



2016

# Minturn Council Meeting

Wednesday July 20, 2016

**Work Session:** **5:30pm**  
**(Town Center)**

**Regular Session:** **6:30pm**  
**(Town Center)**



## **Agenda**

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

**Wednesday July 20, 2016**

**Joint Work Session – 5:30pm**  
**Regular Session – 6:30pm**

**MAYOR – Matt Scherr**  
**MAYOR PRO TEM – Earle Bidez**

**COUNCIL MEMBERS:**

Terry Armistead  
Harvey Craig  
Sidney Harrington  
Sage Pierson  
John Widerman

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.

**Joint Work Session – 5:30 – 6:30 pm**

- Update and discussion with Tim McGuier, Battle Mountain Resort, as relates to development in the Bolts Lake area – Powell

**Regular Session – 6:30 pm**

**1. Call to Order**

- Roll Call
- Pledge of Allegiance

**2. Approval of Agenda**

- Items to be Pulled or Added

**3. Approval of Minutes**

- July 6, 2016      Pg 4

4. **Public comments on items, which are NOT on the agenda (5-minute time limit per person)**
5. **Special Presentations**
  - Committee Reports

## PUBLIC HEARINGS AND ACTION ITEMS

6. **Discussion/Action Item: Ordinance No. 3 – Series 2016 (Second Reading) Amendment to the Dimensional Standards for the Cross Creek Character Area – Hawkinson** Pg 13
7. **Discussion/Action Item: Ordinance 4 – Series 2016 (Second Reading) Approval of a Final Plat for the Cross Creek Subdivision – Hawkinson** Pg 18
8. **Discussion/Action Item: Resolution 18 – 2016 A Resolution approving a Subdivision Improvements Agreement on the Cross Creek Subdivision - Hawkinson** Pg 25

## COUNCIL AND STAFF REPORTS

9. **Town Planner**
  - Design Review Approval of Residential Duplex 1131 &1133 Main Street Pg 47
10. **Town Manager**
  - Manager's Report Pg 59
  - Action Report Pg 62
11. **Town Council Comments**
12. **Town Attorney**

## FUTURE AGENDA ITEMS

13. **Next Meeting – August 3, 2016**
  - Tavern Liquor License – Bunkhouse
14. **Future Meetings:**
  - Boneyard Management plan and conservation easement
  - Work Session on housing
  - Council retreat July 25, 2016 8:30am-3:00pm

**15. Set Future Meeting Dates**

- a) Council Meetings:
- August 3, 2016
  - August 17, 2016
  - September 7, 2016

**16. Other Dates:**

- Council retreat July 25, 2016 8:30am-3:00pm

**17. Adjournment**



## **Official Minutes**

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

**Wednesday July 5, 2016**

**Joint Work Session – 5:00pm**  
**Regular Session – 6:30pm**

**MAYOR – Matt Scherr**  
**MAYOR PRO TEM – Earle Bidez**

**COUNCIL MEMBERS:**

Terry Armistead  
Harvey Craig  
Sidney Harrington  
Sage Pierson  
John Widerman

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.

### **Joint Work Session – 5:00 – 6:15 pm**

- Joint Work Session with Planning Commission. Advisory topics to be reviewed:
  - Commercial code for 100 block of Minturn
  - Master Plan – 3 Mile Plan
  - Future Goals
    - Recreation
    - Boneyard Conservation
    - Little Beach Park Restrooms

### **Regular Session – 6:30 pm**

#### **1. Call to Order**

The meeting was called to order by Mayor Scherr at 6:32 pm.

- Roll Call

Those present included: Mayor Matt Scherr and Town Council members, Harvey Craig, Terry Armistead, Earle Bidez, Sidney Harrington, John Widerman and Sage Pierson.

Staff present: Town Manager Willy Powell, Deputy Clerk/Econ Michelle Metteer, Town Planner Janet Hawkinson, and Town Attorney, Michael Sawyer.

- Pledge of Allegiance

## **2. Approval of Agenda**

- Items to be Pulled or Added

Request to change number 9 and 10 for discussion items first, then the remainder of the discussion items.

Motion by Harvey C., second by Sage P., to approve the agenda as amended. Motion passed 7-0.

## **3. Approval of Minutes**

- June 15, 2016
- Page 9 Earle B stated that a variance is not supposed to be based on any economic factors.

Motion by John W, second by Terry A., to approve the minutes of June 15, 2016 as amended. Motion passed 7-0.

## **4. Public comments on items, which are NOT on the agenda (5-minute time limit per person)**

Mr. David Blakely, representing Holy Cross Utilities, is a Holy Cross employee and engineer for the connection project. He expects August or September for a timeline on presenting a plan to Minturn. The project is a tie between the Gilman substation and the Avon substation by I-70 Interstate. The “benefit” to Minturn will be that the Gilman substation will no longer be a radial station. Right now, there is only a line out to Gilman and no looping connection. The project would improve this situation. Xcel is also a benefactor in this project.

Mr. Lou Meskman, 23698 HWY 24, asked about the Drive-In movies and if the fees can potentially be lowered for attendees and also hopeful that more Minturn vendors will take part next year.

## **5. Special Presentations**

- Committee Reports

John W. discussed the Bolts Ditch legislation and expects to have an update after the next QQ meeting.

Harvey C. updated the room on the Colorado Municipal League and Minturn's position as a municipality seeking businesses. He also spoke on Urban Renewal and life – turning something old into something useful again.

Earle B thanked everyone for coming to the community growth open houses.

## PUBLIC HEARINGS AND ACTION ITEMS

### **6. Discussion/Action Item: Resolution 17 – Series 2016. A Conditional Use Permit, Wilcon Gas – Hawkinson**

This conditional use would be for an underground propane tank located at the north end of the Railroad property to the east side of the northernmost Minturn Bridge. This would be for use with vehicles only. It would be an un-manned station with night-sky security lighting.

Public hearing opened for feedback and comments. No comments or questions were brought before the Council from the public.

Motion by Harvey C., second by Sage P., to approve Resolution 17 – Series 2016 with the condition that the applicant will not allow customers to park on site for purposes other than re-fueling as presented. Motion passed 7-0.

### **7. Discussion/Action Item: Ordinance No. 3 – Series 2016 (First Reading) an Amendment to the Dimensional Standards for the Cross Creek Character Area – Hawkinson**

Applicant seeks an amendment of the dimensional standards for the Cross Creek Character Areas reducing the rear yard setback from 20 feet to 10 feet. The reduction is consistent with most other character areas in Minturn and reflects that the rear yards on the Cross Creek lot will back up to either right of way or Forest Service Lands.

Mr. Matt Giblin, representing Cross Creek Properties LLC, there is an existing building currently encroaching on the current 20' setback which would be removed.

Public hearing opened for comments and feedback. No comments or feedback from the public.

Motion by Sidney H., second by Terry A., to approve Ordinance No. 3 – Series 2016 (First Reading) Amendment to the Dimensional Standards for the Cross Creek Character Area as presented. Motion passed 7-0.

### **8. Discussion/Action Item: Ordinance 4 - Series 2016 (First Reading) Approval of a Final Plat for the Cross Creek Subdivision – Hawkinson**

Mike S added: The preliminary plat that was approved for a development two years ago is not what you will see regularly moving forward. Also, on second reading Council will receive a Resolution for a draft subdivision improvement agreement. A construction impact fee or development impact fee should be reviewed for inclusion in the town fee schedule as there is currently no such provision to help offset costs.

Public hearing opened for comment and feedback. No comments from the public were submitted.

Motion by John W., second by Earle B., to approve Ordinance 4 – Series 2016 (First Reading) Approval of a Final Plat for the Cross Creek Subdivision as presented. Motion passed. 7-0

**9. Discussion/Action Item: Discussion and consideration of a motion to approve a primary option for Section 2 of the Main Street Pedestrian Planning Engineering Project – Powell (re-organized as agenda item #6)**

Willy P. introduced Michelle Hansen and Jenna Frye of Stolfus Engineering who presented the updated material (included as attachment to minutes) from the recently held open house and completed survey results.

Matt S. disclosed that he lives within the Segment One section between Meek to Mann that would look to have parking on the west side of the road.

Earle B asked about an 8’ sidewalk with parking option and how functional that option is today. Michelle Hansen has done a similar project in Fort Collins and the result appears to be successful.

Earle B. also asked about costs of hardship parking cases and if grant funds can be used to cover those expenses. Michelle Hansen said the engineering would be looking to work with creative options.

John W. and Harvey C. both asked about parking in the bike lanes and the ability of enforcement.

Matt S. read a prepared statement from Deputy Josiah Hart (attached to minutes).

Willy P. expressed that any alternative will come with issues. He also believes it’s safer to have a bike lane option. Maintenance is another issue for the parking option and more equipment and labor would be necessary to maintain the area.

Earle B. reminded everyone that parking would be limited to one side of the street for snow removal.

Mr. Gregory Poulos, 781 Main Street, asked about the bike lane going all the way to Dowd Junction. He believes parking is the better option.

Terry A. reminded the council of the goals of the connectivity and the need to allow for safe transportation from south Minturn to many other town areas.

John W. reminded the audience of the location of Vail Ski and Snowboard Academy.

Ms. Nancy Cole, 795 Main Street, explained there is a multi-use path in Vail where path traffic is allowed to go in both directions.

Earle B. expressed the benefits of an 8' sidewalk option for both pedestrians and bicyclists to be off the road. Earle B. would also like to avoid the need for folks to have to cross HWY 24 multiple times.

Matt S. likes sidewalks on both sides of the road for segment two, but recommends 6' rather than 8' sidewalks. Michelle Hansen, maintained the 8' sidewalks would be more user-friendly for both cyclists and pedestrians.

Willy P. is concerned about the wider sidewalks having more backlash from people having to shovel the sidewalks.

Mr. Gregory Poulos, 781 Main Street, asked about the spot in front of the condos (The Enclave) and that parking may not be needed in that section.

Mr. Stan Cole, 795 Main Street, has a house with a driveway and believes a sidewalk on both sides of the street with no parking or bike lane, would be no problem. He also asked about parking further to the north and the need for those owners to park on their own properties. Mr. Cole also expressed that the street sweeping is not conducted often enough to make riding on the shoulder of the road feasible for a cyclist.

Mr. Fraser Horn, 449 Meadow Road, said that bike lanes are the safest, however it's difficult to fit bike lanes in and still be the safest. He prioritized sidewalks as the number one option for safety. He believes the Council's priority should be continuity.

John W. said there have been so many issues with parking up to this point that this issue needs to be addressed within this project and the need for parking be met.

Snow storage for section two would need to be addressed.

Option D received no votes, option E was a unanimous vote with a 6' wide sidewalk.

Michelle Hansen recommended not considering a bike lane in section one since the Council removed the bike lane in section two.

Mr. Gregory Poulos, 781 Main Street, indicated that folks living in the Mann Ave to Cemetery Rd stretch all have on-site parking.

Mann Ave to Cemetery Road: a 2' to 4' shoulder with curb and gutter with a 5' sidewalk and no on-street parking would not require any purchase of property.

Mr. Rob Davis, 1796 Main Street, forgot to bring up the Colorado Revised Statute for clearance a motorist must give to a cyclist during the engineer one-on-one meetings.

Willy P. requested direction from Council regarding prioritization of the project and which segment needs to be done first.

To summarize direction from Council:

- Meek to Mann
  - East side: Varies 5' to 8' sidewalk, no on-street parking
  - West side: 5' sidewalk, 8' parallel parking
- Mann to Cemetery:
  - East side: 5' sidewalk, no on-street parking
  - West side: 5' sidewalk, 4' shoulder, no on-street parking
- Cemetery to Boneyard:
  - East and west side the same: 6' sidewalk, 8' parallel parking

Earle B. recommended segment two (South Minturn) be first to be completed. Council recommended the order of project completion as segment two, then one, then three.

**10. Discussion/Action Item: Discussion regarding responsible growth in the valley floor initial feedback and discussion.**

Willy P introduced Tom Newland who has been assisting in the facilitation of the community growth process. (Newland memo attached to minutes).

John W. thanked folks for their feedback and participation.

Matt S. explained the need for community feedback, potential opportunities and issues and what Minturn would like to see for development in the future. This was a town initiative to find out what it is Minturn would collectively like to see as a community moving forward.

John W. said he has heard the voice of “no development.” Matt S explained that property owners do in fact have rights and development will happen regardless, but better for Minturn to guide development in the direction the community would like to see.

Earle B. believes any development would have to happen in phases. Earle B. also believes Bolts Lake, as a town reservoir, will allow the town to have a secure future with water needs and to better plan moving forward. Earle B. also explained that with a growth in population comes a share of the water rate costs. Water and land costs make affordable housing very difficult in the Bolts Lake area.

Mike S. reminded the Council that this process has been conducted at this time because the owner of the development is under a timeline to consider an agreement with the Bolts Lake area land owner.

Harvey C. sees a desire for the developer to create a relationship with the community in order for everyone to be on the same page moving forward. He also sees the recreational opportunities that would come with Bolts Lake.

Willy P. reminded the audience that if the developer should decide to move forward with a project at Bolts Lake, there will be a public land use process where the community should continue to remain involved.

Mr. Rob Busheski, 560 Taylor Ave, asked about any conceptual sketches or drawings. He was directed to come by Town Hall for review of conceptual ideas and more detailed plans will become available if the project moves forward.

Mr. Jeff Miller, 350 King Ranch Road asked about how much detail is needed to acquire a memorandum of understanding; Matt S. explained that any memorandum of understanding would be a public document open to the public.

John W. explained that if the developer and the town work together in a good manner, then the benefits should outweigh the drawbacks for the Minturn community.

Mr. Gregory Poulos, 781 Main Street, would like to see growth with families, open space and more sales tax.

## COUNCIL AND STAFF REPORTS

### 11. Town Planner

### 12. Town Manager

- Manager's Report

### **Main Street Engineering Project**

The first open house was held on July 7 from 4-7pm. Turnout for the meeting included approximately 30 residents. Almost all completed survey forms. Important in the forms was the preference between the four alternatives for Segment 2, South Minturn. The strong majority favored alternative D, which includes sidewalks and bike lanes on both sides of Main St. It is important the town designate the preferred alternative in Segment 2 at the July 6 meeting so that the engineering stays on schedule. Designation is needed to meet the overall engineering schedule and to give focus to the individual property owner meetings scheduled for June 29 and 30. Special attention is also being given to the area on both sides of the street where the Enclave accel/decel lanes exist. As mentioned at the previous meeting survey return participation is impressive. Staff has posted on the website answers to some of the more common questions contained in the surveys.

## **Dowd Junction**

### Appraisals

The appraisals were finally authorized by the Forest Service two weeks ago. The intent is to receive them by mid-July. We will see.

### Request for Qualifications issued

Because the appraisals were finally ordered and we continued recruiting qualified developers, the RFQ was issued today to four firms. See attached for final RFQ. It is the same as you may have previously seen—only the dates have changed. You will want to look at the evaluation and interview weeks to see if you want to attend and your schedule allows. I hope both of you can do both evaluation and interviews.

### Water Service to the Dowd site

As you may recall we need to provide domestic water service to the site to assure the parcel stays annexed to town. Jeff Spanel and I are meeting with Linn Brooks of the Upper Eagle Valley Water & Sanitation District to explore their serving the site with water. The District main lines are close to the site and by far closer than Minturn's. However, at looking at the District's regulations, they may be overly onerous with respect to water rights dedications, treated water storage fees, tap fees, etc. So this is an exploratory mission.

### Meeting with Attorney Mike Sawyer and consultant Tom Glass

We have scheduled a meeting with Mike and Tom. I would like you to attend if your schedule allows. If the appraisals for the Eagle properties are acceptable to the sellers, it will set off a flurry of activities and we need to be prepared.

## **Dowd to Minturn Bike Trail**

Janet and Willy met with Inter-mountain to review the alignment of the trail. We are looking at some changes at the north end, where there are several uses and property ownership complications. More specifically we need to see if we can have easements through the gas compressor station and the State Land Board property.

- Action Report

## **13. Town Council Comments**

Council brought up the need for more consistent street sweeping on a regular basis. Staff to obtain information for which Council to base a decision.

Recommendation to not have not-for-profits present at this year's budget meetings. Decisions to be based off of the non-profit applicant submission.

Matt S. asked what our scenarios are if the project discussions should fall apart. He would like to know in advance of any final decisions being made, prior for review. Earle B provided a brief update regarding the input for the review of the draft document.

## **14. Town Attorney**

- Discussion about “in lieu” fee for water rights dedication. Resolution to be presented at the second July 2016 Town Council meeting.

### EXECUTIVE SESSION

**15. Executive Session: An executive Session for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b)– Eagle River Properties v. Town of Minturn et al**

Motion by Harvey C., second by Earle B., to enter into executive session for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b)– Eagle River Properties v. Town of Minturn et al. Motion passed 7-0.

### FUTURE AGENDA ITEMS

**16. Next Meeting – July 20, 2016**

**17. Future Meetings:**

- Boneyard Management plan and conservation easement
- Work Session on housing
- Council retreat July 25, 2016 8:30am-3:00pm

**18. Set Future Meeting Dates**

- a) Council Meetings:
- July 20, 2016
  - August 3, 2016
  - August 17, 2016

**19. Other Dates:**

- Council retreat July 25, 2016 8:30am-3:00pm

**20. Adjournment**

Motion by Earle B., second by Harvey C., to adjourn the meeting at 11:30pm. Motion passed 7-0.

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Matt Scherr, Mayor

ATTEST:

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Jay Brunvand, Town Clerk

TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 3 – SERIES 2016

AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO AMENDING SECTION 16-2-40 OF THE  
MINTURN MUNICIPAL CODE, PERTAINING TO THE LOT  
DIMENSIONAL STANDARDS OF THE CROSS CREEK  
CHARACTER AREA.

**WHEREAS**, the Town of Minturn (“Minturn” or the “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; and

**WHEREAS**, Chapter 16 of the Minturn Municipal Code provides for character areas to encourage the most appropriate use of land, and to preserve and promote the Town’s economy, heritage, and small town qualities; and

**WHEREAS**, Section 16-2-40 of the Minturn Municipal Code establishes general lot requirements and dimensional standards, including minimum setback restrictions, for the Minturn character areas; and

**WHEREAS**, Chapter 16, Article 21 of the Minturn Municipal Code establishes the standards and procedure for amendments to the text of land use regulations or character area; and

**WHEREAS**, on June 22, 2016, the Minturn Planning Commission considered and recommended for approval a text amendment to Section 16-2-40 of the Minturn Municipal Code lowering the rear setback requirements in the Cross Creek character area from 20 feet to 10 feet; and

**WHEREAS**, on July 6, 2016 the Minturn Town Council conducted a duly-noticed public hearing and reviewed the text amendment and found the application and proposed amendment to be consistent with the master plan; and

**WHEREAS**, the Minturn Town Council desires to approve of such text amendment.

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

SECTION 1. The Council incorporates the foregoing recitals as findings and determinations, and conclusively makes all of the Findings of Fact, Determinations, and Conclusions contained herein.

SECTION 2. Table 16-A, contained in Section 16-2-40 of the Minturn Municipal Code, is hereby amended as follows, with double underlined text added and ~~strike through language~~ deleted.

**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**

\*\*\*\*

					Front	Rear (feet)	Side	
Cross Creek	Residential-S	5,000	50	40	<u>20</u>	<u>2010</u>	10	Eagle River=30
	Residential-N	10,000	100	25	<u>20</u>	<u>2010</u>	10	
	Mixed-use	10,000	100	40	<u>20</u>	<u>2010</u>	10	Cross Creek=50
	Fed. reg. land use	N/A	N/A	N/A	Rec. 50	Rec. 20	Rec. 10	

SECTION 3. The effective date of this ordinance shall be thirty (30) days after final publication thereof.

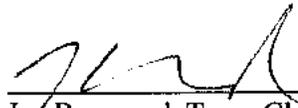
INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THE 6<sup>TH</sup> DAY OF JULY, 2016. A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF MINTURN, COLORADO ON THE 20<sup>TH</sup> DAY OF JULY, 2016 AT 6:30 P.M. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO

  
 \_\_\_\_\_  
 Matt Scherr, 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 20<sup>TH</sup> DAY OF JULY, 2016.

TOWN OF MINTURN, COLORADO

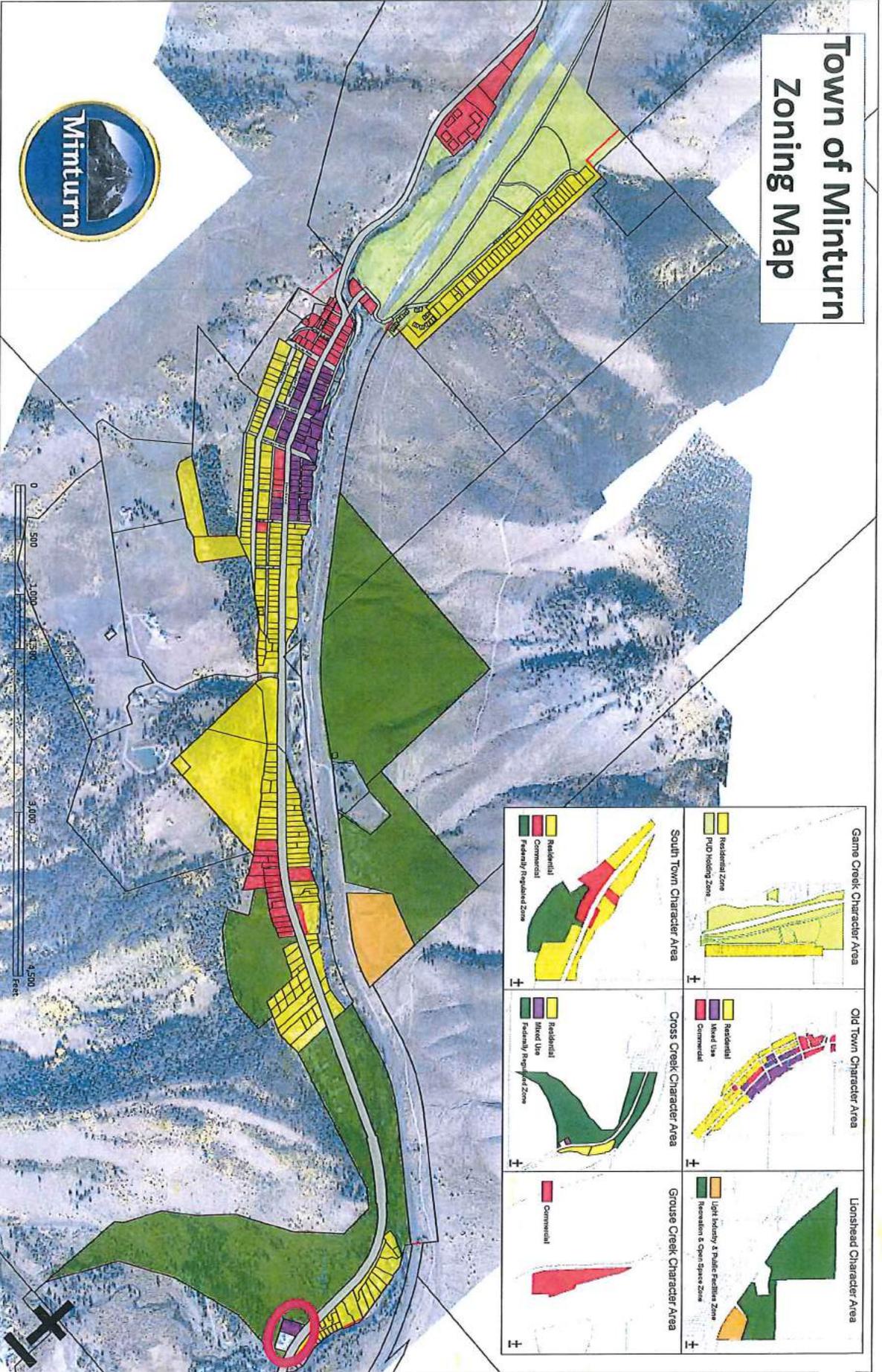
\_\_\_\_\_  
Matt Scherr, Mayor

ATTEST:

By:

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

# Town of Minturn Zoning Map



<p><b>Game Creek Character Area</b></p> <ul style="list-style-type: none"> <li>Residential Zone</li> <li>PUD (Public Use District) Zone</li> </ul>	<p><b>Old Town Character Area</b></p> <ul style="list-style-type: none"> <li>Residential</li> <li>Mixed Use</li> <li>Commercial</li> </ul>	<p><b>Lionhead Character Area</b></p> <ul style="list-style-type: none"> <li>Light Industry &amp; Public Facilities Zone</li> <li>Recreation &amp; Open Space Zone</li> </ul>
<p><b>South Town Character Area</b></p> <ul style="list-style-type: none"> <li>Residential</li> <li>Commercial</li> <li>Future/Regulated Zone</li> </ul>	<p><b>Cross Creek Character Area</b></p> <ul style="list-style-type: none"> <li>Residential</li> <li>Mixed Use</li> <li>Commercial</li> <li>Future/Regulated Zone</li> </ul>	<p><b>Grouse Creek Character Area</b></p> <ul style="list-style-type: none"> <li>Commercial</li> </ul>

Ad Ticket #5

**Acct:** 1032852  
**Phone:** (970)827-5645  
**E-Mail:** MANAGER@MINTURN.OR  
**Client:**  
**Caller:** Jay Brunvand  
**Receipt**

**Name:** Town of Minturn  
**Address:** P.O. Box 309

**City:** MINTURN  
**State:** CO  
**Zip:** 81645

**Ad Name:** 12235960A

**Original Id:** 0

**Editions:** 8VD/8VDI/

**Class:** 0990

**Start:** 07/08/16

**Stop:** 07/08/16

**Color:**

**Issue** 1

**Copyline:** vd ORDINANCE NO. 3 - SERIES 20

**Rep:** Pam Schultz

Lines:	28
Depth:	2.35
Columns:	1
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
<b>Total:</b>	<b>14.56</b>
Payment	0.00

TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 3 - SERIES 2016  
AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO AMENDING SECTION 16-2-40 OF  
THE MINTURN MUNICIPAL CODE, PERTAINING  
TO THE LOT DIMENSIONAL STANDARDS OF  
THE CROSS CREEK CHARACTER AREA.

INTRODUCED, READ BY TITLE, APPROVED ON  
THE FIRST READING AND ORDERED PUB-  
LISHED BY TITLE ONLY AND POSTED IN FULL  
ON THE OFFICIAL TOWN WEB SITE THE 6TH  
DAY OF JULY, 2016. 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 20TH DAY OF JULY, 2016 AT 6:30 P.M. AT  
THE MINTURN TOWN HALL 302 PINE STREET,  
MINTURN COLORADO 81645.  
TOWN OF MINTURN, COLORADO

Matt Scherr, Mayor

ATTEST:  
By: Jay Brunvand, Town Clerk

Published in the Vall Daily July 8, 2016.  
{12235960}

Ad shown is not actual print size

TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 4 – SERIES 2016

AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO APPROVING THE FINAL SUBDIVISION PLAT  
FOR THE CROSS CREEK SUBDIVISION.

**WHEREAS**, the Local Government Land Use Control Enabling Act of 1974, §§29-20-101, et seq., C.R.S.; Article 23 of Title 31, C.R.S.; and other applicable laws grant broad authority to the Town of Minturn, Colorado (“Minturn” or the “Town”) to plan for and regulate the development and use of land on the basis of the impact thereof on the community and surrounding areas; and

**WHEREAS**, the Town has adopted as Chapters 16 and 17 of the Minturn Town Code regulations governing the zoning and subdivision of properties within the Town; and

**WHEREAS**, Cross Creek Development (the “Developer”) has submitted an application and final plat to subdivide land in the Cross Creek character area (the “Cross Creek Subdivision”) into three residential lots for development of three residential duplexes; and

**WHEREAS**, on June 22, 2016 the Minturn Planning and Zoning Commission found the Final Plat for the Cross Creek Subdivision to be in compliance with the requirements and intent of the Minturn Town Code and the Town’s land use goals and plans, and recommended to the Town Council for approval the Final Subdivision Plat subject to certain additional conditions; and

**WHEREAS**, on July 6, 2016 the Minturn Town Council conducted a duly-noticed public hearing and reviewed the Final Plat for the Cross Creek Subdivision and found the document to be consistent with the approved Preliminary Plat, and that all conditions of the Preliminary Plat approval have been met; and

**WHEREAS**, the Minturn Town Council finds that the Final Subdivision Plat has been submitted in compliance with Article 6 of Chapter 17 of the Minturn Town Code; and

**WHEREAS**, the Town Council desires to approve the Final Plat for the Cross Creek Subdivision, subject to all terms and conditions set forth by the Planning and Zoning Commission in its June 22, 2016 Report.

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

SECTION 1. The Council incorporates the foregoing recitals as findings and determinations, and conclusively makes all of the Findings of Fact, Determinations, and Conclusions contained herein.

SECTION 2. That certain Final Plat for the Cross Creek Subdivision, attached as **Exhibit A** and incorporated by this reference, is hereby approved, subject to all terms and conditions attached hereto as **Exhibit B**.

SECTION 3. The Mayor of the Town of Minturn is hereby authorized to indicate the Town Council's approval of the Final Plat for the Cross Creek Subdivision by signing the Final Plat.

SECTION 4. The Developer shall comply with all of the Developer's representations made in any applications and in statements during the public hearings before the Minturn Planning and Zoning Commission and the Minturn City Council, which shall be conditions of approval with which the Developer shall comply. The Developer shall comply in full with the Minturn Town Code and Public Works requirements.

SECTION 5. The Town Clerk is hereby directed to record this Ordinance, the Final Plat of the Cross Creek Subdivision, any subsequent Amendments thereto, and any other associated documents in the Office of the Clerk and Recorder of Eagle County, Colorado with thirty (30) days of approval and to file one (1) certified copy of the Final Plat, any subsequent amendments, and this Ordinance with the Eagle County Assessor.

SECTION 6. The Minturn Town Council's approval of this Final Subdivision Plat creates a vested property right pursuant to the Minturn Town Code and Article 68 of Title 24, C.R.S., as amended, for a period of five (5) years from the effective date of this Ordinance. As a condition of the granting of such vested right, the Developer shall, at its expense, publish the vested rights notice required by C.R.S. § 24-68-103(c) and the Minturn Town Code § 16-21-710 *et seq.*, and the Developer shall comply with all the other procedural requirements set forth therein.

SECTION 7. Except as hereinabove provided, all provisions of the zoning, subdivision, and other ordinances or regulations of the Town shall apply to the Property.

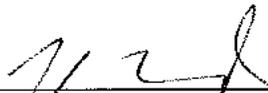
SECTION 8. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent, be held by a courts of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

INTRODUCED, READ BY TITLE, APPROVED ON THE FIRST READING AND ORDERED PUBLISHED BY TITLE ONLY AND POSTED IN FULL ON THE OFFICIAL TOWN WEB SITE THE 6<sup>TH</sup> DAY OF JULY, 2016. 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 20<sup>TH</sup> DAY OF JULY, 2016 AT 6:30 P.M. AT THE MINTURN TOWN HALL 302 PINE STREET, MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO

  
Matt Scherr, Mayor

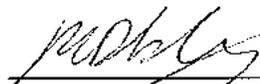
ATTEST:

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 20<sup>TH</sup> DAY OF JULY 2016.

TOWN OF MINTURN, COLORADO

  
Matt Scherr, Mayor

ATTEST:

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

**Exhibit A**  
**Final Plat for the Cross Creek Subdivision**



## **EXHIBIT B**

1. That all statements made by the applicant in the application and in meetings before the Planning Commission and the Town Council are conditions of approval unless modified in the following conditions.

2. All residences on the Property shall be developed using the residential zoning standards in the Cross Creek Character Area.

3. All comments of Town staff on the Final Plat, Engineered Construction Plans and HOA documents be adopted and incorporated.

4. That the Town and Applicant enter into a subdivision improvement agreement that meets the requirements of the Town Code and that is acceptable to the Town attorney.

5. That the applicant will receive applicable design review approvals prior to construction of any structures on the Property.

6. The contemporaneously with recording the Final Plat, applicant will demonstrate incorporation of a homeowners association, registration with the State of Colorado, and recordation in the public records of a declaration of covenants.

7. The applicant will pay all fees required by the Town code and associated with the Town's review and approval of the Final Plat and associated documents, including but not limited to attorney, engineer, planning, administrative and public notification costs.

8. That the final plat include the following language: The zoning for parcels adjacent to the Property allows for mixed uses and commercial uses. Properties zoned mixed use or commercial use are not governed by residential zoning criteria and may be subject to commercial standards for noise, light emissions, hours of operation, traffic, and other zoning use criteria.

9. The landscape berm proposed for the Property shall be entirely contained on the Property and shall not be located on any adjoining parcels or rights-of-way.

Thu, Jul 07, 2016  
12236122

12:02:57

Ad Ticket #5

**Acct:** 1032852  
**Phone:** (970)827-5645  
**E-Mail:** MANAGER@MINTURN.OR  
**Client:**  
**Caller:** Jay Brunvand  
**Receipt**

**Name:** Town of Minturn  
**Address:** P.O. Box 309

**City:** MINTURN  
**State:** CO  
**Zip:** 81645

**Ad Name:** 12236122A

**Original Id:** 0

**Editions:** 8VD/8VDI/

**Class:** 0990

**Start:** 07/08/16

**Stop:** 07/08/16

**Color:**

**Issue** 1

**Copyline:** vd Ordinance No. 4-2016

**Rep:** Pam Schultz

Lines:	28
Depth:	2.35
Columns:	1
Discount:	0.00
Commission:	0.00
Net:	0.00
Tax:	0.00
<b>Total</b>	<b>14.56</b>
Payment	0.00

TOWN OF MINTURN, COLORADO  
ORDINANCE NO. 4 - SERIES 2016  
AN ORDINANCE OF THE TOWN OF MINTURN,  
COLORADO APPROVING THE FINAL SUBDIVI  
SION PLAT FOR THE CROSS CREEK SUBDIVI  
SION.

INTRODUCED, READ BY TITLE, APPROVED ON  
THE FIRST READING AND ORDERED PUB  
LISHED BY TITLE ONLY AND POSTED IN FULL  
ON THE OFFICIAL TOWN WEB SITE THE 6TH  
DAY OF JULY, 2016. 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 20TH DAY OF JULY, 2016 AT 6:30 P.M. AT  
THE MINTURN TOWN HALL 302 PINE STREET.  
MINTURN COLORADO 81645.

TOWN OF MINTURN, COLORADO  
Matt Scherr, Mayor

ATTEST:  
By:  
Jay Brunvand, Town Clerk

Published in the Vail Daily July 8, 2016.  
(12236122)

Ad shown is not actual print size

Sander N. Karp\*  
James S. Neu  
Karl J. Hanlon  
Michael J. Sawyer  
James F. Fosnaught  
Jeffrey J. Conklin  
Andrew A. Mueller

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Matthew L. Trinidad  
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Jon T. Hoistad  
Delphine F. Janey

*Of Counsel*  
Richard I. Zuber\*\*  
Anna S. Itenberg  
Greg S. Russi  
Hollie L. Wieland

\*\* Fellow of the American  
Academy of Matrimonial Lawyers

Glenwood Springs Office  
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P. O. Drawer 2030  
Glenwood Springs, CO 81602

Aspen Office\*\*\*  
323 W. Main Street, Suite 301  
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[www.mountainlawfirm.com](http://www.mountainlawfirm.com)

\*\*\*All correspondence should be sent to the  
Glenwood Springs office

## MEMORANDUM

TO: Minturn Town Council  
FROM: Town Attorney  
DATE: July 11, 2016  
SUBJECT: Cross Creek Approvals

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As Council will recall, at the July 5 meeting the Council approved the two ordinances on first reading related to the Cross Creek Subdivision. The first ordinance undertakes a text amendment to the Zoning Code changing the rear yard setback from 20 feet to 10 feet. The second ordinance approves the final plat for the Cross Creek Subdivision subject to certain conditions. As was noted at the Council meeting, the language in condition no. 9 related to the landscaping berm was not correct. There was a discussion about whether the berm should stop at the property's southern boundary or be allowed to extend within the CDOT right-of-way some distance further to the south. Janet has spoken with ECO Transit and believes that there is a good reason to stop the landscape berm at the property's southern property line. Thus, condition no. 9 has been modified to read "the landscape berm proposed for the Property shall be constructed and landscaped in conformance with the CDOT issued permit, except that the berm shall not extend past the point where the Property's southern property line intersects Highway 24." Otherwise, no changes have been made to this ordinance. Approval of the ordinance related to the final plat should be done noting the amendment to language in condition no. 9.

In your packet for the first time is a resolution approving a subdivision improvement agreement for Cross Creek. Because Minturn so infrequently approves subdivisions, I thought I would take a minute to discuss the importance of a subdivision improvement agreement. When property is subdivided, very frequently the construction of public improvements is necessitated. Such improvements include roads, street lights, utilities, and landscaping. Once a final plat is approved and recorded, the developer can start selling lots. This generally occurs before the public improvements are installed. Therefore, the subdivision improvement agreement identifies the required public improvements and has the developer post "security" with the Town. The security is usually in the form of bank issued letter of credit. The security can be called by the Town in the

event that the developer fails to install the public improvement within the agreed upon amount of time. Thus, the subdivision improvement agreement protects both the Town and those members of the public who may purchase within the subdivision to ensure that the public improvements are completed in a timely manner and that there is a warranty to ensure that they are adequately constructed for an additional period of time.

I would reference you to the following provisions in the Cross Creek Subdivision Improvement Agreement:

A. Paragraph 4 relates to fees paid by the Town as part of the subdivision process. One item that I want to specifically discuss is the water rights dedication. Minturn's Code provides that in addition to a tap fee (a fee charged to reimburse the Town for the cost of the physical infrastructure for delivering water) that the Town should collect a cash-in-lieu fee for water rights dedication. The idea is that the Town has invested in obtaining water rights to facilitate development and that the Town is entitled to some recovery for its investment. At a future Council meeting, we will be discussing water rights dedication and in-lieu fees in more detail. Because this final plat approval needs to occur before a water rights dedication discussion can be had, the Town and the developer have agreed upon the amount of \$2,000.00 per single family equivalency for the water rights dedication fee.

As also noted, the Town has received a contribution of \$2,000.00 toward sidewalk construction.

B. Section 5 relates to specific construction conditions for the project. These include items related to landscaping, fencing, access, dust and mud control. These items are to insure that construction activities do not negatively impact the public.

C. Section 7 deals with the installation of public improvements. Exhibit B to the Subdivision Improvement Agreement is a list of those public improvements that the developer will construct as part of the subdivision.

D. Section 8 relates to observation and inspection of the public improvements. The Town Public Works Department and Town Engineer will periodically inspect the installation and completion of the public improvements to ensure that they are done consistent with the approved plans.

E. Section 10 provides the timeline for completion of the public improvements. Generally, the public improvements will be completed within 12 months of execution of the Subdivision Improvement Agreement. There is one exception to this. The roadway may be completed as late as 24 months from execution of the Agreement. The reason is that the developer does not want to damage the completed roadway by using heavy equipment on it. Thus, initially a gravel roadway will be installed. After the foundation of the last unit is excavated, the developer will come in and pave the roadway. The developer cannot receive a certificate of occupancy on the last unit unless the roadway has been completed.

F. Sections 12 and 13 relate to the developer's warranty for the public improvements. Even if public improvements are initially installed correctly, defects may materialize after the fact. To that end, the developer provides a warranty together with security to ensure that any warranty repairs are completed.

G. Section 17 indicates that a homeowners association will be created for this subdivision. The internal roadway and landscaping improvements related to the Cross Creek Subdivision will be maintained exclusively by the homeowners association (this is not a public road being dedicated to the Town of Minturn). I have reviewed and provided comments on the homeowners association documents.

The form of the subdivision improvement agreement draws on forms that my law firm uses for other municipalities and provisions from the Town Code. I recommend approval of the Subdivision Improvement Agreement.

TOWN OF MINTURN, COLORADO  
RESOLUTION NO. 18 – SERIES 2016

A RESOLUTION APPROVING OF AND AUTHORIZING THE  
MAYOR OF THE TOWN OF MINTURN TO SIGN  
SUBDIVISION IMPROVEMENT AGREEMENT FOR THE  
CROSS CREEK SUBDIVISION.

**WHEREAS**, the Town of Minturn desires to enter into a Subdivision Improvement Agreement with Cross Creek Development (the “Developer”) for the construction and dedication of public improvements on property owned by the Developer.

**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 THE SUBDIVISION IMPROVEMENT AGREEMENT ATTACHED AS EXHIBIT A.**

**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 20<sup>TH</sup> day of July 2016.**

TOWN OF MINTURN

By: \_\_\_\_\_  
Mathew Scherr, Mayor

ATTEST:

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

**SITE SPECIFIC DEVELOPMENT PLAN AND  
SUBDIVISION IMPROVEMENTS AGREEMENT  
FOR CROSS CREEK PLACE SUBDIVISION**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the TOWN OF MINTURN, COLORADO, a home rule municipality whose address is 302 Pine Street, P.O. Box 309, Minturn, CO 81645 (the "Town") and Cross Creek Properties, LLC a Colorado limited liability company whose address is 2015 East Arkansas Ave., Denver, CO 80210 (the "Developer") (individually, a "Party"; collectively, the "Parties");

WITNESSETH:

WHEREAS, the Developer is the owner of certain real property located in the Town of Minturn, Colorado known as Cross Creek Subdivision and described on **Exhibit A**, attached and incorporated by this reference (the "Property"); and

WHEREAS, on about July 9, 2014 after a duly-noticed public hearing and pursuant to Minturn Municipal Code §17-5-40, the Town of Minturn Planning Commission approved a Preliminary Subdivision Plat for the Property; and

WHEREAS, on about July 6, 2016 and July 20, 2016, the Town Council of the Town of Minturn, after holding all necessary public hearings, approved by appropriate ordinance a Final Subdivision Plat for the Property creating three duplex lots, which Ordinance No. 4, Series of 2016 is recorded as Reception No. \_\_\_\_\_ with the Eagle County Clerk and Recorder; and

WHEREAS, the Town's approval of the Final Subdivision Plat for the Property cited above is contingent upon the express condition that all obligations and duties created by this Agreement are faithfully performed by the Developer.

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

1. **Recitals.** The foregoing recitals are incorporated herein as material representations and acknowledgments of the Parties.

2. **Purposes.** The purpose of this Agreement is to set forth the terms and conditions to be met by the Developer; to set forth the fees to be paid by the Developer upon subdivision of the Property; and to constitute the Subdivision Improvement Agreement ("SIA") provided for in Sections 17-7-10 through 17-7-20 of the Minturn Municipal Code. All terms and conditions contained herein are in addition to all requirements of the Minturn Municipal Code, the Town of Minturn Zoning and Subdivision Regulations (Titles 16 and 17 of the Minturn Municipal Code), and state and federal statutes, and are not intended to supersede any requirements contained therein, except where specifically provided in this Agreement. The Developer agrees to bear all costs and responsibility for completion of the improvements servicing the Property as provided in this Agreement. This Agreement is not executed for the benefit of materialmen, laborers, or

others providing work, services, or materials to the Property, or for the benefit of future lot owners or occupants of the Property.

3. Duplex Plats and Declaration. In accordance with Ordinance No. 4, Series of 2016, the Town and the Developer agree and acknowledge that amended duplex plats shall be prepared after building foundations have been constructed and final “as-built” surveys have been completed. These “Duplex Plats” may be approved administratively by the Town without further review by the Town Council or the Planning Commission, such approval not to be unreasonably withheld. No individual duplex unit shall be sold into separate ownership until and unless a duplex plat has been approved by the Town based upon an “as-built” survey of the unit boundaries and such plat has been recorded in the real estate records of Eagle County. A plat note on the Final Subdivision Plat for the Property shall be included to this effect.

4. Fees. In addition to any fees enacted by any ordinance of general applicability in the Town, the following fees shall be paid to the Town by the Developer:

A. Reimbursement of Costs. The Developer hereby agrees to pay the Town the actual costs to the Town for engineering, surveying, and legal services rendered in connection with the review of the subdivision of the Property. In addition, the Developer shall reimburse the Town for the cost of making corrections or additions to the master copy of the official Town map, for the fee for recording the Final Plat and accompanying documents with the County Clerk and Recorder of Eagle County. The Developer shall also pay any fees required pursuant to the Minturn Municipal Code. Interest shall be imposed at rate of 1.5% per month on all balances not paid within thirty (30) days of the date of the statement. In addition to any and all remedies available to the Town and in the event the Town is forced to pursue collection of any amounts due and unpaid under this provision or under this Agreement, the Town shall be entitled to collect attorney’s fees and costs incurred in said collection efforts in addition to the amount due and unpaid.

B. Water and Sewer Taps. The Developer, its successors and assigns, shall comply in full with Title 13 of the Minturn Municipal Code regarding tap fees for water and sewer service. Developer has a credit of three tap fees for preexisting water and sewer service to the Property. Developer shall pay the cost of the remaining three water and sewer tap fees at the time of issuance of a building permit.

C. Water Rights Dedication. The Developer shall pay the cash in lieu of the water rights dedication fees as required under Minturn Municipal Code Section 13-2-20, *et. seq.* For this purpose, prior to receiving a building permit for each unit, the Developer shall pay the agreed upon amount of \$2,000 per single family equivalency for three units for a total of \$6,000. Developer has a credit of three Single Family Equivalencies for existing water service to the Property.

If there are additional EQRs associated with development or use of any of the lots or Property, payment shall be due at the time of building permit for such units which raise the total EQRs above the above-referenced calculations. The water rights dedication fee per EQR to be paid will be the fee then in effect. Further, the Developer agrees to be bound by any ordinance or resolution of general applicability that modifies these fees.

D.Sidewalk Contribution. The Town acknowledges receipt from Developer the sum of \$2000 which amount shall be used for the planning, design and construction of sidewalks in the South Minturn area.

5. Specific Conditions. The Developer agrees to perform the following conditions: These are all specific to the project:

A. Representations. All representations of the Developer made in its application and in statements during the public hearings before the Planning Commission and Town Council shall be considered conditions of approval with which the Developer shall comply.

C. Revegetation and Landscaping. Within twelve (12) months of the filing of the final plat, the Developer shall landscape the Property to eliminate erosion and revegetate any disturbed areas pursuant to plans reviewed and approved by the Town. The Developer shall further install or require by covenant, to which the Town shall be a third party beneficiary, landscaping on the Property pursuant to plans approved by the Town. Cost estimates of all landscaping shall be submitted to the Town, guaranteed by the security required by this Agreement, and shall be considered a public improvement hereunder. Specific components of the Landscaping Plan shall include, but are not limited to:

- i. Compliance with all applicable Town Code provisions, including Sections 16-17-130 to 16-17-170.
- ii. Park/green space improvements to be installed no later than the time of completion of one third (1/3) of the residential units on the Property.
- iii. Landscaping of individual yards, including fencing, as part of the building process.
- iv. Plans for installation and maintenance of seed mix if this approach is selected over sod landscaping.
- v. Screening elements.
- vi. Features to protect mature tree stands, where feasible.

D. Fencing Plan. Prior to the commencement of development of the Property, Developer shall provide a Fencing Plan to the Town for its review and approval, which approval shall not be unreasonably withheld. The Fencing Plan shall show a common and uniform fencing theme (design and materials) for the Property and

shall be included in the Covenants for the Property as an architectural requirement applicable to all unit owners, to which the Town shall be a third party beneficiary.

E. Irrigation. The Developer agrees to construct and install, at the Developer's sole expense, an irrigation system sufficient to irrigate all open space for which the Developer has installed landscaped improvements and all areas of multi-use open space parcels landscaped by the Developer within the Property. The plans and specifications for such system shall be subject to the approval of the Town Engineer and shall be part of the public improvements for purposes of this SIA. Irrigation systems in the drainage ways and cut and fill slopes shall be installed temporarily and may be removed when revegetation has been established and irrigation is no longer necessary.

F. Pedestrian Access. The Developer shall install during the first phase of construction of the Property safe pedestrian access to and from the Property.

G. Emergency Access. Plans for emergency access to the Property shall be submitted to the Planning Department according to specifications approved by the Eagle River Fire Protection District.

H. Dust, Mud, and Erosion Control. The Developer shall maintain all streets and surrounding areas during construction of the Public Improvements by employing techniques acceptable to the Town for dust, mud, and erosion control. Dust & erosion control shall extend beyond the construction area to the streets entering and exiting the project where mud and dirt from construction equipment as well as local traffic may get onto the streets. The Developer shall clean these areas as necessary. The Town may require the Developer to discontinue construction activities at any time until dust and/or erosion conditions are reduced to the Town's satisfaction. There shall be zero tolerance for fugitive dust or erosion from the site. Further, as may be applicable, the Developer shall apply and receive a Storm Water Management Permit from the State of Colorado prior to any construction work, including grading.

I. Traffic Control Devices. Any and all traffic control devices required by the Town's Public Works Director placed in the Town's right-of-way or other property shall be supplied as Public Improvements at the Developer's sole expense. All traffic control devices shall conform to the Town's requirements. Further, the Developer shall repair or replace traffic control devices, add additional traffic control devices, or move or remove traffic control devices at the Town's request during the Warranty Period.

J. Dogs Prohibited During Construction. The Developer shall prohibit its contractors and subcontractors from bringing dogs onto the Property during work hours, even if such dogs are to be kept inside motor vehicles.

K. Common Park and Recreation Areas. The Developer shall submit to the Town a area plan for common space, park, and recreation improvements on the site, if any. Such plan shall identify any deed or restrictions against future use of the improvements, as well as specify a plan for the maintenance of all common space, park, and recreation improvements consistent with Section 17-7-10 of the Minturn Municipal Code.

6. Pre-Construction Meeting. The Developer shall hold a pre-construction meeting with the Town Engineer and Public Works Director, as well as the Developer's engineer and contractor for the purpose of discussing all construction issues that will be required for this project.

7. Public Improvements. All water lines, water facilities, sewer lines, sewer facilities, hydrants, water or sewer distribution facilities, drainage structures, landscaping, cable T.V., telephone lines, utility systems, streets (public and/or private), lighting, and signage required by this Agreement, construction drawings approved by the Town, or shown on the Final Subdivision Plat prepared by Cirque Civil Engineering, as Job No. 16001 dated \_\_\_\_\_ 2016, as it may be amended (the "Public Improvements") shall be installed and completed at the expense of the Developer.

A. All Public Improvements required by this Agreement are shown on the Final Subdivision Plat submittal, and the estimated costs thereof, are identified on **Exhibit B**, attached and incorporated by this reference. The Public Improvements shall be constructed in conformance with the plans and specifications submitted by the Developer as part of the Final Plat application and approved by the Town Engineer and/or Town Public Works Director or his/her designee, including all supplemental plans and specifications, the Town of Minturn Public Works Manual then in effect, and the utility plan (hereinafter collectively referred to as "Plans and Specifications").

B. The Developer shall provide, at its sole cost and expense, all necessary engineering designs, surveys, field surveys, and incidental services related to the construction of the Public Improvements.

8. Construction Observation and Inspection.

A. Materials and Workmanship. Unless otherwise specified, all materials used for the Public Improvements shall be new, of good quality and meeting appropriate municipal requirements. Workmanship and materials shall be of good quality and meet industry standards. Developer shall furnish to the Town for the Town's approval, manufacturer's specifications for all equipment and materials that it contemplates incorporating into the Public Improvements, which approval shall not be unreasonably withheld. The Developer shall also furnish, upon request, information on capacities, efficiencies, sizes, etc. as the Town may require. Equipment, materials, and articles not conforming to the construction plans shall be placed and installed at the risk of subsequent rejection by the Town.

B. Construction Inspection by the Developer. The Developer shall be responsible for ensuring that its professional engineer provides construction inspection services as necessary to allow The Developer's engineer to provide a stamped certification, when improvements are submitted to the Town for acceptance, that the Public Improvements have been constructed in accordance with the Plans and Specifications approved by the Town.

C. Construction Observation by the Town. The Town shall have the right to make engineering and construction observations at reasonable intervals and at the Developer's expense during construction of the Public Improvements. Observation, acquiescence in or approval by any engineering and/or building inspector of the construction of any physical facilities, at any particular time, shall not constitute Town approval of any phase of construction of the Public Improvements. Town approvals shall be made only after completion of construction and in the manner hereinafter set forth. To assist the Town in monitoring the installation of the Public Improvements, a supervisor employed by the Developer's general contractor shall inspect the Public Improvements on at least a weekly basis, and shall provide the Town Engineer and/or Town Public Works Director or his/her designee with supervisor's field and inspection notes relating to the installation of the Public Improvements. The supervisor shall regularly apprise the Town Public Works Director or his/her designee of the status of the work on the Public Improvements. Further, the Developer at its own expense shall have an approved geotechnical engineer monitor the methods of construction and backfill, to ensure such work is being completed in conformance with the approved Plans and Specifications, and accepted standards for such work. The geotechnical engineer shall conduct inspections and testing as directed by the Town Public Works Director or his/her designee. The Town agrees to respond to requests for interim inspections in a timely manner and to respond not later than ten (10) business days after a request for a final inspection. Nothing in this paragraph shall be construed to constitute an acceptance by the Town of the Public Improvements, which approval and acceptance shall only occur pursuant to the specific provisions below. Nothing herein shall be construed to have a meaning that would require the Town to accept any work of inferior quality, work that does not meet the requirements of the Approved Construction Plans, does not meet applicable municipal requirements, or otherwise does not meet industry standards.

9. Permits and Easements. The Developer shall obtain and present to the Town all land boundary surveys, permits, licenses, and easements of a temporary or permanent nature, if any, necessary for the construction or maintenance of Public Improvements.

10. Completion of Public Improvements; Approval. The Developer shall complete all Public Improvements within twelve (12) months of the execution of this Agreement, with the exception of the private roadway which may be completed up to twenty-four (24) months from the execution of this Agreement. Prior to issuing a certificate of occupancy for any unit,

Developer shall install a graveled roadway connecting the driveway of each constructed unit with Highway 24. The gravel roadway shall be inspected and approved by the Town Public Works Department. No certificate of occupancy for the last unit constructed within the subdivision shall be issued until the private roadway is fully paved and completed. Upon the Developer's completion of construction of the Public Improvements, the Developer's engineer shall certify in writing that the improvements have been completed in conformance with the Plans and Specifications and submit to the Town a completed acceptance checklist utilizing a form approved by the Town. Thereafter, the Town Public Works Director or his/her designee shall inspect the Public Improvements and certify in writing and with specificity their conformity or lack thereof to the Plans and Specifications. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Plans and Specifications. The Developer shall at its expense have as-built drawings prepared by a professional engineer and a registered land surveyor, which drawings shall include all legal descriptions the Town may require. The Developer shall also prepare a summary of the actual construction costs of all Public Improvements to be dedicated to the Town. The as-built drawings and costs summary shall be forwarded to the Town for review and approval.

Once the as-built drawings and costs summary are approved, and any and all corrections are completed, the Town Public Works Director or his/her designee shall certify in writing that all Public Improvements are in conformity with the Plans and Specifications, and the date of such certification shall be known as the "Acceptance Date". The Town shall be under no obligation to provide any water or sewer service until all Public Improvements are brought into conformance with the Plans and Specifications and the approved Final Plan and Final Subdivision Plat, and are certified and approved by the Town Public Works Director or his/her designee pursuant to this Agreement. However, upon certification and approval, the Town shall be obligated to provide water and sewer service to the Property, subject to all provisions of the Minturn Municipal Code, and in particular to the availability of water or sewer taps, which shall be on a first-come, first-served basis. The Town does not guarantee an adequate number of taps will be available to serve the Property at the time the Developer intends to proceed with development.

11. Acceptance; Conveyance. Within thirty (30) days of the Acceptance Date, the Developer of the Property shall execute a deed to the owners association (and to the Town if applicable) conveying all rights-of-way and easements required for the operation, maintenance, repair and replacement of the Public Improvements. The Developer agrees to dedicate to the public and to convey or, with respect to off-site easements, to assign, to the owners association, in such form as may be required by the Town, such easements and other rights as acquired by the Developer as may be reasonably required for the construction of the Public Improvements. Such conveyance and dedication shall be free and clear of all liens and encumbrances that might adversely affect the use of the Public Improvements for their intended purpose. The Developer shall also execute a bill of sale conveying the Public Improvements to the owners association, free and clear of all liens and encumbrances. All Public Improvements conveyed to the owners association shall be warranted for a period of twelve (12) months from the Acceptance Date, as provided below.

12. Warranty. The Developer shall warrant any and all Public Improvements and facilities which are conveyed to the Town or an owners association pursuant to this Agreement for a period of twenty four (24) months (the "Warranty Period") from the Acceptance Date. Such Warranty shall automatically terminate at the expiration of Warranty Period or twelve (12) months from the final repair or replacement required under the Warranty, whichever is sooner, unless otherwise agreed by the Parties. Specifically, but not by way of limitation, the Developer shall warrant that:

- A. The title conveyed shall be good and its transfer rightful;
- B. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- C. Any and all facilities so conveyed shall be free of any defects in materials or workmanship for a period of twenty-four (24) months, as stated above.

13. Warranty Securitization. The Developer shall provide to the Town a Warranty Security in the form of a letter of credit or deposit agreement satisfactory to the Town Attorney no later than the Acceptance Date. The Warranty Security shall be adequate to repair or replace twenty-five percent (25%) of the improvements made to the property, as determined through the plan provided on Exhibit B, during the Warranty Period. If the Developer does not repair or replace damaged or inoperable improvements upon 60 days' notice from the Town, the Town shall have the right to do so and deduct the cost of the same from the Warranty Security. Such Warranty Security shall be held by the Town for the Warranty Period and shall be released upon the expiration of the same, once all warranty issues have been resolved.

14. Performance Guarantee. The total amount of required security for the Public Improvements shall be as specified on Exhibit B, less any amounts identified in Exhibit B as "PREPAID THIRD PARTY UTILITY COSTS" for which Developer is required to post a deposit for the full amount of such utility work to be completed and for which the scope of the work to be completed is to be completed entirely by such third party utility. The Developer shall provide to the Town security in the form required under Section 17-7-10 of the Minturn Municipal Code. Such guarantees shall be subject to increase if deemed reasonable and necessary in the sole opinion of the Town.

- A. In order to secure the construction and installation of the Public Improvements above described, for which the Developer is responsible, the Developer shall upon execution of this Agreement, and before any lots are contracted for or sold or offered for sale, furnish the Town with a certificate or other evidence, in good and sufficient form approved by the Town Attorney, of an irrevocable letter of credit or deposit agreement, in a form substantially similar to **Exhibit C**, attached and incorporated by this reference, issued or confirmed by a commercial banking institution authorized to do business and with offices located within the State of Colorado to secure the performance and completion of the Public Improvements, in an amount equal to the estimated costs of said facilities as set forth on Exhibit B. The Town shall have the right to review and approve all

terms and conditions of the letter of credit or deposit agreement prior to recording of the Final Plat.

The original letter of credit or deposit agreement shall be delivered to the Town prior to the recordation of the Final Plat.

The Performance Guarantee shall specifically address:

i. Landscape Guarantee. Developer shall provide Town with a guarantee for no less than one hundred twenty-five percent of the cost of the landscaping improvements for the entire Property to ensure proper installation and continued maintenance of all features for a warranty period of two (2) years after installation. The guarantee shall be provided prior to the initiation of any land clearing or infrastructure development on the Property and shall be released upon the Planning Director's inspection, approval, and acceptance of the landscaping, except that twenty-five percent (25%) of the cost of each feature shall be retained for the two (2) year warranty period.

ii. Public Improvements Guarantee. A guarantee acceptable to the Town Attorney for no less than one hundred percent (100%) of the current estimated costs of necessary public improvements, as estimated by the Town Engineer. Such guarantee shall be released upon inspection, approval, and acceptance by the Town Engineer, except that ten percent (10%) of the cost of each improvement shall be retained until all proposed improvements are completed.

B. In the event the Public Improvements are not constructed or completed within twelve (12) months of the date of this Agreement, the letter of credit or deposit agreement shall provide that the funds necessary to complete the Public Improvements shall be put directly to an escrow account under the control of the Town Manager and shall be used to complete the Public Improvements called for herein.

C. Within ten (10) days of timely completion and acceptance of the Public Improvements, and performance of the conditions and requirements of this Agreement secured by the performance guarantee, and upon the approval of the Town Manager, the performance guarantee shall be released to the Developer. If the Public Improvements are not completed within the required time, the performance guarantee may be called by the Town and the monies may be used to complete the Public Improvements; provided, however, that if such guarantee is not sufficient to pay the actual costs, the Developer shall be responsible for the balance.

D. The required security for the Public Improvements is the amount mutually agreed upon by the Developer and the Town Engineer as set forth above. The

Parties agree that this amount does not necessarily reflect the Town Engineer's estimate of what the actual cost to the Town would be if the Town were required to fund construction of all of the Public Improvements. In the event the costs of the Public Improvements exceed the amount set forth above, the Developer shall be solely responsible for the actual cost. The purpose of Exhibit B is solely to determine the amount of security and shall be revised every twelve (12) months to reflect the actual costs, and the performance guarantee required by this SIA shall be adjusted accordingly. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual costs of all such Public Improvements.

E. The Parties expressly agree that the Developer's preparation and submission to the Town of "as-built drawings" and a summary of actual construction costs for the Public Improvements to be dedicated to the Town or owners association—and approval by the Town of the as-built drawings and summary—are essential requirements of this Agreement. In the event the Developer fails to provide the as-built drawings and summary to the Town thirty (30) days prior to the expiration of the performance guarantee or any extension thereof, such failure shall constitute a breach of this Agreement with regard to the completion of the Public Improvements, damages for which are impossible to ascertain, entitling the Town to call upon the performance guarantee in an amount equal to ten percent (10%) of the total amount set forth on Exhibit B, which amount the Town may retain as liquidated damages due to the Developer's breach. No releases of the letter of credit or deposit agreement shall be granted by the Town until such as-built drawings are provided and all Public Improvements are accepted by the Town.

15. Title Policy. Prior to the recordation of the Final Plat for the Property, the Developer shall provide the Town a commitment for a title insurance policy, indicating that the Property is free and clear of all encumbrances whatsoever which would impair the use of the Property as proposed by the Final Subdivision Plat. Further, said title commitment, and/or an additional title commitment, shall show that all other property to be dedicated to the Town or owners association is free and clear of all encumbrances which would make said dedications unacceptable as the Town in its sole discretion determines. At the time of recording the Final Plat, the title insurance policy(s) shall be provided to the Town, and the premium(s) for the title insurance shall be paid by the Developer. In the event the title commitment(s) reflect encumbrances which would impair the use of the Property as proposed or which would make the public dedications unacceptable, the Town shall notify the Developer, who shall cure or otherwise remove or subordinate said encumbrances to the satisfaction of the Town prior to the recordation of the Final Plat.

16. Vested Rights. Pursuant to Section 16-11-10, *et. seq.*, of the Minturn Municipal Code, the Town and the Developer agree that the Town Council's Subdivision Final Plat approval of the Property constitutes the approval of a "Site Specific Development Plan", and no further hearings are required. Pursuant to the approval by the Town Council of the Final Plat for the Property, the Town granted vested property rights for the Property for a period of five (5)

years from the effective date of the Town ordinance approving this Agreement and the Final Plat upon the condition that the Developer comply with all of the terms and conditions of this Agreement, the Final Plat for the Property, and the development submittal. Such rights shall also be subject to the provisions of Minturn Municipal Code Section, and the Developer shall at its expense publish the vested rights notice required by C.R.S. §24-68-103(1) and Minturn Municipal Code Section 16-21-710.

17. Owners Association; Covenants. An owners association shall be created by the Developer under the laws of the State of Colorado before any properties within the subdivision are sold to third parties. The Articles of Incorporation and covenants shall be reviewed by the Town Attorney to insure that they meet the Town's requirements that the owners association (1) maintains, operate and assume full responsibility for all easements and common areas within the Property and shown on the Final Plat, including landscaping; (2) maintains all private open space; and (3) is empowered to enforce any provisions of the covenants, conditions and restrictions affecting the Property. The covenants for the Property shall also address, at a minimum: party wall agreements, snow removal, building and landscape maintenance, sidewalk maintenance, use of limited and general common elements, fencing styles and heights, outdoor storage of vehicles (including recreational vehicles, boats, trailers, and the like), and pets. The Articles of Incorporation and covenants shall be reviewed and approved, and the Articles filed with the Colorado Secretary of State prior to the recordation of the Final Plat.

18. Conditions of Building Permit / Certificate of Occupancy. In addition to all requirements of the Minturn Municipal Code and any requirements imposed by operation of state, federal, or local law, no building permits shall be issued for the Property until:

- A. This SIA has been recorded in the Office of the Eagle County Clerk and Recorder, and a recorded copy is on file in the Office of the Town Clerk.
- B. The Final Plat has been recorded in the Office of the Eagle County Clerk and Recorder, and a recorded copy is on file in the Office of the Town Clerk.
- C. All Public Improvements have been accepted, or a performance guarantee to secure all Public Improvements has been provided in accordance with this SIA.

19. Voluntary Action of Developer. Notwithstanding any provision of the Minturn Municipal Code, the Developer agrees that all terms and conditions of this Agreement, including specifically the payment of fees, the dedication of land, and the completion of off-site infrastructure improvements, are agreed to and constitute the voluntary actions of the Developer.

20. Breach by Developer; Town's Remedies. In the event of any default or breach by the Developer of any term, condition, covenant or obligation under this Agreement, the Town Council shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders, and to protect the citizens of the Town from hardship. The Town's remedies include:

A. The refusal to issue to the Developer any building permit or certificate of occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described below has been recorded;

B The recording with the Eagle County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Manager or his designee, stating that the terms and conditions of this Agreement have been breached by the Developer. At the next regularly scheduled Town Council meeting, the Town Council shall either approve the filing of said affidavit or direct the Town Manager to file an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further lots or parcels may be sold within the Property until the default has been cured. An affidavit signed by the Town Manager or his designee and approved by the Town Council stating that the default has been cured shall remove this restriction;

C. A demand that the security given for the completion of the public improvements be paid or honored; the refusal to consider further development plans within the Property; and/or any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town or Town residents, the Town shall provide the Developer ten (10) days' written notice of its intent to take any action under this paragraph during which ten-day period the Developer may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless an affidavit as described above has been recorded with the Eagle County Clerk and Recorder, any person dealing with the Developer shall be entitled to assume that no default by the Developer has occurred hereunder unless a notice of default has been served upon the Developer as described above, in which event Developer shall be expressly responsible for informing any such third party of the claimed default by the Town.

21. Assignment. This Agreement may not be assigned by the Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld. In the event the Developer desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

22. Indemnification. The Developer agrees to indemnify and hold the Town harmless from any and all claims or losses of any nature whatsoever incurred by the Town resulting from the subdivision of the Property and construction of the Public Improvements. This indemnification shall include actual attorneys' fees incurred in the event that any party brings an action against the Town for any of the approvals described herein. The Parties intend not to duplicate any legal services or other costs associated with the defense of any claims against either Party described in this section. Therefore, the Parties agree to cooperate in full to prevent duplicative expenses incurred as a result of the indemnification herein described.

23. Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or

concerning the power of the Town to impose conditions on the Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

24. Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties and is the total integrated agreement between the parties.

25. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the Parties.

26. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Town of Minturn Municipal Code and Ordinances and the laws of the State of Colorado, and that the Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town officers or agents or their designees which is subsequently held unlawful by a court of law.

27. Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

28. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, and assigns.

29. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

30. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Eagle County, Colorado.

31. Attorneys' Fees; Survival. Should this Agreement become the subject of litigation, the substantially prevailing Party shall be entitled to, and the failing Party shall pay, all reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Agreement.

32. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the Party it represents to the terms and conditions hereof.

33. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

34. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices shall be sent.

Notice to Town: Town of Minturn  
P. O. Box 309  
Minturn, CO 81645

With copy to: Karp Neu Hanlon, P.C.  
P. O. Drawer 2030  
Glenwood Springs, CO 81602

Notice to Developer: Castle Creek Properties LLC  
c/o Matt Giblin  
2015 E Arkansas Ave  
Denver, CO 80210

35. Gender. Whenever the context shall require, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

36. No Agency, Joint Venture, or Partnership. It is specifically understood and agreed to that the Parties that this Agreement does not create any agency, joint venture, or partnership relationship between the Parties. The Town has no interest in responsibility for, or duty to, third parties concerning any improvements made hereunder until such time, and only until such time, that the Town accepts the Public Improvements under the provisions of this Agreement.

WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

TOWN OF MINTURN, COLORADO

By: \_\_\_\_\_  
Matt Scherr, Mayor

ATTEST:

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

DEVELOPER  
CROSS CREEK PROPERTIES, LLC

By: \_\_\_\_\_  
\_\_\_\_\_, Manager

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF                )

Acknowledged, subscribed, and sworn to before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_ as Manager of Cross Creek Properties, LLC.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**[ISSUING BANK LETTERHEAD]**

**IRREVOCABLE LETTER OF CREDIT**

Date of Issue: \_\_\_\_\_  
Issuing Bank: \_\_\_\_\_  
Letter of Credit No.: \_\_\_\_\_  
Amount: \_\_\_\_\_

Town of Minturn ("Town")  
302 Pine Street  
P.O. Box 309  
Minturn, Colorado 81645

Ladies and Gentlemen:

We hereby establish this Irrevocable Letter of Credit in your favor for an amount up to the aggregate sum of \_\_\_\_\_ U.S. dollars.

Funds under this credit are available to you by your draft or drafts drawn at sight on us containing the number of this Letter of Credit as set forth above.

Partial drawings are permitted.

The sole condition for payment of any draft drawn under this Letter of Credit is that the draft be accompanied by a letter, on the Town's letterhead, signed by the Town Administrator or the Acting Town Administrator, stating that **CROSS CREEK PROPERTIES, LLC**, its successor, transferee, or assign, has failed to perform in accordance with the Site Specific Development Plan and Subdivision Improvements Agreement for the **CROSS CREEK PLACE SUBDIVISION** dated the \_\_\_\_ day of \_\_\_\_\_, 2016.

Demands for payment by the Town pursuant to this Letter of Credit shall be deemed timely if deposited in the U.S. Mail prior to its date of expiration, affixed with first-class postage, and addressed to the above letterhead address.

This Letter of Credit shall have an initial term of one (1) year from its Date of Issue, but shall be deemed automatically extended without amendment or other action by either party for additional periods of one year from the present or any future expiration date hereof, unless we provide the Town with written notice, by registered mail, return receipt requested, at least ninety (90) days prior to the expiration date, that we do not wish to extend this Letter of Credit for an additional period. After receipt by the Town of such notice, the Town may draw hereunder, on or before the then-applicable expiration date, and for the then-remaining available amount by means of the Town's sight draft, drawn on the issuing bank, accompanied by a letter, on the Town's letterhead, signed by the Town Administrator or Acting Town Administrator stating the following:

We are in receipt of written notice from **[NAME OF BANK]** of its election not to renew its Letter of Credit No. **[FILL IN]** for an additional term of one (1) year and



(SEAL)

\_\_\_\_\_  
Notary Public



**Design Review**  
**Planner Report**

7/11/2016

J Hawkinson, Planning Director

Town of Minturn  
302 Pine Street  
Minturn, Colorado  
81654  
970-827-5645

**APPLICANT:** Adam Ostmeyer  
**CONTRACTOR:** South Fork Builders - Eagle, CO 970-443-9427  
**REQUEST:** New residential construction of a duplex  
**LOCATION:** 1131 & 1133 Main Street, Minturn, CO

**DATE SUBMITTED:** July 1, 2016

**ZONING:** Residential - South Minturn Character Area  
**PUBLIC NOTICE:** Agenda posted at Town Hall and on website

**PLANNER RECOMMENDATION:** Approve Application

**PLANNING COMMISSION RULING:** Approved the application with the following conditions:

- 1) snow clips to be added to the east roof of 1131 duplex
- 2) a site plan showing the turning radius for vehicles in driveway to turn around and not back out onto highway 24

**SITE & BUILDING ANALYSIS:**

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**BUILDING HEIGHT:** Maximum Allowed: Actual:  
28' at mid-roof line 27'6" at mid-roof line as per natural grade

**LOT AREA:** 1131 Main - 4170 sq ft 1133 Main - 4206 sq ft

**50% MAXIMUM BUILDING LOT COVERAGE: 2,000 SQ FT**  
Site Coverage: 1131 Main - 2,085 sq ft 1133 Main - 2,103 sq ft  
Total Site Coverage: 33% - 1,372sq ft -31% 1,293 sq ft

**50% MAXIMUM IMPERVIOUS SURFACE COVERAGE:**  
1131 Main - 2,085 SQ FT - Actual: 47% 1,942 sq ft  
1133 Main - 2103 sq ft - Actual: 50% 2,103 sq ft

**SETBACKS:** Meets required setbacks: 20' front 5' side yards 10' rear yards

**TOTAL BEDROOMS:** 1131 Main - 4 bedrooms 1133 Main - 3 bedrooms

**PARKING SPACES:** 1131 Main - Required: 2 spaces Actual: 4 spaces  
1133 Main - Required: 2 spaces Actual: 4 spaces

**SNOW STORAGE:** Required: 29 & 42 sq ft Actual: 29 & 42 sq ft

**LANDSCAPING REQUIREMENTS:** meets 5 trees required and pervious surface

**ROOF:** "cold-roof" designed to not shed snow, stays on roof



**TOPOGRAPHIC SURVEY**  
**Lot 23-B, a Resubdivision of**  
**Lot 23 South Minturn Addition**  
**Town of Minturn**  
**County of Eagle, State of Colorado**

**DESCRIPTION:**

LOT 23-B, A RESUBDIVISION OF LOT 23, SOUTH MINTURN ADDITION, ACCORDING TO THE CITY RECORDS OF MAY 11, 1954, IN BOOK 608, PAGE 337, AS RECORDED IN COLORADO, AT THE OFFICE OF THE CLERK OF RECORDS, COUNTY OF EAGLE, STATE OF COLORADO.

**NOTES:**

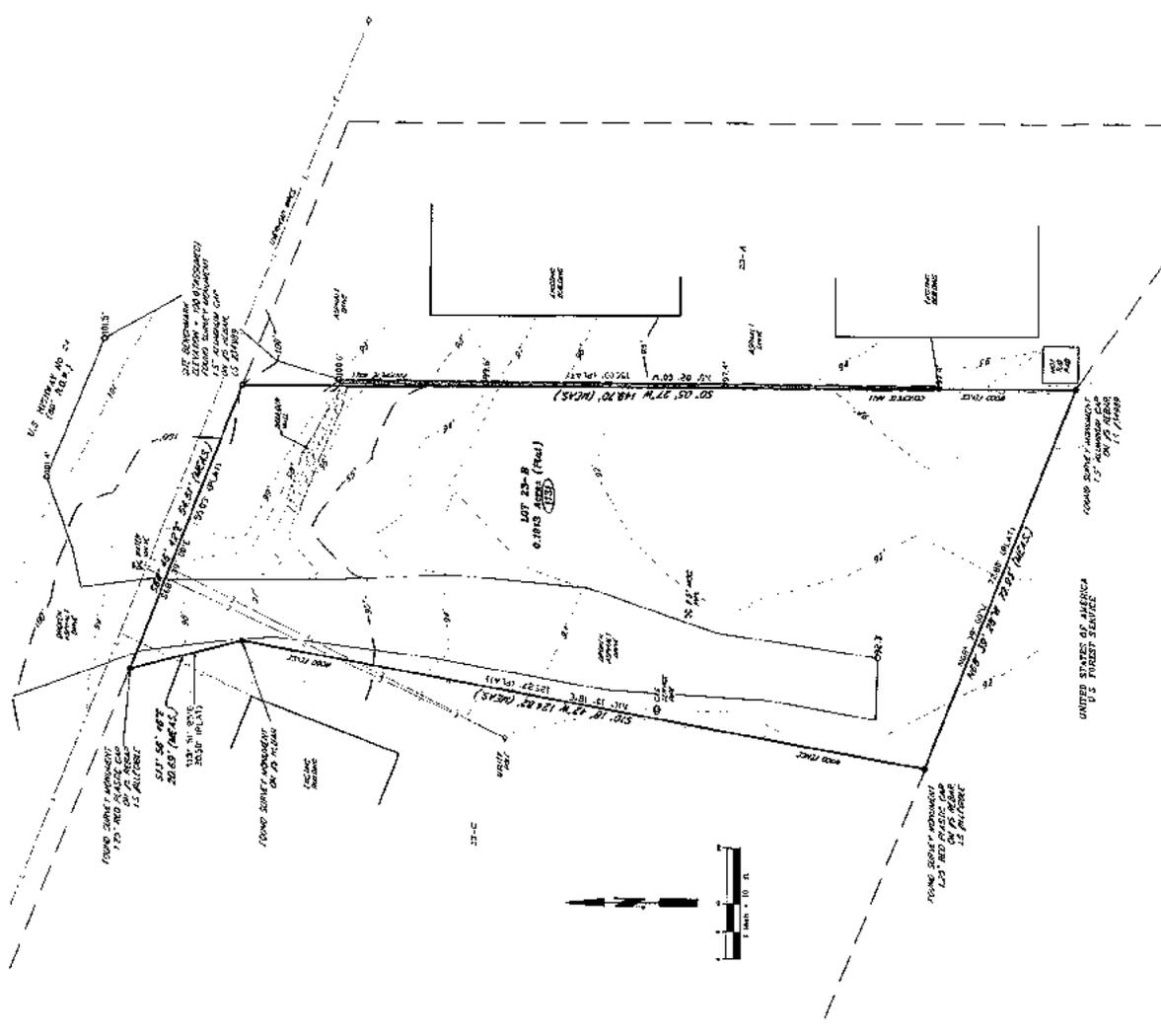
- 1) DATE OF SURVEY: May 9, 2016
- 2) STREET ADDRESS: 131 Main Street (Not Platted)
- 3) ENCUMBRANCE: lot of 137' Minimum, One foot (Platment Elevation) + 100.0' as shown hereon.
- 4) 1" Contour's shown hereon.
- 5) Location of improvements and lot lines are based upon the deed-referenced Plat Rec. and Survey Instruments found in the time of recording of the same. The survey was conducted on or about the date of May 23, 2016. This Survey does not constitute a boundary or other survey. The survey is for the purpose of re-platting and is not intended to be a boundary or other survey.
- 6) The Platted boundary does not exist.
- 7) This lot may be subject to additional setback requirements.
- 8) The survey was conducted by the Surveyor General, State of Colorado, and the Surveyor General's Office. The Surveyor General's Office is located at 1330-7700, Denver, Colorado 80202. The Surveyor General's Office is the only office authorized to conduct surveys in the State of Colorado. The Surveyor General's Office is the only office authorized to issue a Certificate of Accuracy for a survey. The Surveyor General's Office is the only office authorized to issue a Certificate of Accuracy for a survey.
- 9) Notice: According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after the first date in this survey is conducted. There is no time bar for the date of completion of this survey.

**CERTIFICATION**  
 I, RANDY KIPP, a Registered Professional Land Surveyor in the State of Colorado, hereby certify that this TOPOGRAPHIC SURVEY was done by me or under my direct supervision and that I am a duly Licensed Professional Land Surveyor in the State of Colorado. The Survey Instrument used in this survey is a total station and was used in accordance with the rules and regulations of the State of Colorado.



Randy Kipp, P.L.S. No. 15723  
 Colorado Professional Land Surveyor

<b>KIPP LAND SURVEYING</b> RANDY KIPP P.L.S. P.O. Box 3154 Eagle, CO 81631 (970) 390-9540 email: randykipp@kippandsurveying.com web: kippandsurveying.com	
Topographic Survey Lot 23-B, a Resubdivision Lot 23, South Minturn Addition Town of Minturn, County of Eagle, Colorado	DATE: 05-11-2016 DRAWN BY: [Name] CHECKED BY: [Name]
JOB NO: 16123	SHEET 1 OF 1



UNITED STATES OF AMERICA  
 U.S. FOREST SERVICE





















TOWN OF MINTURN  
P.O. Box 309 ♦ 302 Pine Street  
Minturn, CO 81645  
Phone: 970-827-5645 Fax: 970-827-5545

William Powell  
Town Manager



Town Council  
Mayor – Matt Scherr  
Mayor Pro Tem – Earle Bidez  
Councilmember – Terry Armistead  
Councilmember – Harvey Craig  
Councilmember – Sidney Harrington  
Councilmember – Sage Pierson  
Councilmember – John Widerman

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**MANAGER MEMORANDUM**  
**July 20, 2016**

**Main Street Engineering Project**

Council approved Alternative E for Segment 2, which includes parking and sidewalks of 6” in width. If the town is successful in receiving grant funds, Council also approved Segment 2 as the top priority for construction. Stolfus Engineering has forwarded to CDOT plans for Segment E to assure parallel parking in Segment 2 can be approved. We don’t want to progress with engineering plans, only to have CDOT deny the plans at a later date. Additionally, the town wants the public to know we plan to have sidewalks continuous on both sides of Main St. from 1<sup>st</sup> St. to Boneyard. However, we cannot promise a schedule for completion because of funding challenges.

**Dowd Junction**

Appraisals

The appraisals were received by the Forest Service last week and are being reviewed by the FS appraisal staff for adequacy. If approved, the town will then be able to have copies of the appraisals. The next step would be to see if the appraised values are acceptable to the two owners.

Request for Qualifications due July 15

The RFQ deadline for submittal is Friday, July 15, thus we will be able to report to Council at the meeting on the results

Water Service to the Dowd Site

As you may recall from the last meeting I updated Council on the REDI grant. In the original application we applied for an 80/20 grant match. The purpose is to provide an engineering plan for constructing a water main to Dowd. After making application the DOLA grant administrator contacted me to see if the town could match at 50/50 because of the heavy competition for the program. I reluctantly agreed to the 50/50 because some money is better than none. It is likely we will know if Minturn is awarded the grant before the meeting.

### Meeting with Attorney Mike Sawyer and consultant Tom Glass regarding Dowd Schedule

We have developed a draft schedule as follows.

- 4-6 weeks out – Chambers appraisal accepted by USFS RO / Decision to move forward with acquisition by WRNF
- 6-7 weeks out – Get USFS to issue appraisal instructions for Dowd Junction
- 6-10 weeks out – Negotiate option agreement for Chambers properties
- 6-10 weeks out – Start work on exchange agreement with USFS
- 4-5 months out – USFS receives and approvals appraisal on Dowd Junction
- 5-6 months out – execute exchange agreement with USFS
- 5-6 months out – USFS starts obtaining clearances
- 12 months out – close on Dowd Junction and Chambers properties

### **Dowd to Minturn Bike Trail**

We are scheduling a meeting with the State Land Board to learn more of the plans to potentially site CDOT Maintenance on the site across from VR Boneyard and to determine if the town can have an easement through the site that works with any future plans for the site.



**COLORADO**  
Department of Local Affairs  
Division of Local Government

July 12, 2016

The Honorable Matt Scherr, Mayor  
Town of Minturn  
P.O. Box 309  
Minturn, CO 81645

RE: REDI #00103 - Minturn Dowd Junction Waterline Extension Engineering

Dear Mayor Scherr:

In response to your recent request, I am offering to enter into a contract for a grant in the amount of \$49,913 to assist with the above mentioned project. We are pleased to make this investment to encourage growth, diversity and resiliency in the rural partnership between the Department of Local Affairs (DOLA) and the Colorado Office of Economic Development and Trade (OEDIT).

Please contact your regional manager, Greg Winkler, at (970) 668-6160 for information on how to proceed. As you know, no state funds or matching funds can be obligated before a grant contract is fully executed. Expenditure of any funds prior to the contract being fully executed cannot be included in the contract budget or reimbursed by the state. Consult your regional manager prior to expending any funds. Per our program guidelines this offer is valid for one year from the date of this letter.

We wish you success with this project. Please let us know if we can be of any assistance.

Sincerely,

Irv Halter  
Executive Director

cc: William Powell, Town Manager  
Kerry Donovan, State Senator  
Diane Mitsch Bush, State Representative  
Greg Winkler, DOLA



**ACTION ITEMS REPORT**

From: Town Manager  
20-Jul-16

Action Item	Responsible staff	Status
Lease Lot cleanup and leasing	Martinez	berm improved, needs seeded
Boneyard	Hawkinson	management plan and easement needs completion
Little Beach Park	Powell	review improved park plans
Memorialization Guidelines	Metteer	staff presented in 2015, need more guidance from Council
Minturn Fitness Center	Powell Rosenfeld Bidez	Property tax exemption has been approved by state achieve 501.c.7 non-profit status
Minturn Education Fund	Powell	501.3 IRS tax exempt application sent
Zoning Code Amendments	Hawkinson Powell Sawyer	phase 1 complete and adopted by Council staff working on list of priorities to present to Council
Guide Sign Plan	Metteer	Submitted to CDOT for review
Water Rate Structure and Rates	Powell water committee	decision on structure and rates made review after six month history
South Minturn Engineering TAP GRANT	Powell Osborne Inter-Mountain Engr.	Alternative E for Segment 2 approved Segment 2 given top priority for construction TAP grant for construction due August 1
Bolts Ditch within Wilderness	Powell	Senate Energy Committee approved on July 13 House committee hearings complete
Building Code Adoption--newer codes		place holder
Term Limits	Sawyer	Charter or ordinance amendment decide particulars of amendment