

Victoria Village Funding Assistance

The development of Victoria Village (VV) will require significant investment by the Town to keep costs down in order to meet the Area Median Income (AMI) goals for workforce housing. This document presents suggestions for Town policy decisions which can provide funding options to reduce developer costs.

Fraser issued a Request for Qualifications (RFQ) on August 15, 2022, asking developers to present their qualifications and experience in developing attainable workforce housing. The goal of the RFQ is to select a developer with workforce housing development experience and capacity to partner with the Town to develop VV. A selection committee will review developer submittals and present a short list of recommendations to the Fraser Board of Trustees (BOT). The BOT will hold interviews with the finalists in a Special Meeting on November 30th, with a final selection on December 7th.

The RFQ requires the selected developer to prepare a Master Plan for the VV development. The Victoria Village Master Plan (VVMP) must include gathering public input for the development. After approval of the VVMP, the developer will prepare a plan of development to submit to the Planning Commission as a Major Site Plan. The development will require surveys, engineering, site plan development, followed by customary engineering and planning reviews before the Final Plat is approved by the BOT. After final plat approval, construction can begin. The Operation Turnkey Grant requires construction to begin by September 2024.

Fraser will need to put policies and funding procedures in place to reduce risk to the developer to keep the project moving quickly and to reduce costs. These policies need to be developed quickly to meet the grant's construction start timeline.

LEVERAGE LAND:

The VV parcel has a market value of \$3.8M, which gives Fraser several options. Donating or leasing the land to the developer strengthens the cash position of the developer in order to secure financing for the construction. It also removes land acquisition costs for the developer, which can reduce the overall price of housing by as much as \$36,000 per unit.

Fraser should consult with a land-use attorney familiar with affordable housing to select the best option.

WAIVE/REDUCE FEES:

Fees for a major subdivision are a significant cost to developers. The following list illustrates the typical fees for a major subdivision:

1. Major Subdivision Deposit - \$5,000
2. Water Plant Investment Fee - \$7,000 per single family residence
3. Wastewater Plant Investment Fee - \$7,500 per single family residence
4. Water and water service extension fee – 3% of construction costs of main and line extensions

5. Water meters – Cost plus 15%
6. Zoning fees, which include:
 - a. Major Site Plan - \$700
 - b. Sketch Plan - \$350
 - c. Preliminary Plat - \$100 per lot/unit created (\$900 minimum)
 - d. Final Plat - \$200 per lot/unit (\$1,200 minimum)
7. Plan review and engineering fees
8. Building permit fees – based on valuation

The Operation Turnkey grant requires a minimum of 105 affordable units. Therefore, the minimum fees to the VV developer would be between \$1.5M – \$2M. The largest fees to developers are plant investment fees. Waiving or reducing fees can significantly reduce development costs.

The drawback of waiving plant investment fees is that it reduces the Town’s capital reserves which pay for future maintenance and/or replacement of water and sewer infrastructure. However, other funding mechanisms may be leveraged to pay PIFs.

Legal opinion for waiving impact fees (Kent Whitmer):

The Town is authorized to impose legislatively adopted impact fees as a condition of development. C.R.S. §29-20-104(1)(g) and §29-20-104.5(1). The Town can waive impact fees on the development of low/moderate income housing and affordable employee housing. C.R.S. §29-20-104.5(5). Pursuant to its statutory authority, the Town has adopted a plant investment fee which must be paid by all applicants for water service before a certificate of occupancy is issued. Code §13-2-210(a). However, currently the PIF cannot be rebated under any circumstances. Id.

While the Town has statutory authority to waive PIFs for affordable housing projects, the Code currently contains no provisions for a waiver. The Board of Trustees could amend the Code to provide for a waiver of PIFs for defined low/moderate income housing and affordable employee housing projects.

USE TAX REBATES:

Developers pay a 4% use tax on building materials. This tax is paid to Fraser and funds General Fund operations. Depending on the final scope of the development, Use Taxes on VV will account for upwards of \$750,000 of the total construction costs.

Legal opinion for rebating Use Taxes (Kent Whitmer):

The Town Code provides for payment of a use tax on construction materials. Code §4-3-10 et seq. The Town is authorized to impose a use tax provided the tax proposal is approved by the electorate. C.R.S. §29-2-102. Fraser’s use tax ordinance includes the required statutory exceptions to application of the use the tax, but it does not contain any exception for affordable housing projects. The Code permits the Board of Trustees to amend, alter or change the use tax without voter approval, except for changes to the 4% rate. State statute, however, provides that a project owned by or under construction by a duly organized housing authority is exempt from the municipal use tax in proportion to the percentage of the project that is for low-income housing. C.R.S. §29-4-227(1)(b).

The Town has three potential options for waiving the use tax on the Victoria Village project:

- 1. If the Project is owned by or is under construction by the Fraser Housing Authority (or by an entity in which the Housing Authority has an ownership interest), the Project is exempt from the use tax under C.R.S. §29-4-227(1)(b). The exemption is in proportion to the percentage of the Project that is for low-income housing. The Housing Authority would determine the percentage of the project that is for low-income housing on either a square foot basis or a cost basis.*
- 2. Amend the Town Code to provide for an exemption from the use tax for defined affordable housing projects. The safest course if proceeding with an amendment would be to implement the amendment with voter approval. While the Code currently provides the Board the authority to amend the use tax ordinance without voter approval, the validity of this provision is questionable. The issue is whether the voters – who have the statutory authority to decide the material provisions of a use tax – can confer on the Board the authority to materially amend the ordinance without further voter approval. There appear to be no reported Colorado cases addressing the issue. There is a 1980 Colorado Attorney General (AG) Opinion analyzing nearly identical language in the Breckenridge sales/use tax ordinance. The AG's conclusion is that the voters cannot confer on the Town Board a right to amend a voter-approved ordinance without subsequent voter approval. The statutory authority for imposing a sales or use tax requires voters to approve all provisions of the ordinance, not just the concept of a sales or use tax. Further, there is no statutory authority for voters to delegate their authority to a Town Board. As a result, any material change to a use tax ordinance would require voter approval. Although there are no binding decisions interpreting the question, the most conservative process would be to submit an affordable housing exemption to the voters for approval.*
- 3. The Town Board could amend the Code to provide a use tax exemption for affordable housing projects without voter approval, with the understanding that the amendment may be subject to legal challenge.*

EXPEDITED REVIEW/APPROVAL:

Fraser's development review process and timelines are in line with other communities. However, Fraser should review and amend its development code to create shorter timelines for affordable housing development. This allows construction to begin quicker which reduces developer loss.

GRANTS:

There are numerous grants available that the town can pursue for the development of VV. These grants include planning grants (for development of the VV Master Plan), and infrastructure grants (state and federal) to offset costs of public improvements. Additionally, the recently approved Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA) will provide grant opportunities to local municipalities over the next 5-years. Many of these grants can be layered which can greatly reduce development costs.

The Colorado Office of Economic Development and International Trade (OEDIT) and the Department of Local Affairs (DOLA) are working together to fund a Regional Grants Navigator contract position for each regional Council of Governments to assist local communities with assessing and applying for IIJA and IRA grants.

PARTNERSHIPS:

Fraser should explore partnerships with the Fraser River Valley Housing Partnership, the Grand Foundation, Mountain Parks Electric, school districts, local governments, healthcare providers, and local businesses. Through partnerships, Fraser can leverage funds from multiple sources to reduce development costs.

DOWNTOWN DEVELOPMENT AUTHORITY:

A Downtown Development Authority (**DDA**) is a special district that is used to support economic and community vitality in a municipality's downtown business district. The DDA can be used for a multitude of purposes, including real estate development, public infrastructure, parking, permitting and fees, developer loans or reimbursements, municipal operations, and affordable housing.

DDAs can use both sales and property tax increment financing (TIF) to support its plan of development. DDAs may also levy up to a 5-mil property tax to support operations. **TIF** provides flexible funding to offset developer costs associated with infrastructure improvements and construction. TIF funding can also be used secure bonds.

TIF is not a tax. TIF works by capturing the tax revenue difference between the base year assessed values and the increased tax revenues generated by the development year over year over the life of the DDA (30 years). The incremental tax revenues can incentivize development with various financial instruments or developer agreements, or the funds generated can pay the debt service on revenue bonds for the project.

Creating a DDA:

The process to establish a DDA begins with the Board of Trustees approving an ordinance to put forth the question of establishing the DDA to a vote of qualified electors at the next general or special election. A qualified elector is a resident, landowner, or lessee within the DDA. If any qualified corporate landowner or lessee is not a natural person, that entity-electror may designate a person to vote on its behalf. The municipality's governing body may also provide for the submission of TABOR questions at the organizational election; if this is the case the date of the election must be one established by TABOR and must be approved by a majority voting in the election vote.

A DDA also requires the creation of a Plan of Development which outlines the strategies and goals for development within the DDA. The Plan also outlines the vision for the DDA and helps establish the baseline for TIF.

Understanding how a DDA and TIF would benefit VV:

A DDA boundary that includes the Fraser Downtown (FroDo) and Victoria creates a district composed of 108 parcels with a total assessed value of \$5.5 million. This assessed valuation would become the baseline for determining future tax increments.

Over the next 3 – 5 years, there are at least 5 development projects slated for Fraser's downtown: Koselig on Main, the Barrell Storage Room, 2-residential quadplexes (Wapiti Homes), Rocky Mountain Chalet improvements, and Victoria Village. This example will only focus on Koselig on Main and Victoria Village.

1. Koselig is an estimated \$10 million development which, when completed in 2023-2024, will increase the assessed valuation within the DDA by a minimum of \$700,000, creating a tax increment of \$44,000/year for the life of the DDA.
2. Preliminary estimates for the Victoria Village development (based on FRQs submitted), place the future market value of VV at a minimum of \$50 million, which would increase the assessed valuation in the DDA by \$3.5 million, creating a tax increment of \$220,000/year for the life of the DDA.
3. The combined tax increment for these two projects would generate **\$260,000/year** over the life of the DDA (over \$6.5M).

The tax increment can benefit the VV development by providing gap funding for construction costs, repayment of PIFs and development fees, securing revenue bonds for public infrastructure improvements, wetland mitigation, and even to construct a parking garage.

A DDA can also provide additional benefits to the Town beyond VV. The tax increment can generate funds to provide incentives for new commercial development, loans and grants to current businesses, property acquisition, infrastructure improvements, signage, wayfinding, parking improvements, public spaces, and marketing. TIF can also provide funding to support the construction of the Fraser Arts Center.

HOME RULE:

Colorado statutory towns are limited to the powers that have been granted by the state. Home Rule communities have greater flexibility to solve local problems because they are less constrained by state requirements. Home rule municipalities are not required to follow state statutes in matters of local concern and therefore enjoy freedom from state interference regarding local matters. Home rule communities also have greater flexibility to create funding mechanisms to meet local needs. Some of the powers granted to home rule communities as it relates to the development of VV include:

- Create new tax sources to meet local financial needs
- Provide a method for the simple and expeditious transfer of funds among municipal departments
- Establish its own debt limit
- Establish its own procedures for providing street, sidewalk, and other special improvements
- Allows broader and more flexible land use, zoning, and planning powers
- Allows broader authority and more flexible taxing powers, including the ability to collect, administer, and enforce sales and use taxes and to determine what transactions are subject to or exempt from sales and use taxes, ability to levy taxes not available to statutory municipalities such as lodging taxes, admissions taxes, real estate transfer taxes, and excise taxes.
- Authorize property and other tax refunds and exemptions not specifically authorized by the state
- Strengthen legal authority to impose development impact fees
- Facilitate formation of special improvement districts and expand purposes for which districts may be formed
- Provide additional tools for economic development activities
- Broaden land use regulatory authority

Becoming a home rule community is a lengthy process but worth the effort. The expanded powers and authorities of a home rule community extend well beyond the development of VV.

How to become a home rule municipality:

The process for becoming home rule is specified in state statutes. Under state law, at least 5 percent of the registered electors of a municipality may petition the municipality's governing body to hold a charter commission election. Alternatively, the governing body may adopt an ordinance calling for the election of a charter commission.

If approved by the voters, the charter commission has 180 days to submit a proposed charter to the governing body, who then has 30-days to publish the proposed charter and give notice of an election to approve the charter. Once the charter is approved by the voters, the municipality become home rule. If the charter is rejected by the voters, the commission may draft another charter for consideration at a future election. Rejection of the second charter by the voters results in the dissolution of the charter commission. Home rule charters may be amended or repealed through similar procedures as the creation of a charter.

CONCLUSION AND RECOMMENDATIONS:

1. The most flexible funding strategy for VV would be to create a **Downtown Development Authority** in order to leverage TIF funds to offset construction and developer costs to keep unit prices in the targeted AMI ranges. A DDA is a long-range (30 year) strategy that can not only address affordable housing (our most immediate concern) but can also serve to promote commercial development and growth in our downtown (long-range strategy).

A DDA can be created quickly, but the Plan of Development will require 4 – 6 months to complete. Fraser would need to allocate funds in early 2023 for a consultant to complete a Plan of Development. The Fraser Board would also need to pass an ordinance to call for a vote for the creation of the DDA.

If the Board is interested in creating a DDA, we can schedule a work session in January and bring in a subject matter expert on DDAs from Downtown Colorado Inc.

2. Staff should work with the Board of Trustees and the Planning Commission to amend the Town Code to address fee waivers and use tax rebates for affordable housing.
3. Discuss partnership opportunities with the Fraser River Valley Housing Partnership. With the passage of ballot measure 6A, the FRVHP has a \$1.2 million funding stream which might be leveraged. A partnership would be mutually beneficial for both organizations.
4. Staff should aggressively explore grant opportunities.
5. Finally, the Board of Trustees should consider becoming a home rule community.