



MEMORANDUM

P.O. Box 4100 † FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: KATIE KENT, COMMUNITY DEVELOPMENT DIRECTOR
RE: WORK SESSION: HOUSING RESTRICTIVE COVENANT DISCUSSION
DATE: AUGUST 27, 2024

Summary:

The purpose of the work session on August 27th is to review Housing Restrictive Covenants (“Covenant”) including what they are and why they exist. Additionally, this work session will be an opportunity for Staff to explain the resale calculation formulas commonly utilized within the Town and compare them with other resale calculation formulas used in other jurisdictions. An analysis of the effect that the different options for resale calculations would have on properties will be provided.

This work session topic and the overall topic of modifying the 2019 standard Covenant was first brought to the Town’s attention in early 2023. A work session was held in August 2023 and Council directed staff at that time to research resale calculations and return at a later date to Council to discuss this research. An additional change happened in 2024 whereby the Summit Combined Housing Authority Area Median Income (AMI) spreadsheet changed. Some homeowners have expressed concern that this change has negatively affected their home resale calculations due to the current Covenant. These same owners have also noted concern over the future diversity of sale prices in covenant restricted property because of the way that appreciation is calculated in the 2019 Housing Restrictive Covenant.

As a result of the August 27th work session, Staff expects Council to come to a full understanding of:

- What the covenants are and why they exist
- How the most common resale price calculations within the Town are written
- Comprehension of other alternative methods for calculating permitted resale price

This understanding will allow the Council to direct Staff if, and in what direction, they want the resale calculation modified in future Covenants. Under new business on the August 27th Town Council meeting, public input will be invited to be heard regarding the maximum resale calculation discussion. Staff will then seek direction from the Town Council on if the current maximum resale calculation within the 2019 Covenant shall be modified.

The Covenant discussion will continue at two additional work sessions, tentatively scheduled for September 24th and October 22nd at which time staff will explain and seek direction from the Council on a variety of additional topics listed within a covenant including:

- a. Duration of Time to opt into new covenant and should 2019 covenant be extinguished
- b. Eligible Household Income (allow a 20% increase between household income and AMI limit)
- c. Qualifying Capital Improvements
- d. Definition of Resident (for the purpose of qualifying to purchase deed restricted housing)
- e. Initial Purchase Price
- f. Buyer Selection
- g. Priority Period for Defined Employment Location
- h. Asset Limit

By the end of the three work sessions, Staff will have clear direction from Council should they want to bring forward a modification to the standard covenant used within the Town. This modified standard covenant would be brought before Council with a Resolution at a November or December meeting.

Housing Restrictive Covenants

A Housing Restrictive Covenant, also referred to as a “deed restriction, “HRC”, or “covenant”, is a common tool for placing limitations on the uses of a housing unit and are frequently utilized when a housing unit has been partially (or fully) funded by taxpayer money. The Covenant is a written agreement that restricts or limits the activities that may take place on a property or development. These agreements are recorded in the real property records of the County and are binding upon each owner and any future owner when the property is sold. When purchasing a property that has a covenant recorded on it, new property owners acknowledge a written statement affirming that they understand the restriction recorded on the property and that they will abide by it.

Original Covenants

There are approximately 155 properties within the Town that have restrictive covenants on them. Properties are located throughout Town and include:

- 481 W. Main Street (2 units)
- Backcountry Cabins (1 unit)
- Basecamp Shops and Residences (19 units)
- Bears Den Condominiums (3 units)
- Bills Ranch Resub / 821 Pitkin Street (4 units)
- Boulevard Bend Condominiums (8 units)
- Condos off Main (7 units)
- Drake Landing Condominiums (8 units)
- Frisco Main Street Commons (1 unit)
- Galena Street Studios (2 units)
- Lodge at Riverbend Condominiums (1 unit)
- Marina Park Condominiums (2 units)
- Mount Victoria Lodge Condominiums (1 unit)
- Ore House Condominiums (1 unit)
- Peak One Neighborhood (69 units)
- Royal Glen Condominiums (2 units)
- South End Village (8 units)
- Ten Mile Island Condominium (1 unit)
- Towers at Lakepoint (6 units)
- Town Centre Condominiums (6 units)
- Watertower Place Condominiums (3 units)

The above stated properties have a Covenant recorded on them through various development measures primarily stemming from development agreements or bonus density commitments. Approximately forty (40) of these units are employee units with no resale price cap (often referred to as “light” or “live/work” restrictions). The remaining have some type of limitation on household income and/or resale calculation, typically tied to an Area Median Income (AMI) between 80-120% Area Median Income. Some units have a higher AMI, up to 160% AMI.

2019 Opt-In Covenant

In 2019, through Resolution 19-27, the Town Council adopted a new Residential Housing Restrictive Covenant and Notice of Lien document (Attachment A) which was to provide a resale calculation that allows owners to potentially sell their property for a value which is an increased value over the previous method. The purpose of the modifications was to allow an alternative method for calculating the allowable maximum resale price, and the alternative methodology was established to be used in new deed restrictions for affordable workforce housing developments moving forward. Additionally, any property has the option to terminate their existing Covenant and opt-into the 2019 covenant. This has primarily been utilized when property owners sell or refinance their property as the 2019 Covenant typically allows a higher resale price than many of the older Covenants recorded on properties.

In 2019 it was reflected in staff reports:

Staff continues to note that the goals of any modification to the deed restrictions shall be to keep the buyer's price in the same or similar affordable range as when the unit was previously purchased, allow the seller flexibility in price allowing for competition among sellers and encourage capital investment while also promoting upkeep and maintenance of the units. Any modifications approved will not be automatic changes to deed restrictions, property owners would be required to opt-in to the proposed new covenant.

Proposed changes to the Restrictive Covenant do not affect the seller's affordability. The AMI designated in the existing covenant for a property will remain the same when determining the resale calculation. However, a buyer's affordability is proposed to be increased by up to twenty percent (20%) if after twenty (20) days, there is no proposed buyer who is employed within the Town of Frisco and qualifies at the original AMI. As clarification, the buyer shall qualify at the original AMI during the priority period; not the increased 20% spread.

Since 2020, 24 deed restricted properties within the Town of Frisco have sold. 14 of these parcels went into the 2019 Covenant prior to selling. 10 remained under the existing Covenant recorded on the property.

2023 Town Council Discussion

On August 22, 2023 the Town Council held a work session to discuss a proposal outlined in correspondence dated January 13, 2023 from specific property owners who reside within the Peak One Neighborhood. The request, which does not claim or seek to represent all owners in the Peak One neighborhood, was for Town Council to consider modifying the existing resale calculation.

The request was specifically to allow a deed restricted unit to sell at the price set through Summit Combined Housing Authority coinciding with the AMI unit type, or a 3% appreciation each year, whichever is greater.

At the work session, the Town Council gave Staff direction to bring the topic back after the Community Development Department was fully staffed, and requested:

- More information to see how the resale calculation scenario would play out over a long run noting that they were afraid of effecting future buyers
- Staff to look at all deed restrictions and give the Town the option to discuss another covenant option.

Area Median Income

Area Median Income (AMI) is routinely referenced in covenants for workforce housing. AMI is utilized as a measure of local income, and its value is obtained from the U.S. Department of Housing and Urban Development (HUD) and utilized by local jurisdictions along with state and national organizations including the Colorado Housing and Finance Authority (CHFA). AMI is typically used to establish an initial sales price or rental rate that is affordable to a targeted income level. Most of the Town’s older deed restrictions also limit annual appreciation to a maximum of 3% per year or the percentage increase in AMI, whichever is less. Thus, the allowable resale price is, in some covenants, directly tied to the annual percentage change in AMI. The intent of this regulation was to ensure that homes remain affordable to the respective targeted income level over time (e.g., a home originally priced to be affordable to a household earning 100% of the AMI remains affordable to 100% AMI households over time).

How is AMI Calculated?

HUD uses the following methodology to calculate AMI for a specific year:

- Step 1: First HUD uses the most recent U.S. Census Bureau American Community Survey (ACS) 5-year estimate of Summit County Median Family Income as the starting point for the calculation.
- Step 2: HUD then adjusts the most recent ACS 5-year estimate of Median Family Income using the annual percent change in the national Consumer Price Index (CPI) Inflation Factor from the end point of the 5-year Median Family Income estimate to the current year.

It is important to note that ACS data is collected annually for communities with populations over 65,000 people. However, for smaller communities such as those in Summit County, the Census Bureau uses aggregated data from ACS samples collected over a previous 5-year time period. Therefore, the Summit County ACS data being used by HUD for the annual AMI calculation is outdated and there is a multi-year lag in the data.

HUD deems utilizing 30% of a household’s income affordable to be used on housing rates which includes utilities, HOA fees, etc. The Summit County Area Median Income (AMI) spreadsheet (Attachment B) numbers are stated in values that maintain this 30% income affordability.

Maximum Resale Price

The 2019 Covenant’s maximum resale price utilizes a formula that is not to exceed the maximum sales price, as stated on the Summit County Area Median Income (AMI) spreadsheet for that property. A break-down of how you can get to the maximum resale price through the 2019 covenant is as follows:

- Purchase Price
- Plus 3% a year (not compounded)

- Plus Qualified Capital Improvements (QCIs)
- Plus \$ paid for real estate commission
= a value no greater than the number on the 2024 AMI spreadsheet for that unit type

Frisco is the only Town within Summit County to tie a maximum resale calculation to the AMI spreadsheet price. Community members expressed in August of 2023 that they do not feel that utilizing the Summit County Area Median Income (AMI) allows a spread of resale prices in restricted housing unit since it creates more standard resale prices. There is not consistency throughout the County with regards to resale calculations.

Table 1: Resale Price Examples

TOWN	Development Name	Resale Calculation
Breckenridge	Blue 52	2% per year, not compounding; plus cost of QCIs; plus sales commission up to 1%
Dillon	Sail Lofts	The greater of: 1. the Maximum Sales Price in the 2017 AMI chart, based on the purchaser's income and size of the unit, or 2. Initial sale plus 2% fixed appreciation, plus capital improvement costs to a maximum of 3% of the Maximum Resale Price prorated over the 10-year period prior to the sale, plus up to 1.75% in sales commission.
Silverthorne	Smith Ranch	2% per year, not compounding; plus cost of limited capital improvements, not to exceed 5% of initial purchase price over every 10 year period; plus sales commission up to 1.75%
Summit County	Dillon Valley Vistas	2% per year, not compounding; plus cost of QCIs, not to exceed 10% of initial purchase price over every 10 year period; plus sales commission up to 1.75%

Analysis:

Staff reports written in 2019 state that the goals of any modification to the Covenant shall be:

- Keep the buyer's price in the same or similar affordable range as when the unit was previously purchased
- Allow the seller flexibility in price allowing for competition among sellers
- Encourage capital investment while also promoting upkeep and maintenance of the units

Evaluation of Potential Alternative Methodologies for Calculating Maximum Resale Prices.

The purpose of this exercise is to research and evaluate viable alternative methodologies for calculating permitted resale price that would more effectively balance the goals of the Town's affordable workforce housing program.

An analysis has been performed, and attached as Attachment C, which lists a variety of restricted properties and includes for each:

- Number of Bedrooms
- Last Sale Date
- Last Sale Price
- Purchase Price + 3% (not compounded)
- Purchase Price + 2% (not compounded)

- Maximum Resale Price based on Summit County AMI Chart

The “difference” column demonstrates which properties exceed the maximum resale price based on the AMI chart when adding 3% a year to the purchase price since date of purchase. Figures shown in red font represent the additional value the property owner could receive if they had 3% a year and were not capped by the Summit County AMI chart. It is important to note that if the value is shown in red, then the 3% a year may put that resale value out of the affordability range as stated by HUD (30% of a household income to include utilities, HOA fees, etc.).

Summary:

As a result of the August 27th work session, or more if needed, Staff expects Council to have a full understanding of:

- What the covenants are and why they exist
- How the most common resale calculations within the Town are utilized
- Comprehension of other options for resale calculations used throughout the County

This understanding will allow the Council to direct Staff if, and in what direction, they want the resale calculation modified in future Covenants. Under new business on the August 27th Town Council meeting, public input will be invited to be heard regarding the maximum resale calculation discussion. Staff will then seek direction from the Town Council on if the current maximum resale calculation within the 2019 Covenant shall be modified.

Financial Impact: If the Town decides to modify the resale calculation within the Town of Frisco’s Residential Housing Restrictive Covenant and Notice of Lien document, the financial impact is that the Council could be modifying how it preserves the public investment in covenant restricted workforce housing to ensure that it remains available to the workforce of the future.

Alignment with Strategic Plan: The 2023 Strategic Plan, includes the strategic objectives of “We support a Thriving Economy”, “We enhance Community Inclusivity”. Within this priority, it is stated to:

- *Increasing workforce housing to appropriate levels*
- *Offering a variety of housing types to support year-round residents*
- *Considering equity, inclusivity, sustainability, and accessibility in all that we do*
- *Actively supporting the acquisition and retention of a diverse workforce*

The discussion on Housing Restrictive Covenants is consistent with the Strategic Plan and the Town Council’s priorities.

Staff Statement:

We, as staff, realize and acknowledge that the results of these conversations and how these topics are represented matter towards how for-sale affordable housing will operate in our Town and operate for owners. We have expertise and experience appropriate to provide the Council information about these topics and lead them through their analysis and decision making. The public and those living under covenant restricted property will also have important input to this process.

Staff will answer the Council's questions with factual information or based on factual information. If we are asked to give recommendations, we will do so. Ultimately, it's this collective work that may bring forward a new standard Housing Restrictive Covenant for consideration by the Council and the citizens of Frisco.

Our work in the affordable housing arena, with the SCHA, our direction from the Town Council and our strategic plan leads us to opinions and conclusions about these topics. We are attempting with our best efforts not to bias the Council's thought processes on these topics and provide factual information for the Council to consider. The Council's conclusions on these topics will be the policy of Frisco.

Reviews and Approvals: This report has been reviewed and approved by:

Diane McBride, Assistant Town Manager
Tom Fisher, Town Manager
Leslie Edwards, Finance Director

Attachments:

Attachment A - 2019 Restrictive Covenant
Attachment B – SCHA 2024 Summit County Area Median Income (AMI)
Attachment C – Analysis of existing properties resale calculation examples