

## MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

**TO:** MAYOR AND TOWN COUNCIL

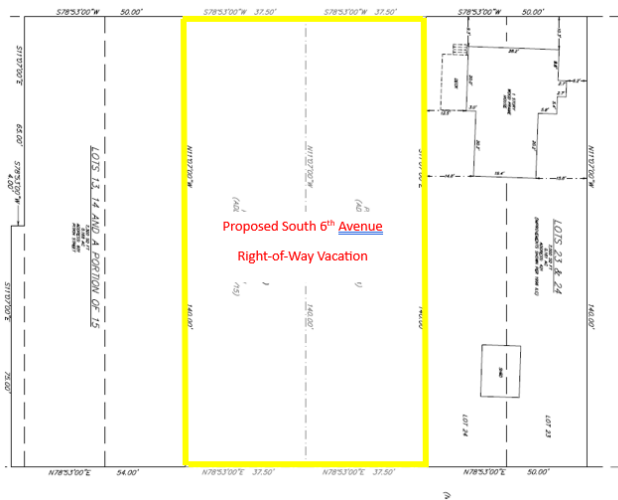
**FROM:** KATIE KENT, COMMUNITY DEVELOPMENT DIRECTOR

**RE:** PLANNING FILE NO. VAC-21-0001. A DISCUSSION REGARDING THE DEVELOPMENT AGREEMENT AND APPLICABLE COMPONENTS INCLUDING QUANTITY OF RESIDENTIAL UNITS, CONSTRUCTION TIMELINES, AND OCCUPANCY RESTRICTIONS OF UNITS.

**DATE:** June 27, 2023

### Summary and Background:

Mr. Andy Richmond and Ms. Lauren Echevarria own a house at 521 Pitkin Street. Mr. Albert Lindrose and Mrs. Marta Lindrose own a house at 601 Pitkin Street. Mr. Richmond and Ms. Echevarria are representing both parties with this request of the vacation of a portion of the right-of-way.



The Applicants have submitted a right-of-way vacation application to the Town of Frisco ("Town") requesting that the Town vacate a portion of a public right-of-way consisting of a 10,500 sq. ft. (0.24 acres) tract of the South 6th Avenue right-of-way. In exchange for this vacation, the Applicants would build 3-4 deed restricted units on the section of right-of-way and adjacent lots. The first step in the application process was a hearing by the Planning Commission, which took place on May 18, 2023.

At the May 18, 2023 Planning Commission meeting, the Commission discussed the proposal and the associated public interest being provided to the Town. The Commission concluded that the request as presented was not an overriding public interest and offered suggested conditions to the Council. The following motion and associated conditions were recommended to the Town Council:

*With respect to File No. VAC-21-0001, Commissioner Tane moves that the Planning Commission forwards a recommendation of approval to the Town*

*Council for the vacation of a 10,500 sq.ft. (0.24 acres) tract of the South 6<sup>th</sup> Avenue Right-of-Way within Blocks 33 & 34, Frisco Townsite; generally located north of Pitkin Street, south of Pitkin Street Alley, adjacent to and east of 521 Pitkin Street / Lots 23-24, Block 34, Frisco Townsite and adjacent to and west of 601 Pitkin Street / Lots 13-14, Pt 15, Block 33, Frisco Townsite, subject to the following conditions:*

- 1. The Applicant(s) shall enter into a development agreement with the Town of Frisco that outlines the requirements for guaranteeing construction completion of all four deed restricted workforce housing units and the residential housing restrictive covenants, including the terms and conditions for occupancy and ownership of the units as determined by the Town of Frisco including that a portion of the units contain a deed restriction that caps the sale price at 160% AMI, and that the applicants have obtained all necessary development approvals and permits.*
- 2. That the vacation ordinance shall not cause the South 6<sup>th</sup> Avenue right-of-way to be vacated until the ordinance is filed by the Town Clerk for recording in the Office of the Summit County Clerk and Recorder. The Town Clerk shall not file the ordinance for recording in said office until the conditions of the development agreement above have been satisfied.*

With the Planning Commission's recommendation that the applicant enter into a development agreement with the Town, the worksession on June 27<sup>th</sup> is for the applicant to receive guidance from the Town Council regarding the development agreement which provides more stringent restrictions on the development than the applicant is proposing.

	<b>Applicant's Proposal</b>	<b>Planning Commission Recommendation</b>
<b>AMI</b>	No AMI cap	A portion of units to contain a deed restriction that caps sale price at 160% AMI
<b># of Units</b>	3-4	4
<b>Construction Timeline</b>	No required timeline to complete work	Guarantee construction

Specific questions that the Town Council should discuss include:

- Pursuant to §142-1 of the Frisco Town Code, the Town Council hereby finds and declares that the general policy of the Town is to prohibit the vacation or divesting of any right, title or interest of the Town in and to any land, including any roadway or easement. Any application for vacation pursuant to this chapter may be granted only in cases where the Town Council, in the exercise of its sole and exclusive discretion, first finds an overriding public interest favors the vacation. Does the Town Council support the Planning Commission's motion finding that the proposal provides an overriding public interest with the recommendation conditions?

- The application materials do not propose Area Median Income (AMI) limitations capping the resale value of the residential units. Will the Town Council require the applicant to follow the Planning Commission recommendation to have a portion of the residential units cap the sale price at 160% AMI?
- The application materials do not propose a guarantee for the construction of a fourth residential unit. Will the Town Council require the applicant to construct each residential unit within a specific timeframe?

The development project as proposed does not comply with existing Unified Development Code (UDC) requirements including minimum lot size, density, and minimum PUD requirements. If the Town Council finds that the proposal as presented by the applicant provides an overriding public interest, does the Council want Staff to pursue code amendments that would memorialize creative developments for higher density live/work housing units on small parcels within the Town? This could be through amendments to Sections of Chapter 180, Unified Development Code relating to Planned Unit Development (PUD), cabin housing, and portions of affordable housing and density.

#### **Analysis:**

The first step in the application process for the vacation of the Town's right-of-way was a hearing by the Planning Commission, which took place on May 18, 2023. The Planning Commission approved this request with specific conditions listed above.

With the Planning Commission recommending a development agreement, the next step in the process is for the Town Council to clearly outline what requirements shall be in the development agreement to support the overriding public interest required by a right-of-way vacation.

If the Town provides feedback to the applicant supporting the proposed public interest, the next step in the process will be a review of the right-of-way vacation application by the Town Council. If the applicant does not receive feedback supporting the proposed overriding public interest, they may want to propose a modification to their proposal and return to the Council for further discussion.

Should Town Council approve the vacation request, the next step is the official creation of a development agreement between the Town and the Applicants which details the quantity of residential units, construction timelines and occupancy restrictions of the units. This development agreement is tentatively scheduled for review with Town Council in the form of an ordinance on August 8, 2023.

Specific topics of discussion for the Town Council worksession on June 27, 2023, are:

- 1) Vacation of a portion of a public right-of-way. Does the Town Council find that the proposal provides an overriding public interest?

Pursuant to §142-1 of the Frisco Town Code, *the Town Council hereby finds and declares that the general policy of the Town is to prohibit the vacation or divesting of any right, title or interest of the Town in and to any land, including any roadway or easement. Any application for vacation pursuant to this chapter may be granted only in cases where the Town Council, in the exercise of its sole and exclusive discretion, first finds an overriding public interest favors the vacation.*

The general policy of the Town of Frisco is to not allow for the vacation or divesting of any right, title or interest of the Town in and to any land including any roadway unless there is a clear overriding public interest. As stewards of public property, the Town has taken a conservative interpretation of “an overriding public interest” and should continue to be conservative in their vacation of public right-of-ways including the subject property.

In this application, the “overriding public interest” is the creation of 3-4 for sale workforce housing units in the Town of Frisco.

- 2) If the Town Council finds that the proposal provides an overriding public interest, the next step is to define the details of a development agreement, specifically the proposed occupancy/ownership requirements, number of units, and construction timeline for four units.
  - a) Occupancy/Owner Requirements. The terms and conditions for occupancy and ownership of the units as determined by the Applicant do not include AMI caps. The recommended conditions from the Planning Commission include that a portion of the units contain a deed restriction that caps the sale price at 160% AMI. Does Council support the recommended AMI cap from the Planning Commission?
  - b) Number of Units. Does the Council support the proposal that would guarantee three units to be restricted by a covenant limiting employment to Summit County with a priority for owners who are employed in Frisco? Or, does the Council find that the overriding public interest does not exist without a fourth unit to be constructed within a certain timeframe?
  - c) Construction Timeline. Does the Council want to establish timelines for covenants to be placed on the units? Two of the proposed structures are already constructed and would need to have a covenant recorded on them. Two of the structures are future construction and a specific timeline is not provided for those units.

This vacation request presents the Town of Frisco with a development proposal that would provide up to four (4) workforce housing units in exchange for the 10,500 sq. ft. parcel of South 6<sup>th</sup> Avenue right-of-way. It is ultimately the responsibility of the Town Council to ensure that the terms and conditions (including covenant limitations) set forth in a development agreement, will also return an appropriate level of value and benefit back to the community.

An appraisal of the property submitted on October 7, 2021 estimated the 10,500 sq. ft. right-of-way’s “as-is” value at \$158,000. The “as-proposed” value of the portion of the right-of-way proposed for dedication to 521 Pitkin is estimated at \$210,000; and the portion of the right-of-way proposed for dedication to 601 Pitkin is \$175,000. This distribution of “as proposed” values is broken down based on the percentage of the lot sizes proposed for each unit.

VALUE CONCLUSIONS					
"AS IS" VALUES			"AS PROPOSED" VALUES		
			<u>Property</u>	<u>Site Sizes SF</u>	<u>Value</u>
6th Ave. Right of Way		\$ 158,000	West Right of Way Lot	7,000	\$ 210,000
521 Pitkin Street		\$ 1,050,000	East Right of Way Lot	3,500	\$ 175,000
601 Pitkin Street		\$ 1,125,000	Rear 521 Lot	3,500	\$ 210,000
			521 Pitkin with house	3,500	\$ 507,000
			601 Pitkin with house	7,300	\$ 1,125,000

Application materials submitted for the right-of-way vacation request state:

*The first step in our proposal is to request that the Town vacate the 6th Ave. right-of-way between our home at 521 Pitkin, and the Lindrose's home at 601 Pitkin. We understand that vacation of public right-of-way requires a show of "overriding public interest." Our proposal offers this public interest.*

*In exchange for the Town's vacation, my wife and I will encumber our current home at 521 Pitkin with a local's housing covenant. Additionally, we are proposing a subdivision of our lot so as to sell the back half, that home would also be subject to a local's housing covenant. In the vacated right-of-way, we would build a third home, also subject to a local's housing covenant.*

*And finally, our neighbors and co-applicants the Lindroses, would, on longer time frame, contribute one more local unit to the proposed area. That is the potential for four local houses from one vacated right-of-way.*

*All four potential local units would contain the same restriction, contained in the Planned Unit Development ("PUD") application, which is proceeding in concert with this requested vacation. That restriction, in summary, is that these local units are only available to individuals who:*

- *Are registered voters in Frisco, Colorado;*
- *Work 30 hours/week at a business who holds a business license or pay taxes in Summit County and the income from that job comprises at least 75% of their total income, or a retired person who met these same requirements for 5 consecutive years prior to retirement; an*
- *Uses these units as their principal place of residence, as determined by Colorado law.*

With regards to an AMI tied to the residential units, the application materials state:

*The covenant we propose would not have the AMI or resale caps that some of the current local housing projects in the Town do. As a recent home buyer, and judging from some of Council's recent discussions, AMI and resale caps can create some issues for buyers. That is not to say that they do not have a place, but rather that the Town should have several options in its local housing arsenal. AMI caps create a situation where some buyers are left behind because they make too much to qualify for an AMI cap but don't make enough for a free market home. Resale caps can provoke dissatisfaction because they essentially disallow locals from participating in the real estate market while second homeowners strike*

*it rich when home values in town rise. Our local housing covenant would instead regulate the local requirement with a strict covenant limiting ownership of these homes to locals who work in Summit County, with a preference to locals who work in Frisco specifically. Additionally, there would be a covenant requiring that these homes be the primary residence of each owner. That ensures there is no real estate speculation or investment purchases in our development, each owner has to want to live there. Thus, we would regulate price with a combination of the local's covenant and the small size of the homes. Essentially, the fact that you must sell to a local, it must be that local's primary residence, and the house cannot be more than 1000 sq. ft. will not allow the prices on these homes to become prohibitive.*

**Financial Impact:** The application does not request an exchange of money for the right-of-way vacation; therefore, there is not a direct financial impact of this application to the Town.

**Alignment with Strategic Plan:** The project aligns with the Inclusive Community Strategic Plan goals. Adding additional live/work options to the Frisco housing market will allow more opportunities for local workers to live where they work. This project will also be built to the most current sustainability code and will be an example of what can be accomplished with the Town allowing more creative development involving smaller lots and increased density while still providing single-family residences.

*Town Council High Priority Goal: Increase Full-Time Residents to 50%*

- *Town Council to develop measurable outcomes to achieve goal*
- *Evaluate Housing Options & create incentives*
  - *Consider opportunities presented by "Zoom economy"*
  - *Consider deed restriction covenants to identify remote workers as locals*
  - *Consider Inclusionary Zoning options for deed restricted housing*
- *Identify strategies to maintain current full-time residents*

The proposed development of 3-4 live/work single-family units on smaller lots:

- Increases housing options for full time locals
- Provides a strategy to maintain current full-time residents

**Environmental Sustainability:** At this time, environmental sustainability is not addressed as part of this discussion. If the project is developed, structures will be required to meet the requirements of the Summit Sustainable Building Code.

**Staff Recommendation:** Staff recommends that the Town Council provide the applicant feedback regarding if the proposal provides an overriding public benefit. If the Town Council does not find that the proposal provides an overriding public benefit, then they should be clear why it does not.

If Town Council finds that the proposal provides an overriding public benefit as presented, then the applicant will move forward with the 1<sup>st</sup> reading of the Ordinance for the right-of-way vacation at an upcoming Council meeting in August.

The proposed development cannot be permitted through existing code language. Staff requests direction if they should be pursuing potential code amendments to the UDC which would memorialize ways for developments providing workforce housing units on smaller lots to be permitted within the Town.

Next steps will include staff continuing to work with applicant on this project and will bring forth updates to the Council as appropriate.

**Approved By:**

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

**Attachments:**

Attachment 1 - Application Materials  
Attachment 2 - Town Code, Chapter 142, Vacation of Property  
Attachment 3 – May 18, 2023 Planning Commission staff report and minutes