



# J. David Reed, P.C.

ATTORNEYS AT LAW

J. David Reed | James D. Mahoney | Bo James Nerlin | Sarah H. Abbott

MONTROSE • RIDGWAY • TELLURIDE

# Memo

To: Mayor and Town Council

From: James Mahoney

Date: September 13, 2019

Re: VCA Expansion – Conversion from Rental Apartments to for Sale Units – Item #10 & 11

After the Town Council retreat of September 5, 2019 our office and Town staff were directed to look into the possibility of converting the VCA Expansion Project from rental apartments to units that could be sold individually. Below is a list of actions and other considerations Town Council should review and provide direction on if the desired outcome is to provide for sale units. This list is preliminary and additional items or issues may arise as this is a major direction change and additional time may be necessary, which would impact the original timeline.

1. **Financing.** Financing for a government owned rental project is a completely different product than financing for a for sale product. There are also many variables to consider that we do not have information on yet as the bank the Town has been working with has not had adequate time to provide this information nor has the Town's bond counsel been able to fully review this project. We do know the interest rate will increase for this type of financing and that there are a number of steps that must be taken to be able to acquire such financing. They are as follows.
  - a. Obtain New financing terms based on a for sale project. Bank is working on providing those, which the finance department and bond council will evaluate.
  - b. Create new lot (Lot 1001-R2). Due to the differing nature of the financing, and the fact that there is substantial money owed and years left on the existing VCA financing it will be necessary to replat one of the Lots at VCA (Lot 1001) into two lots so that a new lot is created in order for the bank to have a legally described parcel of property for which security for a new construction loan would attach and that the existing financing still has adequate security for the bank.
    - i. See Platting section below for timing and responsible person.
  - c. Remove Lot 1001-R2 existing deed of trust. Bank indicated this is a simple modification of the deed of trust which the Town's bond counsel can prepare in coordination with the bank.

- i. Task Completion: The timing of this can occur simultaneously with creation of new lot as explained below in the platting section of this outline.
    - d. Approve financing by bank and Town.
      - i. Task Completion: Can happen simultaneously with creation of Lot 1001-R2 in the timeline outlined below. Kevin to oversee and ultimately Town Council to approve.
    - e. Line of Credit or Bridge Financing. Is the bank or the Town able to create enough money to keep project on an October break ground timeline knowing the construction loan cannot be issued until Lot 1001-R2 is created and construction financing can be issued? Cash reserves from housing fund are not adequate to break ground this fall due to deposit required for modular orders (minimum 25% of cost) and foundation costs.
      - i. Task Completion: Kevin to determine these options with bank and Calvin Hanson, bond counsel, assistance. Completion TBD.
        - 1. Acquiring bridge financing, if possible at all due to restrictions on what municipalities can borrow and pledge due to TABOR, will add additional financing costs to the project.
2. **CBG Grant Implications.** Does this impact the conversion and carve out of this property?
- a. Review CBG Grant. A review of this covenant, which is the outstanding ongoing obligation of the grant, reveals that it requires 40 units to be rented at 50% of AMI and 48 units at 60% of AMI which is accomplished through the existing units. This appears to be the only outstanding obligation of the CBG grant. However, this covenant shows up on title to Lot 1005 and Lot 1001 which means that it would apply to any newly created lot. Therefore, the Town needs to approach the Colorado Department of Local Affairs (DOLA) to inquire as to whether they would modify the covenant to release the newly created lot from this covenant.
    - i. Task Completion. Michelle spoke to our DOLA representative. She indicated that the use covenant can be amended to update the legal description and remove the newly created lot so long as the use covenant remains on lot 1005 and 1001R (as replatted).
3. **Platting.** Currently this site is a part of Lot 1001. In order to be able to break out this project from the existing VCA site, Lot 1001 would need to be re-platted to create two new lots one of which would be the remainder of Lot 1001 where the VCA project sits (Lot 1001-R1) and the new lot (Lot 1001-R2). Lot 1001-R2 would then be released by the Bank from the existing financing and used as collateral to secure new financing for the construction of the project. Here are the steps to accomplish this.
- a. Major Subdivision Application. Class 4 application.



- b. Amend CUP for parking. The approval for parking at VCA to be 1 per unit is premised on parking managed for a rental project operated by the Town. This approval would have to be revisited. New application would need to be submitted by Town staff and evaluated by Town Council. It would likely have to include approval to allow for offsite parking as parking would likely have to be provided on the remaining VCA lots.
5. **Construction Bidding and Schedule Issues.**
- a. Washer dryer capability. In conversations with architects this is pretty simple for 1 bedroom units. The implications for the 2-bedroom units is they don't fit in a common closet; thus, they have to be located in a bedroom which reduces the room size to less than 100 square feet (which is small). The room size is already small and was designed with a rental product in mind. There will be a cost for architectural and construction change orders related to this change.
  - b. Gas Submetering. We are unsure if for sale units can be sub-metered for gas or if the gas company will require separate gas meters. We have to look into this. This would be a change order and a spatial challenge to find a place for the gas meter banks. There will be a cost for architectural and construction change orders related to this change.
  - c. Consult with Mr. Herrington on Building Code Compliance. This is to ensure that conversion to for sale does not change any code requirements. Can be accomplished at staff level.
  - d. Modular Scheduling. The way the project was set up was to select a contractor September 19 and to approve financing on October 9<sup>th</sup> with a groundbreaking mid-October. This will be pushed back slightly with this delay and unless there is some type of bridge financing available this will have to be pushed back by until mid-December in order to address platting and zoning as noted above. Therefore, there may be a change in pricing based on the timing change as this impacts the contractors schedule, the modular factories schedule among other factors.
  - e. Bid for Contractor: In the event the Town Council determines to make this direction change, an addendum to the RFP for contractors would have to be issued and time would have to be given for bidders to evaluate due to the schedule changes noted above and the fact that it is a different product with different insurance and liability concerns.
6. **Market Analysis.** No market analysis has occurred for this direction change. Nearly two years of time energy and money have been put into the existing project including a site specific housing needs assessment from Economic & Planning Systems a Denver based consultant premised upon rental housing supply. Without getting into the details of the assessment it determined there would be sufficient market demand to reach full occupancy, addressed raising rental rates to boost revenue and confirmed the unit mix was appropriate.

As it related to lending the following analysis was provided by the assessment as well: “The conclusion from these tables shows a depth of demand that is far greater than observed in most real estate markets. Lenders and/or equity investors should have a high level of confidence in the existing and future market conditions, with interest from existing renters in the area representing two to three times the proposed inventory. Economic growth in the region and the corresponding increase in households could generate over a three-year time period (2018 through 2020) demand for up to 60 percent of the complex. Drawing from existing renters as well as future growth, the project is expected to be oversubscribed in terms of demand.”

- This study was fundamental at the time, to assure Town Council was moving in the
7. right direction and meeting a regional market demand. Town Council may want to consider a similar analysis of the market for saleable units at this location and in this configuration prior to moving forward.
  8. **Co-Mingling Issue.** Comingling a Town operated rental project with an ownership product should be addressed. From experience, any time publicly owned assets and privately owned assets are mixed there can be unanticipated issues.
  9. **Architectural Contract.** The RFP for the architect of record to design the project and the contract for the architect of record both reference this project as rental apartments owned and operated by the Town of Mountain Village. A change of this nature may trigger changes to the contract with the architect as they may have to procure different insurance among other issues. Any changes would likely result in increased costs.
10. **Secondary Concerns to be Addressed:**
- a. Need to set up HOA for new units to be sold. This will incur additional costs for surveying and legal fees for the creation of the HOA.
  - b. Need for other easements such as pedestrian access, drainage, utilities etc. will need to be addressed due to Town no longer owning this whole project.
  - c. Cost allocations associated with access road to this new building and other amenities provided by VCA such as trash and recycling that cannot be accommodated fully on the new lot will need to be addressed.
  - d. Gas submetering. Need to be addressed by new HOA for units.
  - e. Cable and Internet. Is bulk with VCA but would be individually assessed.
  - f. TMVOA dues and taxes would be paid by new owners.
  - g. Town sewer line sits beneath west building. Need easement for Town to access through designed access hatch and on sides of building.
  - h. Finish quality of units. Is it appropriate for saleable product?
  - i. What finishes can come out of contractor budget? Example is window coverings. Typically, in for sale product owners would install.

- j. Repurpose or keep office in new building. Options on this one can be decided as things progress.
- k. What is the appropriate deed restriction for these units?

Staff and legal are looking for Town Council to consider these implications and provide feedback and direction to staff as to how they should proceed.