 AC	N/A	<del>20</del> N/A		40	20	20	30
Cross Creek	Residential-S	5,000	50	<del>50</del> 40	<u>60</u>	20	10	10	Eagle River=30 Cross Creek=50
	Residential-N	10,000	100	<del>40</del> 25	<u>50</u>	20	10	10	
	Mixed-use	10,000	100	<del>70</del> 40	<u>80</u>	20	10	10	
	Fed. reg. land use	N/A	N/A	N/A		Rec. 50	Rec. 20	Rec. 10	
Lionshead	Recreation & open space	N/A	N/A	N/A		To be determined as part of conditional use review			30
	Light ind. & public facilities	10,000	100	45		25	25	10	
Game Creek	Residential	5,000	50	40	50	20	10	5	Game Creek=30
Railroad	PUD holding zone	To be determined as part of the PUD review							Eagle River=30
Eagle River	Recreation & open space	To be determined as part of the conditional use review							Eagle River=30
Transportation	Railroad R-O-W/Transportation	To be determined as part of the conditional use review							

~~Note 1. Old Town mixed use minimum lot coverage may be increased from 40% to 45% if ground floor commercial space is provided.~~

For any and all lots within the Old Town Mixed-Use zone district, if a proposed use and/or development on a lot is 100% residential in nature, such use and/or development must conform to allowable residential standards (45% building lot coverage and 55% impervious). However, if such use and/or development includes bona fide ground floor retail and/or sales tax generating commercial uses as the primary use of the property; any residential uses included as a mixed-use development are secondary or ancillary; and, all other development standards are met, then the use and/or development may conform to the commercial standards (70% building lot coverage and 80% impervious coverage).

**Sec. 16-2-50. - Specific lot requirements and dimensional standards.**

- (a) Portions of a lot contained in a river or creek as defined by the ordinary high-water mark, shall not be included in the lot's square footage for purposes of calculating the maximum building lot coverage or the maximum impervious surface area.
- (b) Live stream Ssetback from river/creeks. A strip of land measured horizontally from the ordinary high water mark on each side of any live stream, river, or creek shall be protected in its natural state free from human made structures or other improvements and appurtenances, and vegetated with natural riparian vegetation. If necessary to protect the live stream, river or creek, additional river/creek setback distances may be required by the Planning Commission. The following exceptions may be considered by the Planning Commission and/or the Town Council on a case-by-case basis:
  - (1) Underground utilities may be located in the live stream river or /creek setback; provided, however, that there is no practical alternative location for such utilities, and that plans and/or reports related to proposed disturbance within the setback area are prepared by qualified professionals showing limits of disturbance, erosion control measures and revegetation are approved by the Town Council as a conditional use and that all construction scars are revegetated. Otherwise, river and creek setbacks are to remain natural vegetation.
  - (2) Roof overhangs may project a maximum of eighteen (18) inches into the live stream setback if the Planning Commission determines that such encroachments do not detrimentally impact the proper, natural functioning of the protected live stream setback area.
- ~~(c) The river or creek setback shall remain, or be re-vegetated to, natural riparian vegetation. No manmade structures may be placed in the river or creek setback except as permitted by this Chapter 16.~~
- ~~(d)~~ The ordinary high water mark shall be identified by a licensed professional surveyor on all applicable surveys, plats and plans required under this Chapter 16.
- ~~(e)~~ The minimum setback between two (2) structures on the same lot is six (6) feet.
- ~~(f)~~ Garage doors in the Old Town Character Area facing Main Street must be set back at least eighteen (18) feet from the lot line.
- ~~(g)~~ Fences and boundary walls are allowed in the setbacks subject to the following limitations.
  - (1) Height shall not exceed six (6) feet in the rear yard setback.
  - (2) Height shall not exceed six (6) feet in the side yard setback located from the front of the primary structure on the lot and the rear lot line and shall not exceed four (4) feet from the front of the primary structure on the lot and the front yard lot line. Clear vision requirements may be more restrictive.

- (3) Height shall not exceed four (4) feet in the front yard setback.
  - (4) Height of fences shall be measured from natural grade adjacent to or underneath the fence to avoid the appearance of artificially raised fence structures; berms or retaining walls may be used underneath or in combination with fences located within setback areas, however fence height will be measured from the base elevation (bottom of wall or toe of slope of a berm) adjacent to or underneath the fence to establish maximum height.
- (hg) Encroachments of architectural features—Rear yard. The following architectural features may encroach into the rear yard setback but must be a minimum of five (5) feet from the rear lot line(s):
- (1) Unroofed terraces or patios, not to exceed forty-eight (48) inches above grade.
  - (2) Chimneys.
  - (3) Awnings or shading devices.
- (ih) Encroachments of architectural features—Front yard:
- (1) Bay windows, including roof overhangs or eave lines, may encroach up to three (3) feet into the required front yard setback area.
- (ji) Roofed terraces, decks and patios are not permitted in the required setbacks.
- (kj) All cantilevered building elements and areas count toward maximum building lot coverage and maximum impervious lot coverage.
- (~~lk~~) A maximum of eighteen (18) inches of roof eave may encroach into the required front, rear, and side and live stream yard setbacks. ~~No encroachment of structures or roof eaves is permitted within the thirty-foot live stream setback area.~~
- (ml) The first ten (10) feet of the front yard setback shall be dedicated to landscaping, except for driveways and non-motorized sidewalks and trails. This requirement does not apply to commercial and mixed-use zones in the Old Town Character Area.
- (~~nm~~) For structures two (2) or three (3) stories in height, a maximum roof length of sixty (60) feet in one (1) direction is allowed. After sixty (60) feet, the roof height needs to be lowered by a minimum of nine (9) feet for a minimum run of twenty (20) feet in length or change directions a minimum of ninety (90) degrees for a minimum length of twenty (20) feet.
- (on) Sheds.
- (1) To constitute a shed that does not require a building permit, the structure shall be no larger than one hundred twenty (120) square feet in ground floor area and no higher than twelve (12) feet. Sheds in excess of one hundred twenty (120) square feet of ground floor area or twelve (12) feet in height require a building permit.
  - (2) Sheds must be located in the rear or side yards, but such structures may not encroach into the side yard setbacks. A shed may encroach in the rear yard setback so long as it is a minimum of five (5) feet from all lot lines.
  - (3) Sheds in all character areas and zones require a limited use review permit approved by the Planning Director. The denial of a limited use review permit by the Planning Director may be appealed to the Planning and Zoning Commission.

- (4) Sheds count toward the maximum impervious surface lot requirements.
- (p) Greenhouses.
  - (1) In all zones, a permanent greenhouse (which is not fully deconstructed and removed prior to winter) which exceeds one hundred twenty (120) square feet in the ground floor area or exceeds twelve (12) feet in height must receive a limited use review permit approved by the Planning Director and obtain a building permit. The denial of a limited use review permit by the Planning Director may be appealed to the Planning and Zoning Commission.
  - (2) Permanent greenhouses shall be counted toward maximum impervious lot coverage requirements.
  - (3) Non-permanent greenhouses (which are fully deconstructed and removed prior to winter every year) do not count toward maximum impervious lot coverage requirements.
- (q) Any residential structure constructed in a commercial zone district must comply with the applicable residential maximum building lot coverage limitation, the residential maximum impervious structure limitation, the residential building height limitation and residential set back requirements.

**INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEBSITE THE 5<sup>th</sup> DAY OF MAY 2021. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 19<sup>th</sup> DAY OF MAY, 2021 AT 5:30 p.m. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.**

**TOWN OF MINTURN, COLORADO**



**John Widerman IV, Mayor**

**ATTEST:**

By:   
**Jay Brunvand, Town Clerk**

**THE TOWN OF MINTURN, COLORADO, ORDAINS THIS ORDINANCE ENACTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THIS 19<sup>th</sup> DAY OF MAY, 2021.**

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**TOWN OF MINTURN, COLORADO**

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**John Widerman IV, Mayor**

**ATTEST:**

**By:** \_\_\_\_\_  
**Jay Brunvand, Town Clerk**





To: Mayor and Council  
From: Scot Hunn, Planning Director  
Date: May 14, 2021

Agenda Item: Resolution No. 14, Series 2021 - Housing IGA

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**REQUEST:**

Review of the resolution and Intergovernmental Agreement (IGA) by and between the Town of Minturn and the Eagle County Housing and Development Authority.

**INTRODUCTION:**

The attached resolution and IGA is presented for consideration by the Town Council following adoption of the Town of Minturn Inclusionary (Community) Housing Ordinance in July 2020.

**ANALYSIS:**

The attached resolution and IGA between the Town and the Eagle County Housing and Development Authority (ECHDA) has been discussed since adoption of the Town’s housing ordinance, housing guidelines and housing administrative procedures in July 2020 as the primary mechanism to ensure that the Town’s ordinance, guidelines and administrative procedures are properly and professionally administered to achieve the Town’s affordable, community housing goals and objectives.

Therefore, the intent of the IGA is to contract with ECHDA to provide administrative services and expertise via the “Valley Home Store” in return for compensation for the review of new residential developments in the Town as well as other services pertaining to the creation and/or preservation of locals, or community housing in Minturn.

This agreement is needed to ensure that the Town’s housing guidelines and administrative procedures (two separate documents) are properly interpreted, enforced and amended from time to time to adjust to market conditions, public policy changes, and best practices over time.

The IGA permits annual renewal through administrative action and can be terminated by either party with proper notice.

**COMMUNITY INPUT:**

Since 2019, several members of the development community and the general public have been involved and have testified during publicly noticed Planning Commission work sessions and public hearings as well as Town Council hearings related to the drafting and adoption of the Town’s first inclusionary (Community) housing ordinance. Public notice for the May 19, 2021 Council meeting was provided in accordance with the Minturn Municipal Code as a matter of posting of the official agenda and packet materials for public review prior to the hearing, as well as the requirements in Section 16-21-610 of the Minturn Municipal Code.

**BUDGET / STAFF IMPACT:**

Compensation amounts and terms are listed in the IGA and will be billed monthly. Compensation terms and amounts may be amended from time to time administratively by the Town Manager.

**STRATEGIC PLAN ALIGNMENT:**

The Town Council’s review and approval of the resolution and IGA aligns with the following key strategies:

**PRACTICE FAIR, TRANSPARENT AND COMMUNICATIVE LOCAL GOVERNMENT**

THE TOWN WILL SEEK TO MAKE **INFORMED, DATA-BASED DECISIONS** WITH A **STANDARD OF “DOING IT RIGHT.”** WITH AN **HONEST** APPROACH TO ALL ASPECTS OF LOCAL GOVERNMENT AND A FOCUS ON THE **PUBLIC PROCESS**, THE TOWN COUNCIL AND STAFF ARE COMMITTED TO SERVING MINTURN WITH THE HONESTY AND INTEGRITY EXPECTED OF A SMALL-TOWN GOVERNMENT.

**ADVANCE DECISIONS/PROJECTS/INITIATIVES THAT EXPAND FUTURE OPPORTUNITY AND VIABILITY FOR MINTURN**

The ability for Minturn to approach development as **resilient, sustainable, creative and diverse** and specifically recognizing and acting on the need to permit flexibility in certain Code requirements and/or to make adjustments based on best practices will allow the town to continue embracing what has **“made Minturn, Minturn.”** The town can further leverage its crossroads location as a valley-wide benefit and **competitive advantage**.

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Approve the following resolution:

“Resolution No. 14, Series 2021, A Resolution of the Town of Minturn, Colorado approving an Intergovernmental Agreement between the Town of Minturn and the Eagle County Housing and Development Authority for housing services.”

**ATTACHMENTS:**

- Resolution No. 14, Series 2021
- Housing IGA

**TOWN OF MINTURN, COLORADO  
RESOLUTION NO. 14 – SERIES 2021**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE  
TOWN OF MINTURN TO SIGN AN  
INTERGOVERNMENTAL AGREEMENT BETWEEN  
EAGLE COUNTY HOUSING DEVELOPMENT  
AUTHORITY AND THE TOWN OF MINTURN,  
COLORADO**

**WHEREAS**, The Town of Minturn, in the County of Eagle and the State of Colorado is a home rule municipal corporation duly organized and existing under the laws of the State of Colorado and the Town Charter; and

**WHEREAS**, the Town adopted the Town of Minturn Community Housing Resolution on July 1, 2020 (the “Guidelines”), a copy of which is attached as Exhibit B and incorporated herein by this reference; and

**WHEREAS**, the Town desires to contract with ECHDA for the performance of the hereinafter described affordable-housing services on the terms and conditions hereinafter set forth; and

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO THAT THE MAYOR OR HIS DESIGNEE IS AUTHORIZED TO SIGN ON BEHALF OF THE TOWN OF MINTURN ANY AND ALL NEGOTIATED DOCUMENTS REQUIRED TO EXECUTE SAID AGREEMENTS.**

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 19<sup>TH</sup> day of May, 2021.**

TOWN OF MINTURN

By: \_\_\_\_\_  
John Widerman, Mayor

ATTEST:

\_\_\_\_\_  
Jay Brunvand, Town Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
EAGLE COUNTY HOUSING AND DEVELOPMENT AUTHORITY  
AND THE TOWN OF MINTURN**

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between the Eagle County Housing and Development Authority, a body corporate and politic ("ECHDA") and the Town of Minturn, a municipal corporation (the "Town").

**WITNESSETH**

WHEREAS the Town adopted the Town of Minturn Community Housing Resolution on July 1, 2020 (the "Guidelines"), a copy of which is attached as Exhibit B and incorporated herein by this reference; and

WHEREAS, the median price of free market housing in the Town of Minturn exceeds what residents earning the area median income can afford, creating a lack of housing affordable for the local workforce of the Town; and

WHEREAS, the Urban Land Institute recommended forming a regional housing body to address the lack of affordable housing with participation from public and private sectors throughout Eagle County; and

WHEREAS, in a multi-jurisdictional effort, ECHDA has opened a centralized affordable housing management organization known as The Valley Home Store ("TVHS") to provide one physical and electronic location in Eagle County to purchase housing stock affordable to Eagle County's workforce; and

WHEREAS, the Town desires to contract with ECHDA for the performance of the hereinafter described affordable-housing services on the terms and conditions hereinafter set forth; and

WHEREAS, ECHDA is agreeable to rendering such affordable-housing services on the terms and conditions hereinafter set forth.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree hereby as follows:

1. Services or Work. ECHDA agrees to diligently provide all services, labor, personnel and materials necessary to perform and complete the services or work described in Exhibit A ("Services" or "Work") which is attached hereto and incorporated herein by reference. The Services shall be performed in accordance with the provisions and conditions of this Agreement.

In the event of any conflict or inconsistency between the terms and conditions set forth in Exhibit A and the terms and conditions set forth in this Agreement, the terms and conditions set forth in this Agreement shall prevail.

2. Term of the Agreement. This Agreement shall commence upon the date first written above, and subject to the right to terminate set forth herein, shall continue in full force and effect through the 31st day of December, 2021. Either party shall have the right to terminate this agreement with or without cause at any time by giving the other party thirty (30) days' prior written notice of termination. Upon termination, ECHDA shall be entitled to compensation for services performed prior to such termination, and both parties shall thereafter be relieved of any and all duties and obligations under this Agreement.

3. Extension or Modification. Town and ECHDA may mutually renew and extend the Agreement for additional one-year terms. Such renewal and extension shall occur by Town sending via e-mail a renewal request ("Renewal Request") to ECHDA. ECHDA may accept the Renewal Request via e-mail. Any other change or modification to the Agreement shall be in writing signed by each party. The Minturn Town Manager may approve Renewal Requests and rate adjustments on behalf of the Town.

4. Compensation. Town shall compensate ECHDA for the performance of the Services in a sum computed and payable as set forth in Exhibit A.

- a. Payment will be made for Services satisfactorily performed within thirty (30) days of receipt of a proper and accurate invoice from ECHDA. All invoices shall include detail regarding the hours spent, tasks performed, who performed each task and such other detail as Town may request.
- b. Notwithstanding anything to the contrary contained in this Agreement, Town shall have no obligations under this Agreement after, nor shall any payments be made to ECHDA in respect of any period after December 31 of any year, without an appropriation therefor by Town in accordance with a properly adopted budget.

5. Personnel. ECHDA and TVHS and their respective staff shall have full cooperation from the Town of Minturn and its employees, so as to facilitate the performance of this Agreement.

- a. All persons employed in the performance of such Services for the Town of Minturn, pursuant to this Agreement, shall be employees of Eagle County Government. Staff working at TVHS are licensed real estate agents in the state of Colorado. The Valley Home Store is a licensed real estate brokerage company.
- b. The rendition of the Services provided for herein, the standards of performance, the discipline of staff, and other matters incident to the performance of such services and the control of personnel so employed, shall remain with ECHDA.

6. Liability and Insurance. ECHDA, its officers and employees, shall not be deemed to assume any liability for intentional or negligent acts, errors, or omissions of the Town or of any officer or employee thereof. Likewise, the Town, its officers and employees, shall not be deemed to assume any liability for intentional or negligent acts, errors or omissions of ECHDA or by any officer or employee thereof.

- a. ECHDA agrees to indemnify, defend and hold harmless to the extent allowed by law, the Town, its respective agents, officers, servants and employees of and from any and all loss, costs, damage, injury, liability, claims, liens, demands, action and causes of action whatsoever, arising out of or related to ECHDA's intentional or negligent acts, errors or omissions or that of its agents, officers, servants, and employees, whether contractual or otherwise. Likewise, the Town agrees to indemnify, defend and hold harmless to the extent allowed by law, ECHDA, its respective agents, officers, servants and employees of and from any and all loss, costs, damage, injury, liability, claims, liens, demands, action and causes of action whatsoever arising out of or related to the Town's intentional or negligent acts errors or omissions or that of its agents officers, servants and employees, whether contractual or otherwise.
- b. ECHDA and the Town shall respectively provide its own public liability, property damage, and errors and omissions insurance coverage as each party may deem adequate and necessary for any potential liability arising from this Agreement. Further, ECHDA and the Town, respectively, shall name, subject to the approval of each respective party's insurance carriers, the other respective party as a co-insured under such insurance policies to the extent of any potential liability arising under this Agreement and, upon reasonable written request, shall furnish evidence of the same to the other respective party.

7. Notice. All notices, requests, consents, approvals, written instructions, reports or other communication by the Town of Minturn and ECHDA, under this Agreement, shall be in writing and shall be deemed to have been given or served, if delivered or if mailed by certified mail, postage prepaid or hand delivered to the parties as follows:

Eagle County Housing And Development Authority  
Attention: Kim Bell Williams, Executive Director  
500 Broadway  
Post Office Box 850  
Eagle, CO 81631  
Telephone: 970-328-8773  
Facsimile: 970-328-8787  
E-mail: kim.williams@eaglecounty.us

With a copy to:  
Eagle County Attorney  
500 Broadway  
Post Office Box 850

Eagle, Co 81631  
Telephone: 970-328-8685  
Facsimile: 970-328-8699  
E-mail: [atty@eaglecounty.us](mailto:atty@eaglecounty.us)

TOWN:  
Town of Minturn  
Attention: Michelle Metteer, Town Manager  
301 Boulder St #309  
Minturn, CO 81645  
Telephone: (970)827-5645 x8  
Facsimile: (970) 827-5545  
E-mail: [manager@minturn.org](mailto:manager@minturn.org)

With a copy to:  
Karp Neu Hanlon, P.C.  
Attn: Michael J. Sawyer  
201 14th Street, Suite 200,  
P.O. Drawer 2030,  
Glenwood Springs, CO 81602  
Telephone: (970) 945-2261  
Facsimile: (970) 945-7336  
Email: [mjs@mountainlawfirm.com](mailto:mjs@mountainlawfirm.com)

Either party may change the address to which notices, requests, consents, approvals, written instructions, reports or other communications are to be given by a notice of change of address given in the manner set forth in this paragraph.

8. Miscellaneous.

- a. This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceedings against either the Town or ECHDA because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.
- b. No modification or waiver of this Agreement or of any covenant, condition, or provision herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. In the event that the Town amends its Ordinance No. 7, Series 2020, the parties shall make best efforts to amend this Agreement to conform therewith.
- c. This written Agreement embodies the whole agreement between the parties hereto and there are no inducements, promises, terms, conditions, or obligations made or entered into either by ECHDA or the Town other than those contained herein.

- d. This Agreement shall be binding upon the respective parties hereto, their successors or assigns and may not be assigned by anyone without the prior written consent of the other respective party hereto.
- e. All agreements and covenants herein are severable, and in the event that any of them shall be held invalid by a court of competent jurisdiction, this Agreement shall be interpreted as if such invalid Agreement or covenant were not contained herein.
- f. The Town has represented to ECHDA and, likewise, ECHDA has represented to the Town that it possesses the legal ability to enter into this Agreement. In the event that a court of competent jurisdiction determines that either of the parties hereto did not possess the legal ability to enter into this Agreement, this Agreement shall be considered null and void as of the date of such Court determination.
- g. The making and execution of this Agreement shall not be deemed to create any partnership, joint venture, or other relationship between the parties or any of them, and no party shall be deemed an agent of any other party because of this Agreement or anything contained herein.
- h. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.
- i. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the Town, it shall be subject to annual appropriation pursuant to the parties' respective codes and Article X, Section 20 of the Colorado Constitution. Neither party shall have any obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first set forth above.

EAGLE COUNTY HOUSING AND  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Matt Scherr, Chair

Attest:

By: \_\_\_\_\_  
Regina O'Brien, Clerk



TOWN OF MINTURN

By: \_\_\_\_\_  
John Widerman, IV, Mayor

Attest:

By: \_\_\_\_\_  
Jay Brunvand, Town Clerk

## EXHIBIT A

### SCOPE OF SERVICES AND FEES

The Valley Home Store, LLC (TVHS) was formed by the Eagle County Housing and Development Authority (ECHDA) in 2008 to be a multijurisdictional housing management organization that provides centralized services without requiring participating entities to cede control over local housing policy. ECHDA is the majority member of TVHS with 99.9% ownership. Economic Council of Eagle County is the only other member of the LLC. One goal of TVHS was to provide a single point of contact to affordable housing programs and consumers and thereby eliminating confusion, duplication of services, and cost inefficiencies. TVHS desires to eliminate redundancies and create common nomenclature for affordable housing programs throughout Eagle County.

TVHS currently manages and administers nine deed restriction programs through agreements with four different organizations. The administrative component includes qualifying buyers, annual residency affidavits, approving capital improvements, facilitating sales, and acting as a resource for Realtors, appraisers and lenders. TVHS also provides free education to the general public, foreclosure prevention or mitigation counseling, offers down payment assistance programs, and serves as a rental resource for the community. TVHS staff strives to provide excellent customer service in all of their work, evidenced by positive customer service surveys. TVHS staff are licensed Realtors and experienced in the resale of deed restricted housing units. All services offered by TVHS will be available for buyers or owners of Town of Minturn housing units.

All Services described below will be provided by ECHDA through TVHS.

1. Referral Services. The following services, hereinafter referred to as the “Referral Services” will be provided to the Town of Minturn (Town) by TVHS:  
TVHS will serve as a referral agency and resource to the Town, developers and Realtors on the Housing Plan regarding the requirements set forth in the Town’s Ordinance No. 7, Series 2020 regarding affordable housing, as may be amended from time to time, on a project by project basis as new units are brought to market. TVHS will review and consult in the land use process on a formal Housing Plan, and as a referral agent to consult on the following matters:
  - a. Assist developers and Realtors in understanding Ordinance No.7, Series 2020 and provide basic initial analysis including initial maximum sales price and market analysis.
  - b. Review as requested Housing Plans and provide analysis to Town staff and/or Town Council.
  - c. Attend work sessions with the Town Council or Planning Commission as requested and provide recommended best practices.
  - d. Assist developer and/or Listing Broker with initial deed restriction application and marketing development.
  - e. Qualify and approve initial buyers.
  - f. Prepare and provide required deed restricted documentation for initial closings.

\*Compensation for the Referral Services will be billed at the rate of \$60/hour. Invoices for Referral Services will be sent on a monthly basis, and due within thirty (30) days of the date of the invoice.

2. Sale and Resale Services. TVHS will assist with future sales and resales of the Town's deed restricted housing stock.
  - a. Includes all aspects of sales, from listing through closing of the unit ensuring compliance with all aspects of the deed restrictions.
  - b. TVHS staff will hold 2 open houses for each listing and/or provide individual unit showings as appropriate.
  - c. TVHS will cause units offered for sale to be advertised in accordance with the Guidelines.
  - d. TVHS will assist sellers, buyers, lenders, and appraisers through the process.
  - e. A TVHS representative will be physically present at the closing of all units to assist the buyer through the closing of the unit.
  - f. TVHS will comply with policies and procedures outlined in the Guidelines, as may be updated from time to time.

\*\*Compensation for the Sale and Resale Services to TVHS shall be the receipt of 2% of the deed restricted sales paid by the seller or as otherwise outlined in the deed restriction.

3. Community Resource Services. TVHS will serve as a resource to Town and consumers regarding the Town's affordable housing program as follows:
  - a. Communicate Town's information on TVHS website.
  - b. Provide at least one (1) in person Homebuyer education course, either in person or in a virtual setting.
  - c. Provide individual credit counseling or budgeting sessions to buyers or owners of Town units or down payment assistance programs.
  - d. Attend work sessions with the Town Council or Planning Commission as requested.
  - e. Provide best practices and recommendations for Housing Guidelines and/or down payment assistance program, if needed.
4. Compliance Services. For the Town's employee housing units, TVHS will:
  - a. Send owners/occupants up to 3 requests for affidavits and compile responses.
  - b. Provide a list of outstanding affidavits to Town by a mutually agreed upon date.
  - c. Make best efforts to inform the Town of any non-compliance issues.
  - d. Cooperate in Town enforcement actions through sharing of information.
  - e. For Compliance Services, the Town will maintain responsibility for enforcement and reimburse TVHS for any actual costs associated with providing these services, including mailing costs, if any.
5. Future Lottery Process. For future housing stock, the TVHS will:
  - a. Work with the Town to advertise lottery opening and closing dates.
  - b. Collect and score lottery applications.
  - c. TVHS understands that this process may change and will work with Town to

complete future lotteries or equivalent in accordance with policy set by the Town.  
d. Out of pocket costs (advertising) will be paid by the Town.

\*\*\*Compensation for the Services outlined above in paragraphs 3 through 5 will be billed at the rate of \$60/hour. For 2021, the maximum compensation allowed under this Agreement is \$2,000. An invoice for Services outlined in paragraphs 3 through 5 herein will be sent to the Town on or around December 1st each year, with payment being due within 30 days of invoice.

EXHIBIT B

**[INSERT SIGNED ORDINANCE]**

**TOWN OF MINTURN, COLORADO  
RESOLUTION 22 – SERIES 2020**

**A RESOLUTION TO APPROVE THE TOWN OF MINTURN  
COMMUNITY HOUSING RESIDENCY REQUIREMENTS AND  
GUIDELINES AND THE COMMUNITY HOUSING  
RESIDENCY REQUIREMENTS AND GUIDELINES:  
ADMINISTRATIVE PROCEDURES**

**WHEREAS**, the Town of Minturn (“Town”) is a legal and political subdivision of the State of Colorado for which the Minturn Town Council (“Town Council”) is authorized to act; and

**WHEREAS**, the Town is authorized by the Local Government Land Use Control Enabling Act of 1974, §29-20-101 through §29-20-108, C.R.S., as amended, and §31-23-301, C.R.S., as amended, to plan for and regulate the use of land within the Town’s jurisdiction, and to enact zoning, subdivision, and other land use and development regulations; and

**WHEREAS**, the Town Council and Planning Commission held various public work sessions and public hearings to receive public input on the adoption of local’s affordable housing tools and requirements in January, March, May and June of 2019; and

**WHEREAS**, the Town of Minturn 2019 Community Survey has identified affordable housing as a priority for the Town; and

**WHEREAS**, the 2009 Town of Minturn Community Plan adopted via Resolution No. 28, Series 2009, and the 2009 Town of Minturn Three Mile Plan for Annexation adopted via Resolution No. 3, Series 2009, set forth community visions, policy goals and implementing strategies calling for the provision of future housing opportunities and “affordable housing;” and

**WHEREAS**, the Town of Minturn 2018-2020 Strategic Plan adopted by the Minturn Town Council via Resolution No. 14, Series 2018, sets forth strategies to “sustain and invest in the things that define Minturn as a proud, sturdy mountain town to ‘keep Minturn Minturn’ and, specifically, to “Adopt and implement an Attainable Housing Policy through assistance from Eagle County Government and a third party consultant following a public engagement process;” and

**WHEREAS**, the Town Council, at their regularly scheduled meeting of August 21, 2019 considered and adopted the 2019 Town of Minturn Housing Action Plan (Resolution No. 33, Series 2019); and

**WHEREAS**, the 2019 Town of Minturn Housing Action Plan sets forth certain overarching goals and objectives aimed at creating and preserving local’s-only, Community Housing stock within the Town and creating and preserving restricted

housing stock through deed restrictions via the subsequent adoption of inclusionary Community Housing ordinances, annexation policies and incentives for the creation of Accessory Dwelling Units (ADUs) within the Town; and

**WHEREAS**, following adoption of Resolution 33, 2019 the Town of Minturn Planning Commission held subsequent work sessions to discuss and refine specific Community Housing target goals and regulatory and policy related means to achieve said goals; and

**WHEREAS**, §31-23-304, C.R.S., provides that the Town shall provide for the manner in which its land use and development regulations are amended, supplemented, or changed; and

**WHEREAS**, §16-21-430 of the Minturn Municipal Code provides that Town Council, Planning Commission or Planning Director may initiate an amendment of the Zoning Code, and §16-21-440 provides that the Town's Planning Commission shall review all proposed amendments to the Town's Zoning Code at a duly noticed public hearing and shall recommend approval or denial of a proposed amendment by Town Council, and that the Town Council shall finally approve or deny a proposed amendment at a duly noticed public hearing; and

**WHEREAS**, the Town initiated an amendment (the "amendment") to Chapter 6 – Business Licenses and Regulations, Minturn Municipal Code and Chapter 16 – Zoning, Minturn Municipal Code for the purpose of creating Inclusionary Community Housing regulations and requirements; and

**WHEREAS**, the Planning Commission at a duly noticed public hearing on April 8, 2020 considered the amendment and provided a recommendation for approval of the amendment to the Town Council; and

**WHEREAS**, the Town Council at duly noticed public hearings on May 6, 2020, June 17, 2020, and July 1, 2020 considered the amendment and the recommendation of the Planning Commission, and determined that the amendment is in the best interest of the public health, safety and welfare of the citizens of the Town and conformed in all respects to the Minturn Municipal Code; and

**WHEREAS**, at its duly noticed public hearings on May 6 and June 17, 2020, the Town Council directed Town staff to create and refine the Town of Minturn Community Housing Residency Requirements and Guidelines (the "Guidelines") and the Town of Minturn Community Housing Residency Requirements and Guidelines: Administrative Procedures (the "Administrative Procedures"); and

**WHEREAS**, at its duly noticed public hearing on July 1, 2020, the Town Council approved the amendment by ordinance and directed Town staff to subsequently present a resolution for approval of the Guidelines and the Administrative Procedures for the purpose of supporting and facilitating the administration of the amendment.


**NOW, THEREFOE, BE IT RESOLVED** by the Minturn Town Council of the Town of Minturn, that:

SECTION 1: The Minturn Town Council supports and directs approval and adopting of the Town of Minturn Community Housing Residency Requirements and Guidelines, as detailed in Exhibit A attached hereto and, which shall hereafter only be updated and amended from time to time by resolution approved by the Town of Minturn Town Council at a duly noticed public hearing; and

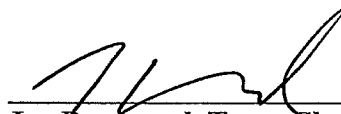
SECTION 2: The Minturn Town Council supports and directs approval and adopting of the Town of Minturn Community Housing Residency Requirements and Guidelines: Administrative Procedures, as detailed in Exhibit B attached hereto and, which shall hereafter be updated and amended from time to time by administrative action by the Town of Minturn Community Housing Program Administrator; and

SECTION 3: This resolution to be in full force and effect from and after its passage and approval.

**INTRODUCED, READ, APPROVED, AND ADOPTED THIS 1<sup>st</sup> DAY OF JULY, 2020.**

  
\_\_\_\_\_  
John Widerman, Mayor

Attests:

  
\_\_\_\_\_  
Jay Brunvand, Town Clerk/Treasurer





**TOWN OF MINTURN**  
**COMMUNITY HOUSING GUIDELINES**

Adopted  
June 2020

## Table of Contents

<b>CHAPTER 1 – NEED AND PURPOSE OF THESE GUIDELINES .....</b>	<b>3</b>
1.01    Minturn’s Need for Housing	3
1.02    Purpose of the Guidelines	4
1.03    Applicability	4
1.04    Minturn Community Housing Guidelines: Administrative Procedures	4
<b>CHAPTER 2 – DEFINITIONS .....</b>	<b>4</b>
<b>CHAPTER 3 – REQUIREMENTS FOR AFFORDABLE HOUSING .....</b>	<b>7</b>
3.01    Mitigation for Residential Developments (Inclusionary Housing)	7
3.02    Incentives for Voluntary Provision of Community Housing Units	
<b>CHAPTER 4 – ACCEPTABLE METHODS OF AFFORDABLE HOUSING MITIGATION .....</b>	<b>7</b>
4.01    Price Capped For Sale Deed Restricted Community Housing	7
4.02    Price Capped For Rent Deed Restricted Community Housing	8
4.03    Resident Occupied Deed Restricted Housing	8
4.04    Land Donation	8
<b>CHAPTER 5 – HOUSING PLAN .....</b>	<b>8</b>
<b>CHAPTER 6 – MISCELLANEOUS PROVISIONS .....</b>	<b>9</b>
6.01    Deed Restrictions	9
6.02    Unit Quality and Design	9
6.03    Community Housing Bedroom Mix and Size	9
6.04    Initial Sales and Marketing of Community Housing Units	9
6.05    Timing of Community Housing	9
6.06    Replacement Housing	10
6.07    Incentives for Voluntarily Provision of Community Housing Units	10
6.08    Liberal Construction	10
6.09    Severability	10
6.10    Modification	10
6.11    Grievance Procedures	10
6.12    Enforcement	11

## CHAPTER 1 – NEED AND PURPOSE OF THESE GUIDELINES

### 1.01 Minturn’s Need for Housing

The Minturn Town Council recently identified attainable housing for year-round locals as one of their top policy priorities. The Town of Minturn Housing Action Plan (the “Plan”), adopted in August 2019, sets the course for the Town’s work on housing over the next three to five years. The Plan was created through a series of workshops with elected and appointed officials, interviews with local stakeholders, and questionnaires in the first half of 2019. The priorities identified in this plan include:

- Increasing housing choices for year-round residents and preserving a balance between second homeowners and locals into the future.
- Adding new tools to Minturn’s housing policy toolbox.
- Seeking opportunities to partner with local residents, developers, and existing housing agencies such as the Valley Home Store.

Minturn is nestled in a narrow mountain canyon. About 420 year-round households enjoy a strong sense of community, working class heritage, and historic small-town character. Minturn is located just seven miles from the Town of Vail and Vail Resort. Compared to other communities so close to a major resort, Minturn has maintained a high level of year-round residency (80% of homes were occupied by local residents at the 2010 Census; this compares with 20% in Vail or 64% in Avon).

In recent years, some of these attributes have been threatened by rising land and housing costs. Minturn has been discovered, and an increasing number of second homeowners have begun to shift the historic the social and economic diversity. Short-term rentals are permitted but regulated in the Town and there is now a severe shortage of housing for local residents to rent or purchase.

Despite the documented demand for workforce housing units in the Eagle River Valley – from Dotsero to Red Cliff, including Vail, private developers have little incentive to provide housing for Households with incomes of 140%-200% or less of the Area Median Income because responding to demand for high end and second homes is more profitable. The exceptional quality of life, natural beauty and abundance of recreation opportunities in Eagle County, and in Minturn specifically, coupled with limited land resources, means that demand for and availability of housing will continue to keep prices beyond the reach of median income Households without assistance.

The Minturn Community Plan, adopted in December 2009, acknowledged the need to sustain Minturn’s community and the supply of housing that employees can afford. In the larger community, Eagle County’s labor shortages and forced commuting to homes outside of Eagle County materially degrade quality of service, the economy, the natural environment, traffic, and the character of local communities. Therefore, Minturn’s Community Plan delineates four primary goals regarding housing:

1. Promote the development of housing opportunities for all income levels throughout all areas of town.
2. Allow a variety of lot sizes (small and large lot) as appropriate to specific areas.
3. Develop an affordable housing program, to include housing assistance for town employees, qualified town residents and other eligible Eagle County employees.
4. Leverage town-owned property for the development of affordable housing.

## **1.02 Purpose of the Guidelines**

The Minturn Community Housing Guidelines (the “Guidelines”) are intended to promote a sustainable and strong Minturn Community through the creation of permanently local and/or affordable housing stock. The Guidelines call for all new residential and mixed-use developments proposing five (5) or more dwelling units to provide for sale and for rent housing for Households earning between 80%-200% or less of the area median income (“AMI”) - Households that have little or no opportunity to purchase market rate housing without significant subsidy. The Guidelines also offer options to incentivize the provision of Community Housing voluntarily for new developments and for redevelopment projects with four or fewer dwelling units. These guidelines and the Town’s Community Housing requirements are not applicable to commercial developments.

The Guidelines will assist in implementing specific strategies of the Community Plan and the 2019 Housing Action Plan calling for private development to share in the responsibility for keeping up with the demand for workforce housing in the future as part of all new residential and mixed-use growth.

Through the Guidelines, Minturn seeks to reduce the number of Cost Burdened Households (as defined below) in the town, maintain the relationship between Primary Residences (as defined below) and vacation homes, preserve community character and vitality, and keep the negative impacts associated with a commuting workforce from worsening. It is Minturn’s belief that jobs and housing should be located in close proximity whenever possible.

## **1.03 Applicability**

The Guidelines apply to applicants for a Development Permit (as defined below) for all residential and mixed-use projects containing five (5) or more units which are located within the corporate boundaries of the Town of Minturn. Governmental and non-profit entities must also adhere to these Guidelines unless otherwise exempted through valid intergovernmental agreements.

Compliance with the Guidelines is only one of several components of an application for a Development Permit, as detailed in the Town of Minturn Municipal Code. Compliance with the Guidelines, however, does not ensure that an application for a Development Permit will be approved by the Town.

## **1.04 Town of Minturn Community Housing Guidelines: Administrative Procedures**

The Town of Minturn Community Housing Guidelines: Administrative Procedures (the “Administrative Procedures”) is the document that provides the technical procedures for developing, purchasing, owning, selling, and renting Community Housing (as defined below). The Administrative Procedures include specific eligibility criteria, AMI levels, purchase prices and rents, sale and leasing procedures, payment in lieu calculations, employment generation rates and other information relevant to the development and operation of Community Housing. The Administrative Procedures are to be read in conjunction with the Town of Minturn Community Housing Guidelines.

## **CHAPTER 2 – DEFINITIONS**

The terms, phrases, words, and clauses in the Guidelines shall have the meaning assigned below. Any terms, phrases, words, or clauses not defined herein will have the meanings as defined in the Minturn Municipal Code or the Town of Minturn Community Housing Guidelines: Administrative Procedures.

**Affordability Gap:** The difference between the average home price in each Eagle County community and the average buying power of a typical household in that community, as provided for in Guidelines – Page 4

the Administrative Procedures.

**Area Median Income (“AMI”):** The estimates of median household income compiled and released annually by the United States Department of Housing and Urban Development.

**Community Housing:** A Residential dwelling unit within the Town of Minturn that is deed restricted in accordance with this Article and the Town of Minturn’s Community Housing Requirements and Guidelines, as approved and amended from time to time by resolution by the Town Council, and in accordance with a deed restriction approved by the Town of Minturn Town Council or its designee

**Community Housing For Rent Unit:** a community housing unit that is deed-restricted in accordance with this Article and the Town of Minturn’s Community Housing Requirements and Guidelines, as approved and amended from time to time by resolution by the Town Council, and in accordance with deed restrictions approved by the Town of Minturn Town Council or its designee, to establish a maximum rental prices, as well as residency, employment and income qualifications for owners and occupants.

**Community Housing Residency Requirements and Guidelines:** the requirements adopted by resolution by the Town Council, from time to time, which may include, but shall not be limited to, standards concerning the procedure for qualifying to own or rent Community Housing Units; the requirements (e.g. residency) for qualifying to own or rent Community Housing Units; forms of approved deed restrictions; limitations on appreciation of sales prices of Community Housing; procedures for sale of Community Housing; priorities for persons bidding to purchase Community Housing Units; maximum sales and rental rate increases; standards for the number of residents per dwelling unit; quality of construction requirements for new Community Housing Units; and possible incentives for the construction of Community Housing. The Community Housing Residency Requirements and Guidelines, and amendments thereto, shall be adopted following a duly noticed public hearing at which such guidelines are considered.

**Community Housing For Sale Unit:** a community housing unit that is deed-restricted in accordance with this Article and the Town of Minturn’s Community Housing Requirements and Guidelines, as approved and amended from time to time by resolution by the Town Council, and in accordance with a deed restrictions approved by the Town of Minturn Town Council or its designee to establish maximum initial sales and resale prices, as well as residency, employment and income qualifications for owners and occupants.

**Community Housing Unit:** a residential dwelling unit within the Town of Minturn that is deed restricted in accordance with this Article and the Town of Minturn’s Community Housing Requirements and Guidelines, as approved and amended from time to time by resolution of the Town Council, and in accordance with a deed restrictions approved by the Town of Minturn Town Council or its designee.

**Community Plan:** The plan officially adopted by the Town of Minturn that sets forth the recommendations and policies for guiding future growth and development, while providing for the public’s health, safety and general welfare.

**Cost Burdened Household:** A Household that is paying more than 30% of its income for housing costs.

**Deed Restriction:** a contract entered into between the Town and the owner or purchaser of real property identifying the conditions of occupancy and resale.

**Development Permit:** Any preliminary or final approval of an application for rezoning, planned unit development, amendment of an existing planned unit development, special use permit, subdivision, or other development requiring a building permit or similar application for new construction.

**Eagle County Housing and Development Authority (“ECHDA”):** A body corporate and politic whose primary purpose is to increase the supply of Affordable Housing in Eagle County.

**Eligible Household:** A Household that meets the criteria set forth in the Administrative Procedures.

**Employee/Qualified Resident:** means a person who meets the definition and requirements for

Employment Qualifications as defined and amended from time to time in the Town of Minturn Community Housing Guidelines and Administrative Procedures.

**Employment Area:** that portion of the Eagle River Valley located from Dotsero to Red Cliff, including Vail.

**Gross Income:** the total income, including alimony and child support, derived from a business, trust, employment and from income-producing property, before deductions for expenses, depreciation, taxes, and similar allowances.

**Household:** All individuals who will occupy a unit regardless of legal status or relation to the owner or lessee.

**Housing Plan:** A written plan submitted to Eagle County describing how the applicant will satisfy the Guidelines.

**Inclusionary Housing:** The policy of requiring Community Housing in Residential Developments to ensure adequate housing stock for local residents and to maintain or increase the current ratio of primary to secondary home ownership.

**Initial Sales Price:** The maximum price for which a Price Capped For Sale Housing unit may be initially sold, as provided for in the Administrative Procedures.

**Maximum Rental Rate:** The maximum monthly rent payment for an Affordable Rental Housing unit, as provided for in the Administrative Procedures.

**Minturn Municipal Code:** The regulations officially adopted by the Town of Minturn, which govern land use within the incorporated areas of the Town of Minturn.

**Price Capped For-Sale Deed Restricted Housing:** Housing with a deed restriction recorded against it requiring that it meet Initial Sales Prices, resale price appreciation limits, quality, and other criteria set forth in the Guidelines and Administrative Procedures.

**Price Capped For Rent Deed Restricted Housing:** Housing with a deed restriction recorded against it requiring that it meet a maximum rental prices, as well as residency, employment and income qualifications for owners and occupants.

**Primary Residence:** The residence in which an owner or renter lives for at least 9 out of any 12 months.

**Program Administrator:** The administrator of the Eagle County Affordable Housing Guidelines and Administrative Procedures. The Program Administrator shall be the Eagle County Housing Director unless the BoCC appoints another person.

**Project:** A residential or mixed-use development for which a development permit is required.

**Resident Occupied Community Housing:** Housing with a deed restriction recorded against it requiring that it be owned or occupied by an Employee/Qualified Resident as its Primary Residence as set forth in these the Guidelines and giving preference to qualified residents of the Town of Minturn.

**Residential Development:** Any development that would result in the creation of one or more residential units or lots and for which a Development Permit is required.

**Square Footage:** A calculation of size including all habitable interior space, excluding garages and mechanical spaces, measured from the outside of exterior walls of the residential or mixed-use development.

**Town Council:** The Town Council of the Town of Minturn, Colorado.

## **CHAPTER 3 – REQUIREMENTS FOR AFFORDABLE HOUSING**

### **3.01 Mitigation for Residential Developments (Inclusionary Housing)**

In order to address the issue of Cost Burdened Households and slow the shift from primary to secondary home ownership, Minturn has set its mitigation rate for Inclusionary Housing in residential and mixed-use developments at 10% of the total residential units in a Project.

### **3.03 Mixed Use Developments**

Minturn encourages mixed-use developments within certain zone districts such as the Old Town and South Town commercial areas. Because the Town does not require mitigation for commercial development, Inclusionary Housing requirements apply to residential dwelling units developed as part of a mixed commercial-residential development.

### **3.04 Residential Lots**

When an applicant for a Development Permit seeks only to create residential lots, the Inclusionary Housing requirement of the Guidelines should be based on the number of such lots, each of which will count as one unit.

## **CHAPTER 4 – ACCEPTABLE METHODS OF AFFORDABLE HOUSING MITIGATION**

In an effort to provide the flexibility necessary for the development industry, an applicant may comply with the Guidelines in the following ways, all of which are subject to approval by the Town of Minturn Town Council, in its sole discretion:

1. Provision of Price Capped For Sale Deed Restricted Community Housing Units with a maximum Initial Sales Price set at or below 200% AMI affordability level.
2. Provision of Price Capped For Rent Deed Restricted Community Housing Units with rental prices set at rates affordable to Households with incomes no higher than 80% AMI
3. Provision of Resident Occupied Deed Restricted Community Housing For Rent and For Sale Community Housing Units.
4. Conveyance of land to the Town in lieu of community housing in an amount determined by the Town Council.

Where a formula indicates that a portion of a unit must be provided, the development's mitigation responsibility will be rounded to the nearest whole number: below 0.5 round down (= 0 unit) and round up from 0.5 and higher (= 1 unit).

### **4.01 Price Capped For-Sale Deed Restricted Community Housing**

Price Capped For-Sale Deed Restricted Community Housing shall have the following characteristics:

- The Initial Sales Price shall be no greater than that which is affordable to Households earning no more than 200% AMI.
- The units shall be a spectrum of types and sizes and shall be consistent with market rate units and market demand as such need is demonstrated by a recent market analysis.
- Deed restrictions shall be perpetual and in favor of the Town of Minturn and shall include all material terms as outlined in the Administrative Procedures.

#### **4.02 Price Capped For Rent Deed Restricted Community Housing Unit**

For Rent Community Housing Units provided within a project shall have the following characteristics:

- Rents must be set at or below rates that are affordable to Households with incomes no greater than 80% AMI.
- Deed restrictions shall be perpetual and in favor of Minturn or other acceptable agency such as the Colorado Housing and Finance Authority or the US Department of Housing and Urban Development and shall include all material terms as outlined in the Administrative Procedures.

#### **4.03 For Sale and For Rent Deed Restricted Resident Occupied Community Housing:**

Resident Occupied For Sale and For Rent Community Housing shall have the following characteristics:

- Sales prices for Resident Occupied For Sale Housing are not limited.
- A spectrum of unit sizes and pricing responsive to market demand is encouraged.
- Deed restrictions shall be perpetual and in favor of Minturn and shall include all material terms as outlined in the Administrative Procedures, including but not limited to a 2% transfer fee due to ECHDA upon sale to a non-Eligible Household.

#### **4.04 Land Donation**

An applicant may satisfy its Town of Minturn Community Housing obligations through the conveyance of land to the Town of Minturn. The Town Council, in its sole discretion, shall decide whether to accept land offered in lieu of an applicant's Community Housing obligations in an amount determined by the Town Council meeting the following requirements:

- Land shall be free of all liens and encumbrances and shall be conveyed by general warranty deed.
- Land shall be properly entitled and capable of supporting the applicable number of Community Housing units.
- Land shall be buildable, have suitable soils and drainage and available utilities, and should not be within an area that has potential geologic hazards associated with development.

### **CHAPTER 5 - HOUSING PLAN**

In order for an application for a Development Permit to be deemed complete, an applicant shall submit a clear, concise, and complete Housing Plan specific to the Project, which has been approved by the Program Administrator. Compliance with the Housing Plan shall be a condition of approval for the Development Permit.

At a minimum, the Housing Plan shall contain the following information, as applicable:

1. Total number of market rate units and Community Housing units.
2. Details regarding how the Guidelines will be met, including unit types, Square Footage, number of bedrooms per unit, targeted income category, and Initial Sales Prices.
3. Average lot size of proposed Community Housing lot and average lot size of market rate housing lots, as applicable.
4. Location of proposed Community Housing within the Project, by unit type and size.
5. Proposed production schedule of Community Housing and market rate units, including phasing plan, issuance of building permits or other acceptable triggers.
6. Concept for marketing to Households that may be eligible for the Community Housing.
7. Any other information deemed to be relevant by the Program Administrator.



The Housing Plan will be recorded against the property in the records of the Eagle County Clerk and Recorder at the time the Development Permit is granted. Any amendment of the Housing Plan requires the approval of the Program Administrator with right of appeal to the Town Council as provided in the Minturn Municipal Code.

## **CHAPTER 6 – MISCELLANEOUS PROVISIONS**

### **6.01 Deed Restrictions**

All Community Housing units shall be subject to deed restrictions, which shall be recorded in the records of the Eagle County Clerk and Recorder. All deed restrictions must comply with these Guidelines and the Administrative Procedures and shall be in a form approved by the Program Administrator and the Town of Minturn Town Attorney.

### **6.02 Unit Quality and Design**

Community Housing shall meet the requirements of all Town of Minturn land use regulations and local building codes. Community Housing units should be architecturally compatible with surrounding uses. Exterior finishes should not be substantially inferior to the materials used on market rate units. Adequate storage space dedicated for each Community Housing Unit shall be provided.

Enhancing the long-term affordability of Community Housing through designs that reduce utility costs is strongly encouraged and conversely, amenities that are costly to operate are strongly discouraged unless such costs are otherwise defrayed or dispersed throughout the Project so as not to further cost burden Households.

Units must meet minimum energy or other efficient building standards as might be amended and as provided for in the Minturn Municipal Code. Community Housing design must address livability, maintenance, health, safety concerns, climate, lifestyle, and needs of the types of Households the units are intended to serve. To enhance livability, balconies, decks and yards and/or pocket parks designed and intended for use of Community Housing residents are also encouraged.

### **6.03 Community Housing Bedroom Mix and Size**

While there are no specific bedroom mix or size requirements for Community Housing Units, the applicant is expected to analyze market demand and to propose a mix that is responsive and appropriate to that demand. The bedroom mix and size will be approved by the Program Administrator as part of the Housing Plan. A market analysis should be provided to the Program Administrator prior to starting construction on the Community Housing units.

### **6.04 Initial Sales and Marketing of Community Housing Units**

An applicant shall be responsible for the initial sales and marketing of the Community Housing units in its Project. The Program Administrator shall have the right to review the terms of each sale for compliance with the Guidelines.

### **6.05 Timing of Community Housing**

All required Community Housing units must be provided prior to, or concurrently and proportionally

with, the production of a Project's market rate housing as measured by issuance of building permits, unless an approved Housing Plan provides otherwise.

#### **6.06 Replacement Housing**

Applicants are prohibited from using units built as replacement of housing affordable to Households earning less than 200% AMI toward satisfaction of Inclusionary Housing requirements. Any such Community Housing destroyed in the development process must be replaced with units of similar affordability and size, in addition to the applicant's obligations under these Guidelines.

#### **6.07 Incentives for Voluntary Provision of Community Housing Units**

Any residential or mixed-use development proposing to create one (1) or more residential dwelling units may be eligible for the following incentives when voluntarily providing deed restricted Community Housing in the form of Resident Occupied Community Housing, For Sale Community Housing and/or For Rent Community Housing, or a combination thereof, that is deed restricted in accordance with the Town's Community Housing Guidelines:

1. **Density bonus:** As part of any new residential or mixed-use Project, the Town may offer a density bonus.
2. **Site design flexibility:** Provided that the housing goals and eligibility requirements of these Guidelines are met; that the intents and purposes of the Minturn Municipal Code are not compromised; and, that the design of the Project achieves other Minturn strategic policy goals, the Town may consider flexible application of design and development standards including, but not limited to minimum lot size, building height, lot coverage, setbacks, and landscaping.
3. **Public-private partnerships:** The Town may participate or facilitate participation with other governmental entities regarding financing or purchasing of Community Housing units directly from the applicant or other participation as agreed to by the parties.
4. **Other fee waivers:** The Town Council, in its sole and absolute discretion, may waive any other fee required by the Minturn Municipal Code and ordinances, as amended from time to time, in return for the voluntary provision of Community Housing Units.

#### **6.08 Liberal Construction**

These Guidelines shall be liberally construed so as to further their purpose.

#### **6.09 Severability**

If any provision, clause, sentence, or paragraph of the Guidelines or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of the Guidelines that can be given effect without the invalid provision or application, and to this end the provisions of the Guidelines are declared to be severable.

#### **6.10 Modification**

These Guidelines may only be modified by the Town of Minturn Town Council in a public hearing on the record. The Administrative Procedures may be amended by the Program Administrator in a manner consistent with the terms and intent of the Guidelines without Town Council approval.

#### **6.11 Grievance Procedures**

A grievance is any dispute that a unit owner, purchaser, or applicant may have with the Town or the Program Administrator with respect to action or failure to act in accordance with the rights, duties, welfare, or status of these persons or entities under these Guidelines. Procedures for filing such a grievance are as follows:

1. A written grievance must be presented to the Program Administrator. It shall specify:
  - a. The particular ground(s) upon which the grievance is based;
  - b. The action requested; and
  - c. The name, address, telephone number of the complainant and similar information about his/her representative, if any.
2. Upon presentation of a written grievance, the Program Administrator shall meet with complainant to review the grievance and resolve the issue, if possible.
3. If the issue is not resolved, the complainant may request a hearing before the Town Council. Rules for the hearing before the Town Council follow the provisions of the Minturn Municipal Code as found in Chapter 16 – Zoning, Section 16-21-30 Town Council Powers and Duties.

### **6.12 Enforcement**

The Guidelines are hereby incorporated as a component of the Minturn Municipal Code. Enforcement of the Guidelines will be pursuant to Chapter 16, Section 16-1-90 - *Enforcement and Penalties*, as amended from time to time, of the Minturn Municipal Code. Remedies include, refusing to issue building permits or certificates of occupancy, withholding monies from escrow, legal proceedings at law and equity, and all other remedies available under applicable law and equity.

**TOWN OF MINTURN**  
**COMMUNITY HOUSING GUIDELINES:**  
**ADMINISTRATIVE PROCEDURES**

June 2020

## Table of Contents

<b>CHAPTER 1 – DESCRIPTION OF ADMINISTRATIVE PROCEDURES</b>	3
<b>CHAPTER 2 – DEFINITIONS</b>	4
<b>CHAPTER 3 – INFORMATION FOR DEVELOPERS OF COMMUNITY HOUSING</b>	5
3.0 Price Capped For Sale Deed Restricted Community Housing Unit	5
3.0.1 Initial Pricing of Price Capped For Sale Community Housing	5
3.0.2 Deed Restrictions for Price Capped For Sale Community Housing	5
3.1 Price Capped For Rent Deed Restricted Community Housing Unit	5
3.1.1 Maximum Rental Rate for For Rent Deed Restricted Community Housing	5
3.1.2 Deed Restrictions for For Rent Deed Restricted Community Housing	5
3.1.3 Divided Ownership of For Rent Deed Restricted Community Housing	5
3.2 Resident Occupied For Sale and For Rent Community Housing Unit	6
3.2.1 Initial Pricing of Resident Occupied For Sale Deed Restricted Community Housing	6
3.2.2 Maximum Rental Rates of Resident Occupied For Rent Community Housing	6
3.2.3 Deed Restrictions for Resident Occupied For Sale Community Housing Units	6
3.2.4 Deed Restrictions for Resident Occupied For Rent Community Housing Units	6
3.3 Miscellaneous Provisions	7
3.3.1 Homeowners and Condominium Associations	7
<b>CHAPTER 4 – INFORMATION FOR BUYERS, OWNERS, AND SELLERS OF COMMUNITY HOUSING</b>	7
4.0 Buying Community Housing	7
4.0.1 Eligible Households	7
4.0.2 Application Process and Selection Criteria for Price Capped For-Sale Units	8
4.0.3 Application Process for Resident Occupied For-Sale Units	10
4.0.4 Trust Ownership	10
4.0.5 Rental of Community Housing by Qualified Employers for Employees	11
4.1 Owning Community Housing	11
4.1.1 Maintaining Occupancy	11
4.1.2 Recertification	11
4.1.3 Leave of Absence	11
4.1.4 Short Term Leases	12
4.1.5 Foreclosure	12
4.2 Sales of Community Housing Units	12
4.2.1 Listing Units	12
4.2.2 Inspection Prior to Sale	12
4.2.3 Sales Fees	12
4.2.4 Closing Costs	13
4.2.5 Maximum Resale Price	13
4.2.6 Increases to Base Price and Permitted Capital Improvements	13
4.2.7 Other Title Transfers	15
<b>CHAPTER 5 – INFORMATION FOR RENTERS OR MANAGERS OF COMMUNITY RENTAL HOUSING</b>	16
5.0 Application Process	16
5.1 Records Inspection	16
<b>CHAPTER 6 – TABLES</b>	17
Table 6.1 – Maximum Initial Sales Price Calculations	17
Table 6.2 – Maximum Monthly Rental Rates	17
Table 6.3 – Area Median Incomes	18
Table 6.4 – Historical Wage Appreciation Data	18
Table 6.5 – Size of Deed Restricted Units in Eagle County	19
Table 6.6 – Affordability Gap	19
Table 6.7 – Historical Freddie Mac 30-Year Mortgage Rates	20

## **CHAPTER 1 – DESCRIPTION OF ADMINISTRATIVE PROCEDURES**

The Town of Minturn Community Housing Guidelines: Administrative Procedures (“Administrative Procedures”) provide the technical procedures for developing, purchasing, owning, selling, and renting Community Housing and are to be read in conjunction with the Town of Minturn Community Housing Guidelines. The Administrative Procedures are updated periodically based on current real estate market, area median income and the most recent Housing Needs Assessment completed by Eagle County which can be found at [www.eaglecounty.us/housing](http://www.eaglecounty.us/housing).

The Administrative Procedures is separated into chapters, which set forth the requirements for developers of Residential and/or Mixed-Use Development containing Community Housing (Chapter 3), requirements of buyers, owners, and sellers of Community Housing units (Chapter 4), and requirements of owners, renters, or managers of Community Rental Housing units (Chapter 5). Chapter 2 contains definitions and Chapter 6 contains all of relevant tables, which may be updated on an annual basis.

## CHAPTER 2 – DEFINITIONS

The terms, phrases, words, and clauses in the Administrative Procedures shall have the meaning assigned below. Any terms, phrases, words, or clauses not defined herein will have the meanings as defined in the Town of Minturn Community Housing Guidelines (the “Guidelines”) or the Minturn Municipal Code.

**Acknowledgement of Deed Restriction:** A document accepting a purchaser’s agreement to be bound by both the recorded deed restriction covering the Community Housing unit and the Guidelines.

**Gross Household Income:** Total amount of income a Household earns in one year from all sources before taxes.

**Maximum Resale Price:** The maximum amount an owner can sell the Community Housing unit for per the deed restriction requirements.

**Non-Eligible Household:** A Household that does not qualify as an Eligible Household per section 4.0.1 of the Administrative Procedures.

**Permitted Capital Improvements:** Certain improvements made to an Community Housing unit that may be included in a seller’s Maximum Resale Price.

**Qualified Employer:** An individual or entity that regularly conducts business in the Eagle River Valley, with preference for businesses located within the Town of Minturn.

**Short Term Rental:** Any residential property dwelling unit or portion thereof rented for a period of less than thirty (30) consecutive days. Rentals of entire dwelling units, individual rooms, or portions of rooms shall each be considered short-term rentals. Short-term rentals are considered lodging accommodations under Chapter 4, Article 4 of this the Minturn Municipal Code

## CHAPTER 3 – INFORMATION FOR DEVELOPERS OF COMMUNITY HOUSING

### 3.0 Price Capped For-Sale Deed Restricted Community Housing Unit

Section 3.0 will cover all requirements specific to Price Capped For-Sale Housing.

#### 3.0.1 Initial Pricing of Price Capped For-Sale Deed Restricted Community Housing Units

The Initial Sales Price for Price Capped For-Sale Deed Restricted Housing Units shall be initially set no higher than at a price Community to Households earning 200% of AMI. The units should be priced in a spectrum of prices consistent with unit size, location, and market demand. Community Housing Units should come to market proportionately with free market units.

Chapter 6 (Table 6.1) contains a table showing the current year's maximum Initial Sales Prices.

#### 3.0.2 Deed Restrictions for Price Capped For-Sale Community Housing Units

All deed restrictions burdening Price Capped For-Sale Community Housing Units must include resale restrictions binding future buyers and sellers to the applicable conditions set forth in the Guidelines and these Administrative Procedures and shall be in a form approved by the Program Administrator and the Town of Minturn Attorney. All purchasers shall execute the deed restriction as well as an Acknowledgement of Deed Restriction.

The material terms for deed restrictions against Price Capped For-Sale Deed Restricted Community Housing Units are as follows:

- a. Eligible Households only with annual recertification
- b. Primary Residency use only with annual recertification
- c. May not own other real property, subject to exceptions
- d. Limitations on rentals
- e. Initial Sales Price restrictions
- f. Maximum Resale Price restrictions. Appreciation should be based upon the average wage for Eagle County as determined by the Colorado Department of Labor and Employment using the most current available data, but in no case shall the allowed increase be more than 3% on an annual basis. There should be no floor on the amount of the increase. Table 6.7 shows current and historic wage appreciation data.
- g. Ownership interest conveyed to ECHDA
- h. Ability to force sale if owner is not complying with program rules
- i. Option to buy post foreclosure
- j. Resale by Program Administrator

### 3.1 Price Capped For Rent Deed Restricted Community Housing

Section 3.2 will cover all requirements specific to For Rent Deed Restricted Community Housing.

#### 3.1.1 Maximum Rental Rates

Maximum Rental Rates for For Rent Deed Restricted Community Housing Units must be set at rates that are affordable for Households with incomes no greater than 80% AMI.

Chapter 6 (Table 6.2) contains a table showing the current year's Maximum Rental Rates.

#### 3.1.2 Deed Restrictions for For Rent Deed Restricted Community Housing

The material terms for deed restrictions against For Rent Deed Restricted Community Housing, shall be as follows:

- a. Eligible Households only, unless otherwise prohibited



- b. Maximum rents
- c. Household income limitations of no greater than 80% AMI (income limits may be lower, but cannot be higher than 80% AMI)
- d. Term of the deed restriction should be perpetual, and the restriction agreement must be between the owner of the rental property and either ECHDA or other acceptable entity, such as the Colorado Housing and Finance Authority or the United States Department of Housing and Urban Development.

Under no circumstances shall any portion of a Community Rental Housing unit be leased or rented for any period of time without the prior written approval of the Program Administrator and compliance with the Guidelines.

**3.1.3 Divided Ownership of For Rent Community Housing Limited**

No For Rent Community Housing unit shall be converted in the future to For-Sale housing through subdivision, the cooperative form of ownership, condo conversion, or some similar form of ownership inconsistent with its rental purpose, unless the owner of such Community Rental Housing unit proposes providing substantially similar substitute Community Rental Housing and such proposal is approved in writing in advance by the Town Council.

**3.2 Resident Occupied For-Sale or For Rent Deed Restricted Community Housing Units**

Section 3.2 will cover all requirements specific to Resident Occupied For-Sale and For Rent Deed Restricted Community Housing.

**3.2.1 Initial Pricing of Resident Occupied For-Sale Deed Restricted Community Housing**

For any Resident Occupied For Sale Deed Restricted Community Housing Units that are provided to meet the Town’s required minimum amount of Resident Occupied Community Housing Units within a Project, but which are not also required to meet the minimum amount of Price Capped For Sale Units, no maximum Initial Sales or subsequent resale pricing will be established.

**3.2.2 Maximum Rental Rates**

For any Resident Occupied For Rent Deed Restricted Community Housing Units that are provided to meet the Town’s required minimum amount of Resident Occupied Community Housing Units within a Project, but which are not also required to meet the minimum amount of Price Capped For Rent Units, no maximum rental rates or subsequent verification of rental rates will be established.

**3.2.3 Deed Restrictions for Resident Occupied For-Sale Deed Restricted Community Housing**

All deed restrictions burdening Resident Occupied For-Sale Deed Restricted Community Housing Units must include resale restrictions binding future buyers and sellers to the applicable conditions set forth in the Guidelines and these Administrative Procedures and shall be in a form approved by the Program Administrator and the Town of Minturn Attorney. All purchasers shall execute the deed restriction as well as an Acknowledgement of Deed Restriction.

The material terms for deed restrictions against Resident Occupied For-Sale Deed Restricted Community Housing shall be as follows:

- a. Eligible Households only with annual recertification
- b. Primary Residency use only with annual recertification
- c. May not own other real property, subject to exceptions
- d. Should a Non-Eligible Household desire to purchase the unit; the Non-Eligible Household must pay a transfer fee of no less than 2.0% to the Eagle County Housing and Development Authority.

### **3.2.4 Deed Restrictions for Resident Occupied For Rent Deed Restricted Community Housing**

The material terms for deed restrictions against For Rent Deed Restricted Community Housing, shall be as follows:

- a. Eligible Households only, unless otherwise prohibited
- b. Maximum rents
- c. Household income limitations of no greater than 80% AMI (income limits may be lower, but cannot be higher than 80% AMI)
- d. Term of the deed restriction should be perpetual, and the restriction agreement must be between the owner of the rental property and either ECHDA or other acceptable entity, such as the Colorado Housing and Finance Authority or the United States Department of Housing and Urban Development.

Under no circumstances shall any portion of a Community Rental Housing unit be leased or rented for any period of time without the prior written approval of the Program Administrator and compliance with the Guidelines.

### **3.2.5 Divided Ownership of For Rent Community Housing Limited**

No For Rent Community Housing unit shall be converted in the future to For-Sale housing through subdivision, the cooperative form of ownership, condo conversion, or some similar form of ownership inconsistent with its rental purpose, unless the owner of such Community Rental Housing unit proposes providing substantially similar substitute Community Rental Housing and such proposal is approved in writing in advance by the Town Council.

## **3.3 Miscellaneous Provisions**

Section 3.3 covers miscellaneous requirements related to the development of Community Housing.

### **3.3.1 Homeowners and Condominium Associations**

Any documents creating a condominium or homeowners association should require that the Community Housing units will only be assessed monthly dues and other shared assessments based upon a reasonable formula.

## **CHAPTER 4 – INFORMATION FOR BUYERS, OWNERS, AND SELLERS OF COMMUNITY HOUSING**

### **4.0 Buying Community Housing**

Section 4.0 addresses requirements for Households interested in purchasing Community Housing.

#### **4.0.1 Eligible Households**

Eligible Households are Households meeting the following criteria:

- a. Employment Qualification: At least one member of the Household must meet one or more of the following criteria:
  - i. Has earned a living primarily in Eagle County by having worked an average of at least thirty (30) hours per week on an annual basis at a business with an office or job site physically located in Eagle County (multiple jobs in Eagle County may be combined to reach 30 hours per week); or
  - ii. Cumulatively earned at least 75% of the Household's Gross Household Income in Eagle County; or

- iii. Has been hired for a job in Eagle County on a permanent basis to work at least thirty (30) hours per week; or
  - iv. Is over the age of sixty (60) and had earned a living primarily in Eagle County prior to his or her retirement; or
  - v. Is a Disabled Person who had been a full-time employee in Eagle County immediately prior to his or her disability or has been granted an exception to the minimum of 30 hours per week in order to continue with a federal or state disability benefit program, if the person works the maximum number of hours per week the program will allow; or
  - vi. Households that make their home in Eagle County but work for employers that are located outside of Eagle County (i.e. telecommuters) may be considered eligible if all other eligibility requirements are met and the Household can prove Eagle County residency for a continuous period before application submission, subject to the Program Administrator's sole discretion.
- b. Limits on Owning Other Real Estate: No member of an Eligible Household, including, but not limited to, spouses and children under 18 years of age, may own real estate anywhere as of the date of purchase of the Community Housing unit, subject to the following exceptions:
- i. If the Eligible Household member is currently an owner of real estate, and he or she actively seeks to sell the existing unit and purchase an Community Housing unit contemporaneously.
  - ii. A member of an Eligible Household that owns other real estate may request a hardship exemption from this requirement, which may be granted at the sole discretion of the Program Administrator.
  - iii. A member of an Eligible Household that owns commercial property for business use or vacant land may request an exemption from this requirement, which may be granted at the sole discretion of the Program Administrator.
  - iv. Exemptions for ownership of residential real estate in Eagle County will not be granted.
  - v. Trust Ownership

During ownership of an Community Housing unit, no Household member shall own any interest alone or in conjunction with others, in any other real estate.

Real estate that is owned by a prospective Eligible Household of Community Housing may not deed that real estate to a corporation or other person or entity except at fair market value nor may real estate be deeded to a corporation or other legal entity in which the Household member has any financial interest in order to meet these requirements.

#### **4.0.2 Application Process and Selection Criteria for Price Capped For-Sale Housing units**

Households interested in purchasing Price Capped For-Sale Deed Restricted Housing units must submit an application to the Program Administrator to certify eligibility prior to submitting an offer to purchase a unit.

Approved applicants who are interested in purchasing Price Capped For-Sale Deed Restricted Housing units will also be added to a master buyer list to be maintained by the Program Administrator. The application and any accompanying documentation will become the property of Program Administrator and will not be returned to the applicant. The Program Administrator will accept new applications throughout the year on a rolling basis. An applicant may update its application at any time.

The application steps are as follows:

- a. Obtain an application from the Program Administrator.
- b. Provide evidence of employment by a Qualified Employer:
  - i. Total Household AMI shall be calculated from two of the most recent pay stubs or tax returns of all income earners.

- c. Provide evidence of residency in Eagle County.
- d. Affirm on the application that your Household intends to live in the unit as your Primary Residence and that no members of your Household own other real estate. If necessary, an applicant may request an exemption regarding owning other real estate according to Section 4.0.1(b).
- e. Provide a letter of prequalification from a mortgage lender for a mortgage with a fixed interest rate of at least 5 years duration or a statement of proof of funds and submit a copy to the Program Administrator. Reverse amortization mortgages are prohibited.
- f. Supply a valid copy of a homebuyer education class certification.
- g. Provide proof of funds for a down payment equal to at least 1% of the purchase price.

Once basic eligibility has been met, the applicant submitting the highest and best offer (not to exceed the Maximum Resale Price) will have the first right to negotiate for the purchase of the unit. If two or more equal offers are received, those offers will be prioritized for selection based on the highest score using the criteria listed below. The Program Administrator will notify the applicant if proof of any of the following item is necessary.

The following selection criteria applies to all resales of Price Capped For-Sale Housing units:

- a. 2 points for each calendar year of full-time employment in Eagle County. Partial years shall be awarded points on a pro-rata basis.
  - i. Provide evidence of employment by a Qualified Employer as follows: 1) the two most recent pay stubs and the W2(s) from your employer(s), and your most recent tax returns, or 2) employment contract or other documents that the Program Administrator deems necessary to make a determination, or 3) affidavit from employer verifying employment plus other documents that the Program Administrator deems necessary to make a determination.
- b. 1 point for each calendar year of residency in Eagle County up to a maximum of 20 points. Partial years shall be awarded points on a pro-rata basis.
  - i. The applicant should provide evidence of Eagle County residency status as follows: 1) copy of lease or deed or property tax statement, or 2) utility statements from service provider, or 3) other documentation that the Program Administrator deems necessary to make a determination, such as voter registration information, place of automobile registration, driver's license address and income tax returns.
- c. 5 points per Household for current owners of Community Housing units.
- d. 5 points per Household member with special needs as defined by ADA.
- e. 25 points for Households earning 200% of AMI or less.
  - i. Total Household AMI shall be calculated from two of the most recent pay stubs or tax returns of all income earners.
- f. 10 points for applicants with a household size of 3 or more members when applying for a unit with 3 or more bedrooms.
- g. Points as mandated by all applicable intergovernmental and similar agreements.

The following rules apply to the selection process described above:

- a. The physical place of residency and employment is relevant; the applicant's mailing address is not.
- b. If two individuals are applying jointly, their points will not be combined.
- c. If two individuals are applying, joint income will be considered for Households earning less than 200% AMI.
- d. All claims may be verified by the Program Administrator. Claims of residency or

employment that cannot be verified will not be counted in determining length of employment or residency.

- e. Eligible Households may have no more than two occupants per bedroom at any time. For example, a household of 5 people does not qualify for a two-bedroom unit.
- f. If there is a tie based upon the selection criteria above, the Program Administrator shall hold a lottery to determine the winning applicant. The drawing shall be held by the Program Administrator during regular business hours and witnessed by the applicants with equal point priority, if desired.

#### **4.0.3 Application Process for Resident Occupied For-Sale Deed Restricted Community Housing Units**

Households interested in purchasing Resident Occupied For-Sale Housing units must submit an application to the Program Administrator to certify eligibility prior to submitting an offer to purchase a unit.

The application and any accompanying documentation will become the property of Program Administrator and will not be returned to the applicant. The Program Administrator will accept new applications throughout the year on a rolling basis. The applicant may update an application at any time.

The application steps are as follows:

- a. Obtain an application from the Program Administrator.
- b. Provide evidence of employment by a Qualified Employer as follows: 1) the two most recent pay stubs and the W2(s) from your employer(s), and your most recent tax returns, or 2) employment contract or other documents that the Program Administrator deems necessary to make a determination, or 3) affidavit from employer verifying employment plus other documents that the Program Administrator deems necessary to make a determination.
- c. Affirm on the application that your Household intends to live in the unit as your Primary Residence and that no members of your Household own other real estate. If necessary, an applicant may request an exemption regarding owning other real estate according to Section 4.0.1(b).

There are no selection criteria for resales of Resident Occupied For-Sale Deed Restricted Housing units.

#### **4.0.4 Trust Ownership**

An Eligible Household may seek a variance to allow title of an Community Housing unit to be held in trust for the benefit of a natural person who also meets the definition of an Eligible Household member. Such ownership in trust may only occur in the circumstances provided herein and at the sole discretion of the Program Administrator.

In order to request a variance from the strict application of these Guidelines, the applicant shall submit a letter requesting a special review to the Program Administrator as follows:

- a. Community Housing units may be held in trust only for the benefit of a natural person who due to a physical or mental impairment lacks the capacity to contract or is prevented by such impairment from acquiring title to a unit in his or her own name. The letter shall include documentation of such impairment and the basis for ownership in trust. It should be noted that the applicant should submit any additional information reasonably requested by the Program Administrator to allow Program Administrator to process this special request.
- b. The beneficiary of the trust may not own other real property.
- c. The beneficiary of the trust must be of the age of majority to qualify under this section.
- d. The criteria set forth in the Administrative Procedures may be met so long as the trust pre-qualifies for a loan. Further the trust must prove an adequate means of ensuring that expenses associated with ownership, including, but not limited to association dues and

expenses are met.

- e. Upon receipt of a request for a special review and any requested information and documentation, the Program Administrator may grant the request with or without conditions, in a timely manner.

#### **4.0.5 Rental of Community Housing by Qualified Employers for Employees**

Qualified Employers may purchase Community Housing and lease to employees who are members of Eligible Households. Qualified Employers may not impose additional deed restrictions to Community Housing without the written consent of the Program Administrator.

### **4.1 Owning Community Housing**

Section 4.1 addresses requirements for Households that own Community Housing units.

#### **4.1.1 Maintaining Occupancy**

The owner of a Community Housing unit shall continue to use the unit as its exclusive and permanent place of residence. The owner of an Community Housing unit will be deemed to have ceased to use the unit as its Primary Residence by accepting permanent employment outside of Eagle County, by residing in the unit for fewer than 9 months out of any 12 months, or by registering to vote outside of Eagle County.

#### **4.1.2 Recertification**

Once a Community Housing unit has been purchased, it must continue to be owned and occupied only by an Eligible Household. On an annual date set by the Program Administrator, the owner of a Community Housing unit, shall submit the following information to the Program Administrator:

- a. A verification that the owner continues to meet employment and residency requirements, as applicable; and
- b. A statement that the owner owns no other real property with the exceptions provided for herein.

The Program Administrator will provide a paper or electronic form. Failure to provide information as required by the Program Administrator and any applicable deed restriction may result in forfeiture of appreciation, a sale mandated by the Program Administrator, or any other available remedy at law or equity.

#### **4.1.3 Leave of Absence**

A leave of absence for an owner of a Community Housing unit may be granted at the sole discretion of the Program Administrator, subject to clear and convincing evidence that shows the reason for leaving and a commitment to return. Said evidence shall be in written form and presented to the Program Administrator for review and decision prior to the owner leaving. The leave of absence shall be for one year and may, at the discretion of the Program Administrator, be extended up to one additional year, but in no event shall it exceed two years. In the case of an approved leave of absence, the owner shall only rent to an Eligible Household.

Rents charged during a leave of absence may not exceed the lesser of 1) Maximum Rental Rates for For Rent Deed Restricted Community Housing at 80% AMI or 2) the owner's monthly housing expenses. The tenant must submit a complete application and receive approval from the Program Administrator. The owner shall provide a copy of the executed lease agreement between the owner and tenant to the Program Administrator.

If a Community Housing unit is listed For-Sale and the owner has relocated outside of Eagle County, the unit may, upon approval of the Program Administrator, be rented to an Eligible

Household prior to completion of the sale.

#### **4.1.4 Short Term Leases**

Short term leases are not permitted in Community Housing units. A short-term rental is defined as a non-owner providing compensation to lodge in another owner's property for periods of less than thirty (30) days. Owners shall not advertise any part of their Community Housing unit available for short term lease on any open, public forum such as Airbnb, VRBO, Homeaway or equivalent.

#### **4.1.5 Foreclosure**

In the event of a foreclosure or of acceptance of a deed in lieu of foreclosure by the holder of a promissory note secured by a first deed of trust on an Community Housing unit, ECHDA, Eagle County, or its assigns shall have the option to purchase the unit, which option shall be exercised as set forth in the deed restriction. The owner has an obligation to notify the Program Administrator in writing once the owner perceives a foreclosure difficulty.

### **4.2 Sales of Community Housing Units**

Section 4.2 addresses requirements for Households that are selling Community Housing units.

#### **4.2.1 Listing Units**

All Community Housing units must be listed For-Sale with the Program Administrator or its designee or as specified by its deed restriction.

The owner/seller of Community Housing must follow these steps:

- a. Execute a standard Listing Contract on forms approved by the Program Administrator.
- b. Consult with the Program Administrator to review the deed restrictions recorded against the unit to determine the Maximum Resale Price and other applicable provisions concerning a sale.
- c. The Program Administrator shall administer the sale in accordance with the requirements in effect at the time of listing.
- d. The owner may consult legal counsel regarding examination of title and all contracts, agreements and title documents. The retention of such counsel, licensed real estate brokers, or such related services (excluding all sales fees), will be at the owner's own expense and shall not be included in the calculation of the Maximum Resale Price.

#### **4.2.2 Inspection Prior to Sale**

The Owner shall commission a listing inspection by a listing inspector certified by the Program Administrator before executing a listing contract to determine the condition of the unit.

- a. The owner shall pay for the cost of the inspection at the time of inspection.
- b. The inspector shall furnish a written report to the owner and the Program Administrator.
- c. This information shall be furnished to the purchaser as a part of the seller's property disclosure once a purchase contract has been executed.
- d. The inspection will be valid for no more than 60 days.

The owner shall replace or repair any items that are identified as unsatisfactory in the report at market value or reduce the listing price accordingly.

#### **4.2.3 Sales Fees**

Unless otherwise set forth in the deed restriction recorded against an Community Housing unit, at the closing of the sale, the owner/seller shall pay the Program Administrator or its designee a sales fee of 2% (two percent) of the sale price.

- a. The owner/seller must deposit 0.50% (one half percent) of the list price with the Program Administrator upon listing the unit for sale, known as the listing deposit.
- b. In the event that the owner/seller fails to perform under the listing contract, rejects all offers, or withdraws the listing after advertising has commenced, the owner/seller shall not be refunded the listing deposit.
- c. The listing deposit shall be considered a budgeted amount for advertising and administrative costs that will be incurred by the Program Administrator. If the Program Administrator incurs any additional costs, the owner/seller will be notified in advanced by the Program Administrator and shall be responsible for those additional costs.

**4.2.4 Closing Costs**

Sellers of Community Housing shall not permit any prospective buyer to assume any of the seller’s customary closing costs, including the fees set forth herein, nor accept any other consideration that would increase the purchase price above the Maximum Resale Price so as to induce the seller to sell to such prospective buyer.

**4.2.5 Maximum Resale Price**

No owner of a Price Capped For-Sale Housing unit shall sell the unit for an amount greater than the Maximum Resale Price for the unit. Maximum Resale Price will be calculated as follows: Base Price + Appreciation of Base Price + Permitted Capital Improvements – Depreciation of Capital Improvements + Sales Fee = Maximum Resale Price.

There are no resale price limitations on Resident Occupied For-Sale Housing units.

**4.2.6 Increases to Base Price and Permitted Capital Improvements**

Certain improvements to a unit may be included in a unit’s Maximum Resale Price. The following table outlines the costs that may be included in an owner’s base price, items which will not be considered Permitted Capital Improvements, items which will be allowed as Permitted Capital Improvements and depreciated on a five year schedule and items which will be allowed as Permitted Capital Improvements and depreciated on a twenty year schedule.

<b><u>Items included in Base Price</u></b>	<b><u>Items which are NOT Permitted Capital Improvements</u></b>
<ul style="list-style-type: none"> <li>● Purchase price, including garage, lot premium, heating systems and water heaters</li> </ul> <p>The following items may be included in base price with the written approval of the Program Administrator prior to the commencement of the work:</p> <ul style="list-style-type: none"> <li>● Structural addition or addition of livable space including bathrooms, bedrooms, exterior door, interior doors, baseboard, window casing, insulation and plumbing (excluding fixtures)</li> <li>● Modifications or improvements to accommodate a person with a disability as defined in the Americans with Disabilities Act of 1990</li> <li>● Roof replacement</li> </ul>	<ul style="list-style-type: none"> <li>● All work performed without the issuance of a building permit</li> <li>● Jacuzzis, saunas, steam showers, hot tubs, etc.</li> <li>● Maintenance of existing fixtures, appliances, plumbing, mechanical systems, painting, cleaning, etc. and improvements to existing fixtures</li> <li>● Decorative items including window coverings, lamps and lighting not affixed to walls or ceilings, bath towel bars and hooks, etc.</li> <li>● Interior paint</li> <li>● Cost of tools</li> <li>● Equipment Rental</li> <li>● Removable items not attached to the unit</li> </ul>



<u>Items depreciated on 5 year schedule</u>	<u>Items depreciated on 20 year schedule</u>
<ul style="list-style-type: none"> <li>● Replaced appliances</li> <li>● Washer and dryer (including stackable)</li> <li>● Carpet upgrades including pad</li> <li>● Permanent fitted window blinds</li> <li>● Garage door openers</li> <li>● Gutters and downspouts</li> <li>● Security system</li> <li>● Electric fireplace</li> <li>● Exterior paint</li> </ul>	<ul style="list-style-type: none"> <li>● Flooring and countertop upgrades including hardwood, stone, slate, granite, marble, tile, etc.</li> <li>● Light fixtures (electrical fixtures &amp; wiring)</li> <li>● Plumbing fixtures including sinks and toilets</li> <li>● Cabinets including vanities</li> <li>● Closet organization systems</li> <li>● Trees and permanent landscaping including sod, concrete pads, concrete pavers, etc.</li> <li>● Outdoor decks</li> </ul>

<ul style="list-style-type: none"> <li>● Ceiling fans</li> <li>● Storm doors</li> <li>● Laminate flooring</li> <li>● Building permit fees</li> <li>● Improvements for health and safety protection</li> </ul>	<ul style="list-style-type: none"> <li>● Irrigation system</li> <li>● Fencing</li> <li>● Gas fireplace</li> <li>● Windows</li> <li>● Solar Panels</li> <li>● Asphalt roof shingles (single family &amp; duplex)</li> </ul>
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Unless otherwise identified in the recorded deed restriction, the actual costs of Permitted Capital Improvements made to a unit shall not exceed 10% of the Initial Sales Price for a five-year term, regardless of changes in ownership. For every subsequent five-year period, an additional 10% of the value of the unit at the beginning of that five-year period may be added as Permitted Capital Improvements. The five-year period for Permitted Capital Improvements shall not reset merely upon resale. No costs incurred in one five-year term may be rolled into a different five year term.

For an owner to request that Permitted Capital Improvements be added to the Maximum Resale Price, he or she must comply with the following:

- a. Upon completion of the work, Program Administrator requests the following:
  - i. Legible copies of receipts and invoices
  - ii. Proof of payment by a third party
  - iii. Owners must retain original receipts and invoices
- b. In calculating the costs allowed as Permitted Capital Improvements, only the owner's actual out of pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to owner's labor, or that of their employees or business, or to any appreciation in the value of these improvements.
- c. If an owner pays cash for improvements, the owner must provide third party documentation of payment. An owner must have an invoice for improvements, but if no such documentation of proof of cash payment can be produced, the Program Administrator can inspect the improvement completed in the unit. Up to 75% of documented invoice value may be included after an inspection, subject to depreciation, at the Program Administrator's sole discretion.
- d. Work that requires and is performed without the issuance of all required building permits or property owners' association approval will not be included as a Permitted Capital Improvement.
- e. The value of the Permitted Capital Improvements will be added to the appreciated value of the unit at the time of sale. No appreciation is allowed on Permitted Capital Improvements.
- f. Other improvements to the Community Housing unit are allowed, but adjustments to the Maximum Resale Price will only be given for Permitted Capital Improvements.

If a Permitted Capital Improvements or an improvement included in the base price of the unit is removed or is no longer operational, the actual cost of the improvement shall be deducted from the base price or Permitted Capital Improvement schedule. No other categories or types of expenditures may qualify as Permitted Capital Improvements unless pre-approved in writing by the Program Administrator.

#### 4.2.7 Other Title Transfers

In the event that title to an Community Housing unit transfers, through descent or other method, to a person or entity that is not an Eligible Household, the Non-Eligible Household must notify the Program Administrator of its intent as outlined below within 90 days of taking title to the unit.

- a. The Non-Eligible Household may list the unit For-Sale, following the procedures outlined herein.
- b. The Non-Eligible Household shall have one year to become an Eligible Household. In the event the Non-Eligible Household is unable to become an Eligible Household in one year then the unit shall be listed For-Sale as provided herein.

- c. Non-Eligible Households shall not: 1) occupy the Community Housing unit; 2) rent all or any part of the Community Housing unit, except in strict compliance with these Guidelines; 3) engage in any other business activity on or in the Community Housing unit; 4) sell or otherwise transfer the Community Housing unit except in accordance with these Guidelines or corresponding deed restriction.
- d. The Program Administrator may require the Non-Eligible Household to rent or sell the Community Housing unit in accordance with the provisions of these Administrative Procedures.

## **CHAPTER 5 – INFORMATION FOR RENTERS OR MANAGERS OF COMMUNITY RENTAL HOUSING**

### **5.0 Application Process**

Eligible Households must be given priority for Community Rental Housing units, unless prohibited by other funding sources. Households must meet all other requirements of the deed restriction, including Area Median Income limits.

The owner/manager must document how eligibility and income was confirmed and must keep a record of any documents supporting the eligibility and income determination.

### **5.1 Records Inspection**

The Program Administrator has the right to inspect the owner/manager's records on an annual basis to ensure compliance with the deed restriction.

CHAPTER 6 – TABLES

Table 6.1 – Maximum Initial Sales Price Calculations

Table 6.1 - Maximum Initial Sales Price Calculations updated 7/22/19						
		Studio	1 Bdrm	2 Bdrm	3 Bdrm	4 Bdrm
Household Size		1	1.5	3	4.5	6
100% AMI		\$ 65,800	\$ 70,500	\$ 84,600	\$ 97,760	\$ 109,040
Max Monthly Housing Payment	30%	\$ 1,645	\$ 1,762.50	\$ 2,115	\$ 2,444	\$ 2,726
Property Tax, Insurance, HOA	20%	\$ 329	\$ 353	\$ 423	\$ 489	\$ 545
Max Mortgage Payment		\$ 1,316	\$ 1,410	\$ 1,692	\$ 1,955	\$ 2,181
Maximum Mortgage Amount*		\$ 203,000	\$ 217,000	\$ 260,000	\$ 301,000	\$ 336,000
Less: Closing Costs**	1.5%	\$ 3,045	\$ 3,255	\$ 3,900	\$ 4,515	\$ 5,040
Plus: Downpayment	10%	\$ 22,894	\$ 24,473	\$ 29,322	\$ 33,946	\$ 37,893
Maximum Sales Price		\$ 228,939	\$ 244,728	\$ 293,222	\$ 339,461	\$ 378,933
*Assumes a mortgage amortized over 30 years with an interest rate of 6.77% which was determined by using the FHLMC (Freddie Mac) mortgage rate average over 30 years.						
** Includes all closing costs such as Origination Fees, Recording Fee, Document Fees, Appraisal, Title Fees.						

Table 6.2 – Maximum Monthly Rental Rates

Table 6.2 - Maximum Monthly Rental Rates						
HUD Release Date updated 7/22/19						
		Unit Size				
		Studio	1 Bdrm	2 Bdrm	3 Bdrm	4 Bdrm
Income Limits	140%	\$ 2,303	\$ 2,468	\$ 2,961	\$ 3,422	\$ 3,816
	120%	\$ 1,974	\$ 2,115	\$ 2,538	\$ 2,933	\$ 3,271
	100%	\$ 1,645	\$ 1,763	\$ 2,115	\$ 2,444	\$ 2,726
	80%	\$ 1,316	\$ 1,410	\$ 1,692	\$ 1,955	\$ 2,181
	75%	\$ 1,234	\$ 1,322	\$ 1,586	\$ 1,833	\$ 2,045
	70%	\$ 1,152	\$ 1,234	\$ 1,316	\$ 1,481	\$ 1,645
	60%	\$ 987	\$ 1,058	\$ 1,269	\$ 1,466	\$ 1,636
	50%	\$ 823	\$ 881	\$ 1,058	\$ 1,222	\$ 1,363
All ongoing fees required to be paid by a resident (including but not limited to utilities and mandatory parking fees) must be included within the Maximum Rental Rate.						
Rents based on 1.5 persons per bedroom.						

Table 6.3 – Area Median Incomes

<b>Table 6.6 - Area Median Incomes</b>							
HUD Release Date April 24, 2019							
	Household Size						
	1 person	2 person	3 person	4 person	5 person	6 person	
Income Limit	160%	\$ 105,280	\$ 120,320	\$ 135,360	\$ 150,400	\$ 162,432	\$ 174,464
	140%	\$ 92,120	\$ 105,280	\$ 118,440	\$ 131,600	\$ 142,128	\$ 152,656
	120%	\$ 78,960	\$ 90,240	\$ 101,520	\$ 112,800	\$ 121,824	\$ 130,848
	100%	\$ 65,800	\$ 75,200	\$ 84,600	\$ 94,000	\$ 101,520	\$ 109,040
	80%	\$ 52,640	\$ 60,160	\$ 67,680	\$ 75,200	\$ 81,216	\$ 87,232
	60%	\$ 39,480	\$ 45,120	\$ 50,760	\$ 56,400	\$ 60,912	\$ 65,424
	50%	\$ 32,900	\$ 37,600	\$ 42,300	\$ 47,000	\$ 50,760	\$ 54,520

Table 6.4 – Historical Wage Appreciation Data

<b>Table 6.7 - Historical Wage Appreciation Data updated 7/22/19</b>						
US Department of Labor Average Weekly Wages for Eagle County						
Year	Q1	Q2	Q3	Q4	Annual	Annual
2002	\$ 578	\$ 624	\$ 603	\$ 668	\$ 617	
2003	\$ 609	\$ 636	\$ 638	\$ 685	\$ 641	3.89%
2004	\$ 599	\$ 670	\$ 659	\$ 724	\$ 662	3.28%
2005	\$ 645	\$ 674	\$ 709	\$ 777	\$ 701	5.89%
2006	\$ 730	\$ 704	\$ 776	\$ 791	\$ 750	6.99%
2007	\$ 741	\$ 747	\$ 759	\$ 824	\$ 768	2.40%
2008	\$ 774	\$ 752	\$ 781	\$ 837	\$ 786	2.34%
2009	\$ 725	\$ 735	\$ 770	\$ 806	\$ 757	-3.69%
2010	\$ 692	\$ 730	\$ 768	\$ 814	\$ 749	-1.06%
2011	\$ 703	\$ 742	\$ 771	\$ 793	\$ 751	0.27%
2012	\$ 726	\$ 754	\$ 743	\$ 794	\$ 754	0.40%
2013	\$ 740	\$ 768	\$ 775	\$ 834	\$ 778	3.18%
2014	\$ 757	\$ 791	\$ 793	\$ 871	\$ 802	3.08%
2015	\$ 789	\$ 819	\$ 812	\$ 899	\$ 829	3.37%
2016	\$ 787	\$ 827	\$ 852	\$ 890	\$ 838	1.09%
2017	\$ 852	\$ 833	\$ 858	\$ 918	\$ 865	3.22%
2018	\$ 856 *	\$ 839 *	\$ 888 *	\$ 945 *	\$ 882 *	1.97%

\* Preliminary, subject to change.

Table 6.5 – Size of Deed Restricted Units in Eagle County

**Table 6.8 Size of Deed Restricted Units**

Deed Restriction	# Units	Average	Total SF
Miller Ranch	282	1,310	369,459
Brett Ranch	156	1,163	181,362
Red Draw	4	900	3,600
Riverwalk	59	892	52,620
Bluffs	4	1,716	6,864
Avon	62	727	45,104
Vail*	100	1,255	125,497
Eagle	23	1,549	35,628
Eagle Ranch	51	1,398	71,317
ERWSD-various locations	57	1,302	74,216
Stratton Flats	21	1,652	34,692
<b>Total/Average</b>	<b>819</b>	<b>1,221</b>	<b>1,000,359</b>

Table 6.6 – Affordability Gap

Table 6.10 Affordability Gap				
Town/Neighborhood	Average Home Sales Price*	Average Weekly Wage (by zip code)	Average Household Buying Power**	Affordability Gap
Beaver Creek, Bachelor Gulch	\$ 2,239,607.09	\$776	\$ 346,115	\$ 1,893,492
Cordillera, Lake Creek	\$ 1,650,893.62	953	\$ 424,235	\$ 1,226,659
Vail	\$ 2,247,610.16	\$922	\$ 410,130	\$ 1,837,480
Arrowhead	\$ 1,780,252.94	\$953	\$ 424,235	\$ 1,356,018
Wolcott	\$ 1,621,173.08	\$1,072	\$ 477,400	\$ 1,143,773
Countywide	\$ 1,191,984.13	\$871	\$ 388,430	\$ 803,554
Edwards	\$ 862,393.68	\$953	\$ 424,235	\$ 438,159
Basalt (in Eagle County)	\$ 775,090.63	\$883	\$ 392,770	\$ 382,321
El Jebel (in Eagle County)	\$ 709,517.53	\$856	\$ 380,835	\$ 328,683
Minturn, Red Cliff	\$ 756,964.29	\$803	\$ 358,050	\$ 398,914
Eagle	\$ 616,249.50	\$920	\$ 410,130	\$ 206,120
Eagle-Vail	\$ 679,175.71	\$776	\$ 346,115	\$ 333,061
Avon	\$ 653,317.07	\$776	\$ 346,115	\$ 307,202
Rural (in Eagle County)	\$ 360,000.00	\$806	\$ 359,135	\$ 865
Gypsum	\$ 447,691.35	\$884	\$ 393,855	\$ 53,836
* Based on 2018 residential improved transactions				
** Based on 2 workers per household using 2018 QCEW wage data, mortgage rate of 4.5%.				

Table 6.7 – Historical Freddie Mac 30-Year Mortgage Rates

Table 6.11 Historic Mortgage Rates - Freddie Mac updated 7/22/19							
	Year	Rate	Points		Year	Rate	Points
1	1989	10.34%	2.10%	17	2005	5.87%	0.60%
2	1990	10.13%	2.10%	18	2006	6.41%	0.55%
3	1991	9.25%	2.00%	19	2007	6.34%	0.40%
4	1992	8.39%	1.70%	20	2008	6.03%	0.60%
5	1993	7.31%	1.60%	21	2009	5.04%	0.70%
6	1994	8.38%	1.80%	22	2010	4.69%	0.70%
7	1995	7.93%	1.80%	23	2011	4.45%	0.70%
8	1996	7.81%	1.70%	24	2012	3.66%	0.70%
9	1997	7.60%	1.70%	25	2013	3.98%	0.70%
10	1998	6.94%	1.10%	26	2014	4.17%	0.60%
11	1999	7.44%	1.00%	27	2015	3.85%	0.60%
12	2000	8.05%	1.00%	28	2016	3.65%	0.50%
13	2001	6.97%	0.90%	29	2017	3.99%	0.50%
14	2002	6.54%	0.60%	30	2018	4.54%	0.50%
15	2003	5.83%	0.60%			6.38%	1.03%
16	2004	5.84%	0.70%		Points	0.38% *	
					All-In Rate	6.77%	

\* 1 point typically buys between .25% and .50% interest rate reduction



To: Mayor and Council  
From: Michelle Metteer  
Date: May 19, 2021  
Agenda Item: Supporting Healthy Rivers & Watersheds

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**REQUEST:**

Approve Resolution supporting healthy rivers and watersheds.

**INTRODUCTION:**

Colorado is experiencing a [drought](#) which requires heightened attention toward the value of water, and it's use. In the late fall of 2021, the Municipal Task Force was convened at the State-level to start identifying steps local municipalities and their residents could take to support efforts to address current drought conditions.

**ANALYSIS:**

[Front range municipalities have identified ways to collaborate with neighboring communities for consistent messaging on reduced water use.](#) And although the mountain region has vastly different water production systems from town to town, this front-range effort led to the current Eagle County effort for all jurisdictions to support healthy rivers and watersheds in whatever ways are most conducive within each community. This effort was initially supported during the recent Mayors/Managers meeting and the resolution was drafted by the Eagle River Watershed Council.

**COMMUNITY INPUT:**

The community has identified the desire to value our natural environment.

**BUDGET / STAFF IMPACT:**

N/A

**STRATEGIC PLAN ALIGNMENT:**

**LONG-TERM STEWARDSHIP OF THE NATURAL BEAUTY AND HEALTH OF MINTURN'S ENVIRONMENT**

**RECOMMENDED ACTION OR PROPOSED MOTION:**

Approve Resolution 15 – Series 2021

**ATTACHMENTS:**

- Resolution 15 – Series 2021



**TOWN OF MINTURN, COLORADO  
RESOLUTION NO. 15 – SERIES 2021**

**Resolution Supporting Healthy Rivers and Watersheds**

**WHEREAS**, a collective effort to reduce water use helps to keep more water flowing in our streams; and

**WHEREAS**, the drinking water provided throughout Eagle County originates from local rivers and streams; and

**WHEREAS**, the waters of the Eagle River, which reside entirely within Eagle County, are under increasing pressure from urbanization, climate change and transmountain diversions at the same time that the flow of the river is decreasing due to long term drought; and

**WHEREAS**, local river recreation, such as, but not limited to, fishing, tubing, kayaking, rafting, paddle boarding and swimming, is dependent upon healthy rivers and streams; and

**WHEREAS**, residents and visitors associate healthy rivers and streams with Eagle County's identity and value the aesthetics and beauty of such rivers and streams; and

**WHEREAS**, the communities of Eagle County rely on healthy rivers and watersheds for economic health; and

**WHEREAS**, downstream users, such as, but not limited to, urban and rural communities, industrial and agricultural production, wildlife and habitat is largely dependent upon the good practices of upstream water users, including those in Eagle County; and

**WHEREAS**, outdoor water use has the greatest potential for loss, due to evaporation and other causes; and

**WHEREAS**, regardless of whether users receive water from the town or through private water rights, overuse and misuse of water anywhere in the valley ultimately impacts the Eagle River; and

**WHEREAS**, all local wildlife depends on the water in local rivers and streams for sustaining their habitat; and

**WHEREAS**, local mountain resorts make snow utilizing water from local rivers and streams.

**NOW THEREFORE, BE IT RESOLVED**, we encourage all water users, whether residential, commercial, golf courses, school grounds, municipal or public spaces and parks, to use the least amount of water as possible at any given time, but in particular during drought; and

**BE IT FURTHER RESOLVED**, our community should scrutinize its outdoor water use, such as for lawn watering; and

**BE IT FURTHER RESOLVED**, our community is encouraged to learn more about irrigation,

xeriscaping and more through local, regional, and state resources, such as Eagle River Watershed Council (erwc.org), Eagle County Extension (eaglecounty.us/csuextension), Colorado River Water Conservation District (coloradoriverdistrict.org), Colorado Water Conservation Board (cwb.colorado.gov), Water Education Colorado (watereducationcolorado.org) and our own town's website www.minturn.org.

PURPOSE: The purpose of this document is to protect and maintain water resources in the Eagle River watershed and surrounding areas and maximize the aesthetic, economic, recreational, environmental and human and wildlife benefits.

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this  
19<sup>TH</sup> day of MAY, 2021.**

TOWN OF MINTURN

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

Michelle Metteer  
Town Manager  
301 Boulder St. #309  
Minturn, CO 81645  
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Town Council  
Mayor – John Widerman  
Mayor Pro Tem – Earle Bidez  
Council Members:  
Terry Armistead  
George Brodin  
Brian Eggleton  
Eric Gotthelf  
Gusty Kanakis

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## **Town Manager Report**

May 19, 2021

### **Revitalizing Main Street Grant**

Minturn has submitted a grant application for the construction of sidewalks continuing south along HWY 24. The grant application is for \$1.6M with a match from the Town of \$400K totaling \$2M. (this is an adjustment from the original understanding of an application totaling \$2.4M). Grant awards are expected to be announced in July 2021.

### **Spring in the Mountains**

The wildlife will be coming out of their winter habitat areas and it is important for everyone to please remember to have their garbage bins locked at all times and bird feeders inaccessible. Minturn loves its local wildlife!

### **Community Plan Update**

Minturn has been awarded \$100,000 through the Energy/Mineral Impact Assistance Fund (EIAF) grant opportunity with the Department of Local Affairs. The Ad Hoc Community Plan Update Committee will now work to finalize the RFP and begin the process of selecting a professional/firm/team to lead Minturn through this important process.

### **Town Cleanup Day**

[Cleanup day is June 5<sup>th</sup> from 7am to Noon](#). This is a great opportunity for all those random tires laying around people's yards to make their way to recycling...for free. Really anything you have in your yard that you think is bothering your neighbor, you should feel free to bring by (no hazardous materials). Let's be good stewards of the land and take pride in the community!

### **Eagle County Public Health Orders Lifted**

Eagle County Public Health Orders are scheduled to be lifted May 18, 2021. State and/or federal orders will remain unaffected.

### **Two Elk Target Range – Facilitation Process**

The shooting range committee is in receipt of a proposal from the Keystone Policy Center for the facilitation of the public process to determine recommending next steps for the range. Once the committee reviews the proposal they will determine if it meets the goals of the committee and possibly bring to Council for financial assistance.

### **Two Elk Sub Area Master Planning**

Do you enjoy the area around Little Beach Park? Two Elk Trailhead? The new bike park? The

Town of Minturn is seeking community input for planning purposes as this recreational area finds new and exciting ways to meet the needs of the Minturn community. [If interested, please take some time to learn more and provide feedback.](#) This process is expected to take many months so there is time to get yourself and your neighbors involved.

**Railroad Activation Information**

The towns of Minturn, Eagle, Avon and Red Cliff, in conjunction with Eagle County are seeking feedback from residents. Information and the ability to leave comments can be found at: <https://engage.avon.org/tennessee-rail-line>

Jay Brunvand  
 Clerk/Treasurer  
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Town Council  
 Mayor – John Widerman  
 Mayor Pro Tem – Earle Bidez  
 Council Members:  
 Terry Armistead  
 George Brodin  
 Brian Eggleton  
 Eric Gotthelf  
 Gusty Kanakis

Below reflects proposed topics to be scheduled at future Town Council meetings and is informational only. Dates and topics are subject to change.

<b>REGULAR TOWN COUNCIL MEETINGS</b>
<b>May 19, 2021</b>
Public Hearing – Thai Kitchen 141 Main St, Patti Wanapii Owner/Manager. Changing existing Beer and Wine License to a Hotel and Restaurant license.
Battle Mountain Funding Agreement
Ord 03 - Series 2021 (Second Reading) Chapter 16 Article 2 Text Amendment
Ord 04 - Series 2021 (Second Reading) Rezone Lots 1 & 2 Lucero Subdivision to Residential
<b>June 2, 2021</b>
Acceptance of Fiscal Year 2020 Audit
<b>DATE TO BE DETERMINED</b>
An Ordinance adopting Specified Sustainability Building Codes
CUP regulation review – Fall 2021