



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: KATIE KENT, COMMUNITY DEVELOPMENT DIRECTOR
RE: WORKSESSION PEAK ONE HOMEOWNERS REQUEST– REVISION TO DEED RESTRICTION
DATE: AUGUST 22, 2023

Summary and Background: The Town entered into a Development Agreement and Real Covenant with Ten Mile Partners LLC on February 9, 2010 to develop the property that would become known as the Peak One Neighborhood. This Agreement contained affordable housing requirements and specifically outlined the targeted purchase prices listed per Area Median Income (“AMI”) category. With each initial sale within Peak One, the sale price was established based off the targeted household income level relative to AMI. Initial sale prices were not based on the sale price that correlates to the maximum income; they were designed specifically for the lower AMI level targeted for that property. These two AMI levels created a range of affordability for the property, from the AMI target used to calculate the sale price up to the AMI used for the maximum income allowed for income testing.

With the establishment of the Peak One Neighborhood, affordability categories for each property were established. Each category: Live/Work, Category 1/80% AMI, Category 2/100% AMI, Category 3/120% AMI and Category 4/ >= 160% AMI) are identified on the attached document titled Peak One Neighborhood Affordability Category (Attachment 2). This AMI percentage was intended to identify the maximum household income qualification for the property; not the sale price.

In a letter dated January 13, 2023, to the Mayor and Frisco Town Council (Attachment 1), nine property owners from the Peak One Neighborhood are requesting a revision to the deed restrictions within the Peak One Neighborhood. The request is for Town Council to consider modifying the existing resale calculation for deed restricted units so that owners have the opportunity to receive more money for the sale of their property than what may be permitted through the existing recorded Housing Restrictive Covenant (“Covenant”), or the Covenant that the Town approved in 2019 for any deed restricted property owner to opt-into voluntarily. Property owners who are requesting these revisions will present their request to Council during the work session.

The request is specifically to allow a deed restricted unit to sell at the price set through Summit County Housing Authority (SCHA) coinciding with the AMI unit type, or a 3% appreciation each year, whichever is greater. If determined to be appropriate by the Town Council, the Town’s existing deed restrictions could be amended to adopt an alternative methodology for calculating the allowable maximum resale price, and the alternative methodology could also be used in new deed restrictions for affordable workforce housing developments moving forward.

At the August 22, 2023 work session, Staff is seeking feedback from Council regarding the proposed modifications to the covenant as presented in the January 13, 2023 correspondence. Specific discussion points include:

- Does the Council support the proposed modifications to the Housing Restrictive Covenant as presented by this group of Peak One Neighborhood homeowners?
- If the Council supports the proposed concept, do they support modifying the Covenant just for properties within the Peak One Neighborhood, or all deed restricted units within the Town that have a resale calculation within them?
- Does the proposed modification keep the affordability of the Peak One Neighborhood and meet the intent of the Peak One Neighborhood along with serving a benefit to the community as a whole?

Analysis: In general, the purpose of a deed restriction is to establish and preserve a supply of affordably priced housing to help meet the needs of the locally employed residents within Summit County. The original Covenant utilized for the Peak One Neighborhood was based off requirements stated in the development agreement. These covenants state the resale calculation as:

A. The Maximum Resale Price of a Property shall be equal to the sum of:

1) The lesser of:

- a. the Purchase Price paid by the Owner for the Property, plus an increase of three percent (3%) of such Purchase Price per year (prorated at the rate of 1/12 for each whole month) from the date of the Owner's purchase of the Property to the date of the Owner' s execution of the listing contract, such percentage increase to not be compounded annually; or
- b. the Purchase Price paid by the Owner for the Property, plus a percentage increase equal to the percentage increase in the Area Median Income from the date of the Owner' s purchase of the Property to the date of the Owner's execution of the listing contract (prorated at the rate of 1/12 for each whole month), such percentage increase to not be compounded annually.

2) Plus the cost of the Permitted Improvements approved by the SCHA or the Town.

3) Plus the amount of any commission payable to the SCHA.

Staff notes that not all units within the Peak One Neighborhood are permitted the cost of improvements through the existing covenants. They are always permitted if they opt-into the new covenant.

In 2019, the Town moved forward with a new Residential Housing Restrictive Covenant and Notice of Lien document 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. This covenant is allowed to be opted into by any existing homeowner within the Town of Frisco.

The 2019 covenant outlines four items which can be combined to achieve the maximum resale price. The bottom line of the maximum resale calculation is taken off the current AMI sheet included as an attachment.

A break-down of how you can get to the maximum resale price through the new covenant is as follows:

- Purchase Price
- Plus 3% a year (not compounded)
- Plus Qualified Capital Improvements (QCI's)
- Plus \$ paid for real estate commission

= a value no greater than the number on the 2023 AMI spreadsheet for that unit type

The proposal before Town Council is requesting a property owner to automatically receive the number on the 2023 AMI spreadsheet for that unit type, or 3% whichever is greater. This would not incentivize QCIs as the current methodology does.

The goal 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. If the Town pursues the request before them, any modifications approved in the future will not be automatic changes to deed restrictions, property owners would be required to opt-in to the proposed new covenant.

Deed restricted properties within Frisco continue to sell. Since 2021, fifteen deed restricted properties within the Town of Frisco have sold. Nine (9) of these parcels went into the 2019 Covenant prior to selling, while six (6) remained under the existing Covenant recorded on the property.

Points for the Council to consider:

- The 2019 covenant incentivizes Qualified Capital Improvements ("QCI") by allowing sellers to add them to their resale calculation. Through the proposal before Town Council, a seller would not have an incentive to invest in QCIs; they could list the property for the maximum value regardless of if they invested money in improvements. This will lead to more decline of the condition of the units.
- Through the 2019 Covenant, more money is added for the more time the property remains under single ownership (3% a year), thereby encouraging home owners to stay and invest in their community.
- The higher the value of the resale calculation, the less affordability of the property for a new buyer.
 - A 3-bedroom 160% AMI unit can sell for \$837,990.
 - A family of four can make up to \$159,680 annual income to qualify to purchase.
 - A brief online search says that if you make ~\$150,000 you should be able to buy a home in the 500,000s. Allowing units to sell at over \$800,000 does not encourage buyer affordability, which is what the Peak One neighborhood was intended to be for.

Financial Impact: There are no direct financial impacts to the Town of Frisco. The only financial impact would be on the affordability of the housing units.

Alignment with Strategic Plan: The recently adopted 2023-2026 Strategic Plan includes the strategic objective "we enhance Community Inclusivity" through the following pillars:

- Offering a variety of housing types to support year-round work/live occupancy
- Considering equity, inclusivity, sustainability, and accessibility in all that we do
- Actively supporting the acquisition and retention of a diverse workforce

Properties that have a housing restrictive covenant recorded on them are enhancing the Community Inclusivity by providing housing types to support year-round work/live occupancy along with supporting the retention of a diverse workforce.

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 1 – January 13, 2023 correspondence
Attachment 2 – Peak One Neighborhood Affordability Categories
Attachment 3 – 2019 Housing Restrictive Covenant
Attachment 4 – SCHA 2023 Summit County Area Median Income (AMI)