



TO: Mountain Village Town Council

FROM: Paul Wisor, Town Attorney, Michelle Haynes, Planning and Development Services Director, and Kim Montgomery, Town Manager

FOR: Town Council Meeting, May 20, 2021

DATE: May 7, 2021

RE: Mountain Village Community Housing Initiatives

OVERVIEW

The Town Council is delighted to launch a Community Housing Initiative for 2021 and beyond. The Town of Mountain Village continues to be a leader in supporting existing and new community housing in Mountain Village. In light of the regional housing urgency, we are sharing our comprehensive plan and vision to demonstrate our ongoing commitment to support, create and pave the way for community housing.

ATTACHMENTS

- Exhibit A. Your Equity Support (“YES”) Incentive Program
- Exhibit B. Village Court Apartments Update
- Exhibit C. Proposed Zoning Incentives
- Exhibit D. Existing Community Housing Incentives
 - a. Fee Waiver
 - b. Zoning Incentives

The Town is launching a series of incentives all of which are attached to this memo as the above-mentioned Exhibits. A new YES Incentive Program, an update regarding Village Court Apartments, and proposed zoning incentives. It is also important to highlight our existing financial and zoning incentives regarding community housing, which are addressed in the attached educational memo, exhibit D.

To adequately pursue these initiatives as well as maintain the robust community housing program already in place, the Town Council will discuss the formation of a Community Housing Department with dedicated staffing to support our Community Housing Initiatives, Village Court Apartments, programs, policies, compliance and regulations for the Town of Mountain Village.

/mbh



TO: Honorable Mayor Laila Benitez and Councilmembers
FROM: Paul Wisor, Town Attorney;
 Michelle Haynes, Planning and Development Services Director
RE: Your Equity Support Work Session
DATE: May 20, 2021

SUMMARY: Housing prices in Mountain Village continue to escalate which increases affordability challenges for persons who desire to live in Mountain Village. The Comprehensive Plan identifies a deed restrictions as one method by which Mountain Village could promote affordability and the help permanent residents purchase a home in Mountain Village. A deed restriction purchase program also expands the permanent pool of housing for full-time residents. Mountain Village has a substantial stock of multi-family housing which presents greater opportunities for creating more Community Housing stock compared to constructing new Community Housing projects.

This report outlines the background behind deed restricted purchase programs, including the Vail InDeed program, discusses the provisions of a proposed Mountain Village Deed Restricted Program and outlines policy considerations for Council. Council input and direction is requested.

BACKGROUND: Since the end of the Great Recession, jobs and population have been growing much more rapidly than housing inventory. With the San Miguel County Adjusted Median Income (“AMI”) currently at \$67,000, the median price for a home in Mountain Village, nearly all housing options within Mountain Village exceed what most San Miguel County residents can afford. Given the disparity between income levels and housing costs, full-time residents have difficulty finding affordable housing, employers have difficulty in filling job vacancies, and many employees choose housing in down valley communities which results greater commute times.

The Town of Mountain Village Comprehensive Plan sets forth the goal of achieving a diverse range of housing densities, styles and types, including rental and for sale, to serve all segments of the population. Comprehensive Plan specifically identifies a deed restriction program as a strategy to maintain attainable market rate housing at affordable rates.

VAIL IN-DEED PROGRAM: In 2017, the Town of Vail created its own deed restriction purchase program known as Vail InDeed (“InDeed”). Under the InDeed program, the Town of Vail pays owners a portion of a home’s value in exchange for a deed restriction which restricts future use of the unit. In the case of the InDeed, the deed restriction provides the home must be occupied by people who work at least an annual average of 30 hours per week in Vail or Eagle County. In roughly its first two years the InDEED program acquired 153 deed restrictions at a total cost of approximately \$10.5 million.

Under the InDeed program, a typical applicant applies to the Town for funding the purchase of a new home. The Town of Vail will provide funding between 15% and 18% of the purchase price of the home to be acquired. The average amount provided to an applicant by the Town of Vail through the InDeed program has been \$67,300. However, per Town of Vail policy, the Town of Vail may purchase a restriction for as much as \$200,000. Typically, these funds are used by the applicant for a down payment on a home, but in some cases applicants use the money for home improvements. There are, however, no restrictions on the use of funds once the funds are wired to the applicant at closing.

In addition to providing funding in connection with the acquisition of a new home, a current homeowner can apply to have their home placed into the InDeed program. If the Town of Vail determines it is in the Town’s best interest to have the unit available only to Eagle County employees, the Town of Vail will purchase a deed restriction under the same parameters outlined

above.

Mountain Village staff has discussed the InDeed program at length with Town of Vail staff as well as lenders, mortgage brokers, real estate agents, appraisers, applicants and attorneys, and believes the Town of Vail has established an excellent model for Mountain Village to follow.

FINANCIAL CONSIDERATIONS: The Mountain Village 2021 budget estimates there is approximately \$2.6 million dollars available for affordable housing purposes in the Affordable Housing Fund. Some or all of these funds could be dedicated towards a Mountain Village Deed Restriction Program, and as needed, the Town Council could always elect to transfer funds from the General Fund now or in the future. For context, the Town of Vail has dedicated \$2.5 million in its 2021 budget to go towards deed restriction purchases through the InDeed program.

PROPOSED MOUNTAIN VILLAGE DEED RESTRICTION PROGRAM: Based off of the InDeed model, Staff has compiled all the documentation necessary to begin an Mountain Village Deed Restriction Program, including an Application, Staff Application Evaluation Deed Restriction Purchase Agreement, Deed Restriction, Subordination Agreement, and Closing Instructions.

The Mountain Village Deed Restriction Program documentation provides any San Miguel County Employee, an employee working in San Miguel County thirty hours a week, may apply to place their property in the deed restriction program. Businesses that own a property within Mountain Village and who operate in San Miguel County and rent their property to its employees who are San Miguel County Employees are also eligible to apply.

After applying to the program, the applicant negotiates with the Town as to the value of the deed restriction. Once a price is determined, the applicant and the Town execute a Deed Purchase Agreement for the amount of the deed restriction as well as the deed restriction. Under the proposed form deed restriction, there is no price appreciation cap. In addition, the owner may occupy the home or rent it to other individuals so long as one or more San Miguel County Employees occupy the residence. However, short term rentals and use of the property as a second home is prohibited.

The property may not be sold or otherwise transferred to anyone other than a San Miguel County Employee or an San Miguel County business renting to San Miguel County Employees. The seller must notify the Town it intends to sell its deed restricted unit, and the Town must confirm the proposed buyer is eligible to purchase under the terms of the deed restriction. It is important to remember the deed restriction survives the transfer and remains with the property forever.

Among other things, an owner is in default under the deed restriction in the event the owner conveys the property to an individual not eligible to own the property under the deed restriction, transferring the property prior to obtaining the Town's certification of the transfer, failing to rent the property in accordance with the deed restriction or failing to make applicable mortgage payments. In the event Staff finds an owner in default under the deed restriction, the owner has sixty-five (65) days to cure the default, and may appeal to Town Council. The Town may pursue specific performance and other remedies at law in the event of default, and the owner will be subject to liquidated damages of \$300 for each day the owner is in violation of the deed restriction.

In the event an owner defaults on their mortgage and the lender initiates foreclosure proceedings, the Town may make payments on behalf of the owner to avoid foreclosure. In the event of foreclosure, the deed restriction will remain in place, except if the property is subject to a HUD loan, in which case, pursuant to federal rules and regulations, the deed restriction is extinguished. However, the Town will have the option to purchase the property thirty (30) days after the issuance of the public trustee's deed.

COUNCIL POLICY CONSIDERATIONS: The attached documents provide a basis for a Mountain Village Deed Restriction Program. Several policy considerations are highlighted below for Council's discussion. These documents will be modified to incorporate Council's direction.

Deed Restriction Purchase Price Parameters – As noted above, the Town of Vail has set the market for a deed restriction at 15% to 18% of a home's value. As a practical matter, this range effectively serves as the down payment on the home. The fact that it does not go to the 20% down payment traditionally required for a down payment speaks to the overall expectation applicants put some money in the home. Staff's research indicates that the placement of a deed restriction on a property decrease the resale value on a property anywhere from 5% to 20% due to the decreased pool of eligible buyers. This amount changes based on the value of the home with the impact being less significant on lower priced homes. Therefore, in establishing parameters for a purchase price, Mountain Village needs to consider the current market rate for deed restrictions as well as the financial realities for an applicant contemplating selling a deed restriction to Mountain Village. ***Staff recommends the Town purchase price of a deed restriction should be at 15% to 18% of the purchase price of a home while noting not every applicant need not receive the full 18%.***

Transaction Cap – The Town of Vail has capped the maximum amount at which it will purchase a deed restriction at \$200,000. Given the disparity in budgets as well as market prices, This cap seems appropriate as the Town of Mountain Village has identified the need to provide relief for those below San Miguel County's Adjusted Median Income as well as the "Missing Middle." Although such cap would serve as an 20% down payment on a \$1,000,000 home, it is likely the program would be used for units at lower price points. ***Staff recommends a cap of \$200,000 with an emphasis on basing award on the percentage of the home value with a target of 15%-18%.***

Multiple Properties – As the Mountain Village Deed Restricted Program is currently written, and as InDeed currently operates, it is possible for an individual to apply for funding on multiple properties so long as those properties are rented to San Miguel County Employees. In one respect, there is nothing wrong with this approach as it ensures those properties will always house local residents. Conversely, it seems Mountain Village would be subsidizing an individual's rental business, and there is no guarantee the property is rented at attainable prices. ***Staff recommends limiting participation in the program to one property per individual at a time. Council may desire to allow a Mountain Village based business to purchase multiple residences with deed restrictions for its employees.***

Rentals – As currently written, an owner may rent their property so long as a San Miguel County Employee uses the property as their primary residence. Some have argued the deed restriction should only permit owner- occupied units. While this may be practical initially, at some point the owners of deed restricted properties may wish to move to different homes within the community. In a down economy, a move may be feasibly possible, but selling the property may not make economic sense. So long as the property is being rented to a San Miguel County Employee, the goal of providing local long-term housing is likely being met. ***Staff recommends permitting owners to rent deed restricted properties.***

Short-Term Rentals – It is common for Mountain Village residents to short-term rent rooms within their home, which enables the owners to more easily afford their mortgage payments. This would be prohibited under the current documents. As with applicants applying Town funds to multiple properties, permitting short-term rentals even where the owner occupies the home appears to create a scenario under which the Town is subsidizing a business rather than a long-term housing solution. ***Staff recommends not allowing short- term rentals under any circumstances.***

Buyout Provision – Some potential owners have proposed the deed restriction extinguishes if the owner is unable to sell the property at fair market value, or a to-be-determined percentage of fair market value, after a period of one year. Some lenders have proposed the same approach if the lender takes possession post- foreclosure. Such owners and lenders feel the risk in participating in the program would be reduced if such a provision were in the deed restriction. The purpose of the deed restriction is for the Town to increase housing option throughout the community, not make real estate a safe investment. **Staff recommends against a buyout provision.**

Right of First Refusal – Under the InDeed approach, the Town of Vail has a right of first refusal if an offer is made on a deed restricted property. This allows the Town of Vail to control the housing stock and direct who occupies some homes. The Town of Mountain Village does not necessarily have the financial capacity to purchase homes. **Staff recommends having a right of first refusal provision.**

Administering Applications – There are a limited number of deed restrictions the Town can purchase based on available financial resources. Applications can be considered on a first come, first served basis or the Town could establish a lottery. Staff does not anticipate it will receive more applications than it can accommodate and administer. **Staff recommends processing applications as they are received.**

Subordination Agreement: In the event a current homeowner wishes to place a deed restriction on their home for the purpose of acquiring additional funds for a home improvement or other reasons, the InDeed program requires the lender who provided the mortgage on the original acquisition of the home to sign a Subordination Agreement. This Subordination Agreement essentially acknowledges the deed restriction and places the Town of Vail's interests ahead of the lenders even though the lender did not provide the mortgage with the deed restriction in mind. Larger financial institutions who sell mortgages on the secondary market are unable to sign the Subordination Agreement at the moment; though, small institutions in San Miguel County are will to execute such agreements. Staff is working with secondary mortgage market participants to create an alternative agreement. **Staff recommends continuing to find a solution for larger financial institutions, but proceed with the program without a solution in place.**

Name: Staff recognizes "Mountain Village Deed Restricted Program" does not have any flow or ring to it. The Mayor Pro-Tem has aptly suggested the Your Equity Support or YES Program.

REQUESTED ACTION: Staff requests direction on the policy areas highlighted above as well as any comments to the documentation provided.



ITEM #10, EXHIBIT B. VILLAGE COURT APARTMENTS
PLANNING & DEVELOPMENT SERVICE
PLANNING DIVISION
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Mountain Village Town Council

FROM: Paul Wisor, Town Attorney and Michelle Haynes, Planning and Development Services Director

FOR: Town Council Meeting, May 20, 2021

DATE: May 7, 2021

RE: Community Housing Initiatives – Exhibit B. Village Court Apartments

OVERVIEW

The Town Council has discussed during a series of public meetings the best approach to managing Village Court Apartments going forward. Specifically, Town Council has discussed four possible scenarios with respect to VCA: 1) sell VCA to a third party who would operate VCA and likely develop Phase IV of VCA; 2) lease VCA to a third party who would pay a lump sum to the Town for the right to operate VCA for a defined period of time and potentially develop Phase IV; 3) hire a third party management company; and 4) maintain Town ownership of VCA and either seek a third party developer for Phase IV or develop Phase IV with the Town serving as the developer. The considerations associated with these options are more fully discussed in a memorandum to Council dated December 4, 2020, which is attached hereto as **Exhibit A**.

As discussed further below, the Town’s ability to pursue any of these options is largely tied to the outstanding debt associated with VCA. No matter which option Council chooses to pursue, the Town will need to take some action with respect to its debt.

OUTSTANDING DEBT

The Town, through the Housing Authority, issued debt for the purposes of financing the construction of VCA. This debt was issued (and refinanced) on a tax-exempt basis, meaning it is subject to a myriad of rules under Section 103 of the Internal Revenue Code. As most relevant here, Section 103 prohibits a third party from receiving more than 10% of any revenue generate from a project financed by tax-exempt debt. As such, if the Town were to pursue a sale, lease or management agreement related to VCA, it would be required to pay off the debt upon executing sale, lease or management documents.

There is currently approximately \$12 million outstanding on the VCA debt. In the event the Town enters into an agreement with a third-party developer, either for sale or lease, a portion of the proceeds of the transaction must be simultaneously applied to the outstanding debt upon closing of the transaction with the third-party developer. While it is beyond the scope of this memorandum to speculate on an ultimate transaction price, we do know the amount to the Town will be \$12 million less than the amount paid by the third-

party developer. This obviously dilutes the Town's ability to meaningfully address other community housing needs with the transaction proceeds.

Even if the Town decides to maintain complete ownership and control of VCA, the Town will still need to take action with respect to the outstanding debt. The Town will be required to pay a balloon payment in 2024 in the amount of approximately \$12 million, at which time the debt will be defeased. The reality is that the Town will not be able to make this payment, so it will be necessary to refinance the outstanding debt in order to avoid the balloon payment.

Staff has worked with the Town's financial advisors to preliminarily structure the debt with a few features that will make the debt more advantageous for the Town going forward. First, the debt will feature level debt service, meaning the Town will make equal annual principal payments so as to avoid a large balloon payment at the end of the term of the debt. This will allow the Town to eliminate this debt altogether rather than continually refinancing it.

Second, it is possible for the Town to subdivide Buildings 8 and 9 of VCA along with Phase IV. In doing so, the Town could carve out Buildings 8 and 9 from the overall project and essentially allocate early payments of the new debt to Buildings 8 and 9. These early year payments would then relieve Buildings 8 and 9 from the restrictions of the Section 103 of the Internal Revenue Code, and permit them to be commoditized and sold to current owners or individuals.

Finally, staff has suggested any RFP for bank loans include a construction draw facility as a component of the overall financing package. Given the Town is not in a position today to commit to financing Phase IV, the draw component would allow the Town to access capital to undertake such a project in the future, but the Town would not be obligated to ever access such capital.

RESTARTING VCA PHASE IV

Regardless of Council's decision to pursue a third-party agreement or maintain ownership and control of VCA, the Town should discuss timing of the Phase IV development process. The need for community housing has not dissipated since Council began considering the project. However, construction costs have certainly increased to extraordinary levels. While some of these costs are driven by supply issues stemming from the pandemic, it is unlikely construction costs will return to 2015 levels anytime soon.

CONCLUSION

As has previously been discussed, there are several substantive considerations Council must address in deciding whether to enter into a third-party agreement or maintain ownership and control of VCA. Regardless of Council's decision, it is clear Council will either need to pay off existing VCA debt immediately or refinance such debt in the near term. Were the Town to pursue a refinancing, there are several steps the Town could take to facilitate access to capital for purposes of constructing Phase IV – the timing of which Council should address.

/pw & mbh

EXHIBIT A

MEMORANDUM

To: Town of Mountain Village Town Council
From: Paul Wisor, Town Attorney;
Michelle Hayes, Director of Planning and Development Services
Re: Proposed Village Court Apartment Sale
Date: December 4, 2020

This memorandum is provided in connection with the Town of Mountain Village's (the "Town"¹) ongoing discussion with respect to the ownership, development and operation of the Village Court Apartments ("VCA"), and in particular the proposed Request for Proposal (the "RFP") for Ownership and Operation of VCA.

Background

Currently, the Town owns and manages VCA subject to rental caps imposed by a Beneficiary and Rent Use Restriction recorded by the Department of Local Affairs that runs with the land through 2042,² associated with 95 of the 222 rental units. Although there have been occasional dips in the quality of management services, Council has recently recognized Town staff is efficiently managing VCA.

However, in response to multiple unsolicited requests, in late 2019 and early 2020 the Town circulated a draft RFP for the sale of VCA. The RFP contemplated a third party would purchase VCA and become the owner and operator of VCA with no future Town involvement. It is anticipated an additional 42 units will need to be constructed to address the ongoing attainable housing shortage in the community, and it is expected any third party owner, as part of the agreement to acquire VCA, would be required to construct these additional units at an anticipated cost of \$14-\$16 million.

The Town engaged in significant public outreach to receive feedback on the draft RFP. The Town received comments from VCA residents and the Mountain Village Community as a whole. In part due to these comments, and in part due to the COVID-19 pandemic, the Town ceased its effort to finalize and publish the RFP.

Given this pause in the RFP process, this memorandum is provided to Council in order to provide a broader array of options available to Council with respect to VCA. Specifically, this memorandum examines the details related to 1) the sale of VCA; 2) the long term lease of VCA

¹ Within the context of this memorandum, the Town shall be synonymous with the Mountain Village Housing Authority.

² The current Rent Covenant contained within the RFP contemplates the rents will be tied to a certain percentage of Fair Market Value ("FMV"). A FMV valuation may be beneficial to the Owner, but it does little to protect the residents, particularly in a community like Mountain Village or San Miguel County more broadly. Real estate prices and rents within the Town continue to rise; however, in most mountain communities, salaries fail to keep pace with property values. In order to protect VCA residents, rent covenants should be tied to percentages of Area Median Income. Not only will this approach be more equitable for VCA residents, but it is the approach required by the Beneficiary and Rent Use Restriction.

under a Development Management Agreement; 3) entering into a Management Agreement and 4) maintaining the status quo.

I. Sale of VCA

The Sale of VCA would certainly address many of the concerns that led to the Town drafting the RFP. Sale proceeds would allow the Town to retire VCA debt. In addition, the Town would be relieved of the ongoing maintenance and operation costs associated with VCA, and the Planning and Development Services Department would be freed to pursue other planning and development initiatives. However, as detailed below, there are several drawbacks associated with the sale of VCA, and selling VCA brings many intricacies that are not immediately evident. The sale of VCA, while an easy choice, should be approached with caution.

State Law and the Town's Ongoing Ownership Interest in VCA

While the current RFP provides for a standard Contract to Buy and Sell Real Estate (Residential), future Owner will have interests in VCA that far exceed the acquisition of the property itself. Although owners and operators of affordable housing projects are generally interested in acquiring the “sticks and bricks” of a particular affordable housing project at a good price, the Owner will be more concerned with the ultimate capitalization rate or “cap rate” of VCA.

That is, the Owner will be concerned with the percentage return the Owner will receive on its cash purchase of VCA. The higher the percentage return the better. In order to evaluate whether or not its initial investment is a good one, the Owner will take the purchase price of VCA and divide it by VCA's net operating income (the “NOI”). So, to simplify things, if the Owner purchases the property for \$10MM and VCA has a NOI of \$400,000, VCA will have a cap rate of 4%. If the NOI is \$800,000, then the cap rate will be 12.5%. Thus, the higher the NOI, the higher the cap rate, and the more attractive the deal is for the Owner.

NOI of a property is calculated by subtracting the total operating expenses of a property from the total revenue of the property. Therefore, the Owner will have an incentive to drive expenses down as much as possible in order to achieve a higher NOI, and thus a higher cap rate. According to the 2019 VCA budget, current operating revenue was projected to be \$2,386,958. Total expenditures were expected to be \$2,063,558.³ Thus, the 2019 budget would provide for a NOI of \$323,400.

However, this NOI does not account for property taxes, which the Town is exempt from paying. Based on an assessed valuation of \$7,107,480,⁴ property taxes for VCA for 2019 were \$364,990. Were the Town required to pay these taxes, the NOI for VCA would be wiped out, and the VCA would operate at an annual loss of roughly \$42,000.

³ This amount does not reflect the additional \$784,777 in debt service currently paid for by the Town, but which debt the Owner would likely need not account for as it will either be paid off upon acquisition of VCA or remain the Town's debt.

⁴ We believe this to be the correct valuation, but the legal description on the Contract to Buy and Sell Real Estate (Residential) and the legal description on the Assessor's website do not match.

Obviously, the property tax will make acquisition of the VCA by affordable housing owners and operators a significantly less than appetizing proposition. However, Colorado state law⁵ provides that if a governmental entity has an ownership interest in a company that owns an affordable housing project, such project is exempt from real property taxes as well as certain sales and use taxes.

Therefore, in order to maximize the cap rate, and at the very least achieve a profit, the Owner will need to establish a new entity (the “LLC”) to own the VCA, and admit the Town as a nominal member (likely a 0.005% membership interest) of such LLC. By doing so, the Town will have an ongoing ownership interest in VCA, and the Owner will be able to avail itself of the property tax breaks provided in state law.

It is not uncommon for affordable housing projects to be structured with a municipality having a membership interest in the ownership group. It is, however, common for many municipalities to enter into such partnerships without properly valuing their participation. At the very least, San Miguel governmental entities will forgo over \$360,000 in revenue each year, \$100,000 to the Town alone. In addition, the property tax exemption has significant value to the Owner. To the Owner, the \$364,990 represents over \$9,000,000 when valued through the lens of the 4% cap rate the Owner is likely attempting to achieve.

For these reasons, the Town should be prepared to factor the value of its ongoing participation in the LLC into its overall pricing of the transaction. It should be similarly prepared to protect itself if and when it becomes of a member of the LLC.

Town Compensation

While the Town and the Owner will agree on a purchase price for the VCA property, the Town should negotiate for separate compensation for its membership in the LLC. The mechanisms proposed below should compensate the Town for the tax revenue it will forgo on an annual basis and account for the additional profit the Owner is able to realize by virtue of the Town’s participation.

Payment In Lieu of Taxes

It is unlikely the Owner will be able or willing to quantify its need for the tax exemption, and the Town should require a Payment In Lieu of Tax (the “PILOT”) provision in the LLC Agreement. Under the PILOT, the Town should be entitled to a payment equal to 50% of the property taxes not paid by the Owner in any given year, which would amount to approximately \$180,000. The Town could covenant to dedicate these funds to the Community Service Fund to directly benefit VCA or other affordable housing efforts. In the alternative, the funds could be directed to the Transportation Fund given the Town provides bus service to VCA throughout the year.

Admission Fee

⁵ See C.R.S. §§ 29-1-204.5(10), 29-4-226, 29-4-227, and 39-26-704(1.5).

While a PILOT would allow the Town to claw back some of the property tax exemption in the future, the Town should also seek immediate compensation. One mechanism to achieve this goal would be to require a fee to be paid upon admittance into the LLC. This admission fee could be a flat fee representing the Town's percentage interest in the LLC. The admission fee could also be based off a percentage, perhaps 3%, of the property tax exemption that will be realized over the next thirty years. There are obviously other ways in which an admission fee could be calculated, but the general concept of an admission fee should be considered.

Cash Flow

In addition to or in lieu of an admission fee, the Town could request that it benefit from LLC membership by seeking a percentage of the LLC's annual profits. Unlike municipalities entering into new projects with developers, the Town has the benefit of having access to the financial data of VCA. However, it will be difficult to determine the profit margin the Owner is seeking, so it may be challenging to determine how much gross revenue the Town can claim before the transaction becomes unattractive to the Owner. The Town can explore this further with the Owner, or alternatively, require a flat annual fee. A fee equal to the cost of constructing one deed restricted unit in the Town would be a reasonable starting place for negotiations.

Exit Fee

As detailed below, it is possible the Town would exit the LLC at some point. Accordingly, the Town should push for an exit fee. An exit fee would be payable in the event the Town is required to withdraw, which would only arise if the Owner engaged in severe mismanagement of VCA. An exit fee would provide additional incentive to the Owner to avoid such mismanagement. It is possible the Owner could infuse the LLC with significant debt, so any exit fee language should be calculated based on gross revenue so debt and other miscellaneous management fees are not included when calculating the Town's payout.

Contractual Provisions

While the Town should negotiate for additional compensation, it should also insist on certain protections upon entering the LLC. The Town Attorney has prepared to detail these provisions, but such discussion is beyond the scope of this memorandum.

Loss of Control

The biggest drawback to selling VCA is obvious – loss of control. Once the Town sells VCA, the Town no longer controls this important asset. Even if the Town were to record a right of first refusal against VCA, it is unlikely the future price tag on a future sale would be palatable to the Town given the ever increasing cost of real estate. As the last year has shown all of us, Town ownership is invaluable to VCA. It is highly unlikely a third party owner would have forgiven rent for a month, provided free cable or taken any of the other steps the Town has taken to ease the burden on current VCA residents. While we hope to never repeat the extreme circumstances of 2020, it seems likely VCA residents and the community as a whole will benefit at some point in the future from an owner who is not solely driven by profit motives.

Other Considerations

In addition to considering the compensation and covenant provisions suggested above, the Town should discuss some additional macro issues before pursuing the RFP.

Condominiumize Mountain Munchkins

The RFP contemplates the Owner will lease back the VCA units currently dedicated to Mountain Munchkins. The Town should strongly consider retaining ownership of these units. Affordable housing is arguably the biggest challenge for any mountain resort community; however, a close second is the shortage of childcare and early childhood educational programming. The proposed lease may seem long term, but it will end at some point. When that time comes, the Owner may repurpose the space or seek rents that are higher than economically feasible for an early childhood program, and the amount of land available within the Town to build a new facility to accommodate the program will have significantly diminished. The Town would be wise to consider retaining this particular asset rather than turning it over to the Owner who may have no real interest in facilitating early childhood education in the future.

Appraisal and Brokers

Before the Town takes any other step in connection with a potential sale of VCA, the Town should seek an independent appraisal of VCA. The RFP process may give the Town a sense of security that they are receiving a reasonable offer for VCA, but the Town will not truly know if they are receiving fair value for VCA without an appraisal. Along those lines, the Town should also engage a broker to evaluate VCA and help market VCA, or at least the RFP process, to affordable housing developers and managers across the country. The Town simply does not have the resources to create a truly competitive bidding process that will yield a fair offer price.

II. Leasing and Development Management Agreement

The current RFP makes clear the Town's ultimate goal is to sell the VCA property. Given the current debt load of the property, this is logical. The rationale to sell is bolstered by the fact the Town spends a significant amount of resources acting as a property manager, which places a considerable amount of pressure on the Community Development Director's time. Further, as noted the above, the sale of VCA is more complicated than first blush, and comes with the permanent drawback of losing control of VCA as a Town and community asset. The Town can address all of these issues by entering into a long term lease with a developer who will not only manage the property, but will likely be willing to develop the remaining 42 units as well.

Under the most likely scenario, the Town would enter into a ground lease for the land where the 42 units are to be located, which ground lease would last for 50-75 years. The Developer would then be responsible for financing the construction of the new 42 unit building. The Developer would likely finance this construction utilizing a Colorado Housing Finance Authority ("CHFA") loan, which would allow the Developer to leverage certain affordable housing tax credits. The Developer would have exclusive control of the 42 units, so the Developer would repay the loan from rent

revenue. As further described below, the Developer would also serve as Manager of the units and will likely collect a management fee on top of rent revenues. While the new units would be subject to a deed restriction capping rents, the Developer would charge the maximum rent allowed in order to make debt payments in as well as generate a profit.

Concurrently with entering into the ground lease for the 42 units, the Developer will enter into a long term Master Lease for the rest of VCA. Under the Master Lease, the Developer will have the exclusive authority to collect and retain rents. As with the ground lease, the Developer will also collect a management fee. Again, while VCA is subject to a deed restriction, the Developer will increase rents to the maximum amount permitted under the deed restriction to generate a profit.

The fact the Developer will likely seek a CHFA loan is useful to the Town in that CHFA will require annual reporting requirements and minimum maintenance standards. However, the Town will need to ensure the Master Lease provides for stringent reporting and maintenance standards above those required by CHFA.

Under the leasing arrangement, the Developer will bear the cost and risk associated with financing the construction of the 42 units. The Developer will also bear all ongoing maintenance and operations costs. As such, there is tendency for Developers to at least be perceived to cut corners in order to guarantee rent revenues are sufficient to cover these costs. In the event the Developer proves less than a desirable for the VCA community, there will be little the Town can do other than enforce reporting and maintenance covenants in the Master Lease.

Unlike a sale of VCA, leasing VCA likely will not be accompanied by a large up front payment. The Town, therefore, will lack the cash infusion necessary to pay off existing VCA debt.

III. Management Agreement

While leasing VCA does not result in a permanent loss of control of VCA, it undoubtedly locks the Town into a long-term relationship with a developer for a period that will likely exceed the tenure of even the youngest members of Town staff. Entering into a Management Agreement with a Manager may provide the Town with some of the efficiency gains the Town is seeking and reducing the workload of the Community Development Department while avoiding the necessity of a long term commitment.

Under a Management Agreement, the Town would engage a third party to manage and operate VCA. The term of such agreement likely would need to initially be for two or three years, but the Town would not have future commitments. The scope of these responsibilities would include leasing VCA units, qualifications of tenants, on-site management, enforcement of leases, and payment of expenses and collection of rent. Essentially, the Town would no longer be involved in the day to day operations of VCA. The Management Agreement would also provide the Manager would be responsible for all maintenance and operations expenses, to be paid pursuant to established schedule, subject to amendments, and as further directed by the Town as necessary.

The Town may find it is able to generate more efficient operations of VCA through the compensation structure contained in the Management Agreement. Typically, the Manager will seek

a fixed Management fee of between 4% and 6% of gross rent. The Manager would be further entitled to an Incentive Fee, pursuant to which the Manager would receive a percentage (60%-80%) of all revenues in excess of maintenance, payroll and other fixed costs. Of course, some believe an Incentive Fee would lead to the Manager cutting corners, in which case the Town could increase the fixed fee.

It should be noted that currently VCA employees would likely become employees of the Management Company. The Town could attempt to negotiate the structure of these employees' compensation, but ultimately the terms of continued employment would be determined by the Management Company.

Of course, entering into a Management Agreement would not address the outstanding need to construct the additional 42 units at VCA. The Town would ultimately have to determine the best way to finance such construction. Though, with interest rates hovering at historic lows, now would not be the worst time to make such a financial commitment.

IV. Status Quo

At the end of the day, the Town may simply choose to pursue the status quo. Though management of VCA has proven difficult in the past, it appears from Council's own assessment that many of these issues have been addressed. As other entities in the community have noted, the residents of VCa have received more compassion from the Town than they would have otherwise received for a third party management company. This community minded approach has allowed the Town and other local businesses to retain workers throughout a pandemic in which many communities saw many critical workers leave due to a lack of housing or recognition of the need for rent relief. The Town thus must determine how to best address its outstanding debt while managing the cost of additional units. The Town may want to consider increasing its capacity to consistently oversee and forecast the financial condition of VCA. While affordable housing is certainly a pressing issue, the Town is not required to pursue construction at this moment, and could wait to undertake such an effort only after the existing debt is paid off.

Conclusion

The Town undoubtedly has good reasons for selling the VCA property. However, if the Town pursues a sale, the Town must continue to keep in mind it is bargaining for more than just the sale of a housing complex. It is likely soliciting an invitation to a long term membership in a corporate entity. Accordingly, the Town should be prepared to negotiate for fair compensation for its participation in such an entity and for essential protections for the Town, the residents of VCA, and the local families that rely upon Mountain Munchkins for childcare and early education. The Town should also be clear with itself that a sale means a permanent loss of control of one of the most important community assets.

That said, not of the remaining options are panaceas. A ground lease/master lease relationship would address the construction of the 42 units as well as ongoing management issues.

However, it would not solve the issue of the current outstanding debt. In addition, the Town would effectively lose control of VCA for the foreseeable future.

A management agreement would not address the construction of the 42 new units nor existing debt. It would, however, take the Town out of the day to day details of operating VCA. The Town would not be committed to a long term relationship with a management company, and the Town would continue to benefit from a portion of the revenue generated from VCA rent.

The status quo, obviously, does address construction of the 42 units, existing debt, or current and future management issues. However, it does leave the Town in control of their own destiny. The status quo also almost certainly guarantees the best stewardship of VCA now and into the future.



ITEM #10, EXHIBIT C. ZONING INCENTIVES
PLANNING & DEVELOPMENT SERVICE
PLANNING DIVISION
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Mountain Village Town Council

FROM: Paul Wisor, Town Attorney and Michelle Haynes, Planning and Development Services Director

FOR: Town Council Meeting, May 20, 2021

DATE: May 7, 2021

RE: Community Housing Initiatives – Exhibit C. Zoning Incentives

OVERVIEW

The Town of Mountain Village can amend, with Council discussion and support, the Community Development Code in the following ways to encourage community housing development.

- A. Accessory Dwelling Units/ Mother-in-Law Suites
- B. Reintroduce Non-Subdividable Duplex Zoning
- C. Community Housing Mitigation Methodology

Part A.

Accessory Dwelling Unit (ADU) is defined as an accessory use to a primary single family dwelling. Each ADU may have a kitchen so long as it is limited in size per the CDC and has a separate entrance. These units must be attached to the primary house if on a lot under .75 acres and can be detached if on a lot over .75 acres. ADUs are allowed in the CDC today. We have over 100 ADU already constructed in the Mountain Village.

Mother-In-Law Suite is also allowed in the single-family zone district, within detached condominiums found in the multi-family zone district, and within non-subdividable duplex dwelling units. They are similar to an ADU but require a common entrance (the suite can't have a separate lock-off entrance) consist of a living area, a bedroom, and limited kitchen facilities consisting of a sink, microwave, two-element burner and a 6 cubic foot refrigerator.

Staff Recommendation. Staff recommends removing the mother-in-law suite definition and combining the definitions under ADU. This would clarify that ADUs are permitted in detached condominiums and increase flexibility related to access and the allowance of a kitchen.

Part B.

Non-Subdividable Duplex was removed from the CDC in 2013 but previously allowed in the Single Family Zone District. The previous code provision allowed two dwellings to be constructed on a single family lot as long as one visually remained the primary structure

and the second dwelling was constructed at 75% of the size of the primary structure. They can be attached or detached. The non-subdividable provision means that the property cannot be further subdivided by platting or condominiumizing, but must remain in the same ownership. Allowing this development pattern would result in smaller duplex development because the homes are limited to the same site coverage as a single-family home of 40%, achieve a lower price point due to the smaller square footage, and allow a builder/owner to generate a passive income stream by rental of the second dwelling unit. Rather than apply the non-subdividable duplex to all of the single-family zone district as afforded in the past, staff recommends we create an overlay and target appropriate areas for duplex development.

Staff Recommendation. If Town Council is generally comfortable with the idea of re-introducing non-subdividable duplex development in the single-family zone district as an overlay, we can work through the details in a worksession format to then bring forward the recommended CDC amendments by a Design Review Board recommendation and two readings of an ordinance.

Part C.

Community Housing Mitigation Methodology

The Town of Mountain Village has platted deed restricted zoning designation requirements and currently has no methodology to understand the community housing needs that are triggered through large scale development. A Community Housing Mitigation Methodology will require a Request for Proposal and a third party to evaluate and produce a mitigation methodology for the Town to use. This type of methodology is common and found in most Colorado resort communities. The end result will be a formula based upon volume and type of use that will generate the commensurate employee generation which then translates into a housing requirement. The Town Council will better be able to determine when to apply the housing mitigation methodology and also once the required housing requirement is established, provide the developer options to satisfy that housing requirement, e.g. a payment in lieu of equivalent value, housing constructed onsite, housing constructed off-site, or a land dedication in equal value. The housing mitigation requirement will be integrated into the CDC by a Design Review Board recommendation and two readings of an ordinance. This will offer both the Council and developers the predictability we are trying to achieve through our Comprehensive Plan Amendment while also offering flexibility of how to meet the requirement.

Staff Recommendation. Direct staff to develop the Request for Proposal with an associated budget adjustment for 2021.

SUMMARY

Community Development Code changes typically require a worksession for public feedback, then a Design Review Board recommendation to Town Council and two readings of an ordinance as outlined above. The Community Housing Mitigation Methodology is a six to nine month process between RFP, end product and integration into the Community Development Code. These recommendations listed in this memo, will assist the community with more housing on a less immediate timeframe yet create community housing building blocks for years to come.

/mbh



ITEM #10, EXHIBIT D. EXISTING INCENTIVES
PLANNING & DEVELOPMENT SERVICE
PLANNING DIVISION
455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Mountain Village Town Council

FROM: Paul Wisor, Town Attorney and Michelle Haynes, Planning and Development Services Director

FOR: Town Council Meeting, May 20, 2021

DATE: May 7, 2021

RE: Community Housing Initiatives – Exhibit D. Existing Incentives

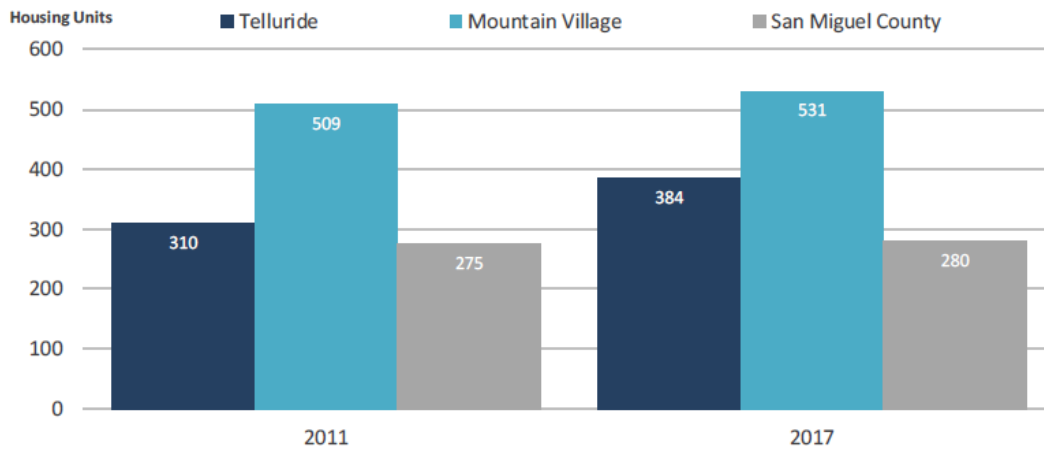
OVERVIEW

The Town of Mountain Village is unique in its existing zoning regulations and fee waivers related to community housing. We will provide a brief overview below.

WHAT THE TOWN IS DOING RIGHT

- 1. We have the most deed-restricted housing inventory in the region.**

Figure 22
Deed Restricted Housing Inventory by Location, San Miguel County, 2011-2017



Source: SMRHA; Rees Consulting; Economic & Planning Systems

- 2. The Town has been waiving development fees since 2019 to encourage repair, remodel, replacement, additions and new construction.**

Since 2019, the Town has waived all design review fees and building permit fees (except the county use tax portion) to encourage remodels, repair, replacement, remodel, additions and new construction of deed-restricted housing in the Mountain Village. This incentive has been valuable in assisting residents to maintain, improve and allow developers/homeowners to choose to build deed-restricted housing in the Mountain

Village understanding it comes with significant cost savings. Three deed-restricted homes are in construction to date due in part to the savings in development and permit fees. Water and sewer tap fees have historically been and remain half of free market tap fee rates at \$5,000 compared to \$10,000.

EXISTING ZONING INCENTIVES THAT SUPPORT COMMUNITY HOUSING

- 1) **Town Council can create deed-restricted housing** (dormitories, apartments, condominiums or single-family zoning designations) and it does not count against our density limitations. This requires a density transfer and rezone process with the town.
- 2) **Design Guidelines can be expressly reduced or waived** by the Design Review Board.
- 3) **Accessory uses that can be used for community housing**

Accessory Dwelling Unit (ADU) is a use by right pursuant to the Single Family Zone District Regulations. An Accessory Dwelling unit can be detached if located on a property over .75 acres and attached if located on a property under .75 acres. This allows for a secondary dwelling unit with a full kitchen and a separate entrance on any property zoned single family. Size limitations apply and it is otherwise considered an accessory use. These are not deed-restricted but free market dwellings.

Mother-in Law Suite is allowed on properties zoned single-family and with detached condominiums within the multi-family zone in both free market and deed-restricted dwellings. Mother-in-law suite allow for an accessory use within the same building that includes a common entrance and a separate living, bedroom, and limited kitchen facility. These are not deed-restricted unless found already on a deed-restricted dwelling.

(Staff note: We are proposing to eliminate mother-in-law suite and combine the definition with ADU – see exhibit C.)

- 4) **Allowable Zone Districts**
Community housing can be constructed within all current zone districts inclusive of Active Open Space and only prohibited within Passive Open Space.
- 5) **The Town's form of deed restriction** limits the owner or renter (whomever is occupying the unit) to demonstrate that they live and work in the R-1 School District. There are no income limitations, complicated formulas or tiers. You can own and not be required to occupy a deed-restricted property; yet the renter must be qualified. There is no limitation on other assets or properties. Most, though not all, deed restrictions in the Mountain Village do not have price caps. You can be a retired person, or anticipating retirement and have peace of mind that you can continue to live in, occupy, and own your deed-restricted unit with no threat of losing eligibility to own or occupy the unit.

SUMMARY

We feel a robust communications plan for property owners, realtors, potential buyers, architects and developers will educate the community and more immediately affect change of design and building programs moving through the design review process today.

The list below are the key take-aways for new or existing development:

- 1) You can build a detached ADU on a lot that is .75 acres or greater
- 2) You can build an attached ADU or mother-in-law suite on a lot under .75 acres
- 3) You can build a mother-in-law suite in a detached condominium OR single-family home.
- 4) When you construct a deed-restricted home, your development fees are waived, tap fees are half that of free market fees, RETA is waived, and your form of deed restriction is the simplest in the region.
- 5) You can retrofit your existing detached condominium to include a mother-in-law suite and secure a passive income stream to assist with your mortgage by targeting a long- term renter.

/mbh