

## ABOR Observer September 2013

*A rundown of the government and business activity over the last month, with particular focus on issues and items that are important to the Real Estate community.*

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### **Aspen —**

#### **Land Use Code amendments would reduce developer risk**

Aspen City Council is considering a code amendment that would streamline the land-use-approval process by allowing applicants to lock in major details — such as mass and scale— at the beginning of the process, during conceptual review. The idea is to allow a developer to get a sense of community and Council support earlier in the review.

Skeptics say the change will remove the public's right to review a project between the conceptual and final stages. The city's long term planner counters that the public's right to review would not be affected, only the timing. Currently, the major details are decided at the end of the process, but are often shaped by public input in earlier stages.

The amendments, tentatively scheduled for City Council discussion in September, would affect the "Planned Unit Development" and "Specially Planned Area" chapters of the land-use code.

#### **Cops cite restaurateurs over noise complaints**

Aspen police have warned and cited Hopkins Ave. restaurant and bar owners several times this summer for violating the city's noise ordinance, in response to more than a half dozen complaints from Natalia Shvachko, who lives in a penthouse on restaurant row at 308 E. Hopkins Ave.

Her complaints and the police department's response has reignited the debate over whether it is appropriate to allow luxury residences in commercial zones. City code currently sets the noise limit at 60 decibels after 9 p.m., which is the level that typically comes from a conversation between two people.

Jimmy Yeager, co-owner of Jimmy's An American Restaurant located on the second floor directly across from the penthouse, says police have visited a number of times this summer in response to noise complaints by Shvachko. The phenomena is new: Until this summer, Jimmy's has hosted live music and salsa nights for 13 years without complaint.

Now the matter is going to court: The manager of the Aspen Brewing Co. will contest two citations in municipal court. A trial date has been set in early October.

#### **City ponders "no complaining" clause for luxury condos**

Aspen City Council is considering a "no complaining" as a condition of approval for a third story residence in a mixed-use building proposed in the CB Paws building on the Hyman Avenue Mall. The idea developed as a response to noise complaints by a Hopkins Ave. unit owner that resulted in restaurant owners and managers being cited for violating the city's noise ordinance. City officials and the developer are working on language for the condition ahead of their next meeting on Sept. 9.

### **City not interested in proposed Wagner Park garage**

Aspen Mayor Steve Skadron said the city government has no interest in building an underground parking garage below Wagner Park.

Part-time resident Susan O'Neal, who owns a unit on Durant Street, has been making a very public case for a new underground garage. O'Neal says many people she knows who live outside of town are deterred from coming in for dinner because parking spaces can be tough to find near popular restaurants.

With plans for new irrigation and a re-grade of Wagner Park, as well as remodel the Rubey Park bus depot next door, O'Neal says the city should look at the big picture, and the possibility of new underground parking.

Skadron said a new parking garage is contrary to Aspen's transit goals, which are designed to limit, not encourage automobile traffic. Additionally, the city-owned Rio Grande parking garage, located a few blocks from downtown, only fills up during the Christmas and Fourth of July weeks.

### **Jerome Professional Building set for demolition, rebuild**

Aspen City Council approved redevelopment plans for the Jerome Professional Building at the corner of Mill Street and Bleeker Street.

Once completed, the new, mixed-use building will have four free-market and four affordable housing units, office space and an underground parking garage. The original approval in 2006 allowed for ten residential units, so the latest proposal is a reduction in size and impact. It will also utilize several environmentally-friendly energy sources to reduce its carbon footprint, such as geothermal wells, solar panels and a green roof.

Council member Dwayne Romero praised the "environmental stewardship" of the project. Mayor Steve Skadron voiced concern about the building's 32-foot height but said the approved design on the Jerome Professional Building was "much better" than originally planned.

### **USFS nets \$7 million for one acre in West End**

The U.S. Forest Service sold five undeveloped lots on its Aspen West End campus for \$7.01 million, which will be used to redesign the visitor center and headquarters on the remaining acreage. Three buyers purchased the lots, located on an acre of land at the corner of North Eighth and West Smuggler streets. The auction yielded average prices of approximately \$1.4 million per lot, four of which were about 6,500 square feet in size and one 11,300 square feet. Forest Service officials and observers from the real estate industry said bids came in lower than expected.

### **Community strongly backs USA Pro Challenge**

If there is anyone against Aspen hosting the USA Pro Challenge cycling race, they didn't voice their opinion to City Council at a post-event public meeting to hear feedback on the event. More than 30 people spoke in favor of the race with the overarching sentiment was not only that it was widely successful but Aspen can't afford not to have it. Race supporters cited worldwide publicity Aspen that brands the resort as a cycling destination; enthusiasm and volunteerism generated in the community; charitable fundraising that took place during the race.

### **Aspen Street developer, community development spar over affordable housing location**

The three empty lots just below Lift 1A on Aspen Street have long been considered ideal for a hotel, but the owners, ASV Aspen Street Owners LLC, appear to be pursuing their vested right to build 14 free-market and 17 affordable-housing units that come with the three lots they own. The question now is how much affordable housing will be located just steps from the ski lift. For several years, they have made it clear they would like to reduce the number of affordable housing units on Aspen Street, despite objections from the city.

Aspen Director of Community Development Chris Bendon suggested recently that changes can be made to address the developer's and neighbors concerns without moving any of the units from the site.

Aspen Street Owners recently purchased two free-market apartment buildings at 404 Park Avenue that could be remodeled and deed restricted to comply with affordable housing mitigation.

Council takes the matter up again on Sept. 9.

#### **Soup Shop owner prevails over landlord, but face eviction nonetheless**

Dez Bartelt, proprietor of the Little Soup Shop, prevailed over her landlord, Ken Sack, in county court last month, when the judge ruled she does not have to pay rent for two months last spring when renovations were under way.

Judge Gail Nichols ruled that Bartelt was excused from paying rent in April and May, as outlined in email exchanges between her and Sack. Nichols did not however rule that the tenant is entitled to a long-term lease. The Little Soup Shop was served an eviction notice earlier this summer.

#### **Aspen Ski Company raises pass prices — slightly**

Ski pass prices for the upcoming season will increase between 1.7 and 3.1 percent. Early purchase of a Premier Pass (before Sept. 13) costs \$1,649, up \$50 from last season. The Premier Chamber Pass, available to local employees and business owners, increases \$20, to \$1,199. Purchases made by Sept. 13 qualify for the lowest rates. Snowmass and Aspen Mountain will be open on Nov. 28, Aspen Highlands and Buttermilk beginning Dec. 14.

#### **Yellow Brick security enhancements still under discussion**

Potential security upgrades at the Yellow Brick Building, which houses four day care providers that take care of around 150 children, are still under discussion. One leading proposal includes a biometric fingerprint reader, a keypad-code system for entry, surveillance cameras, and intercom communications between classrooms. New measures, including extra staff at pick up and drop off times and locking most doors into the building, were enacted last winter following the slaughter of children at an elementary school in Newtown, Conn.

#### **Centennial repairs estimated at \$3.2 million**

The latest estimate for repairs on 92 privately-owned affordable units at the Centennial complex is \$2 million for immediate needs and another \$1.2 million over the next decade. The complex buildings lack adequate “flashing” and other materials that keep water from seeping into the siding, which has been degrading for several years.

The housing department and residents remain in dispute over who should pay for repairs. City officials have previously stated that government should not pay for Centennial repairs, because it may set a precedent. But Mayor Steve Skadron recently struck a more conciliatory tone.

#### **Burlingame goes solar**

New affordable housing at Burlingame Ranch will include enough solar-power potential to reduce natural gas consumption by 50 percent. Solar hot water preheat systems, paid for by the city and a grant from CORE, are designed to offset a third of each unit’s energy use and reduce the project’s CO2 emissions by approximately 25 metric tons a year. Homeowners are expected to save about \$125 a year in utility costs.

#### **Snowmass Village —**

##### **Skiing Co. may build moderately priced lodge at Base Village**

The Aspen Skiing Co. has reportedly expressed interest in acquiring Lot 2 at Base Village from Related Colorado for a lodge modeled after the moderately priced Limelight Hotel in Aspen.

According to an e-mail exchange between a Skico executive and the town of Snowmass Village, the company is interested in developing a 105-room hotel, plus 18 hot bed condominiums. A Skico spokesman confirmed discussions are under way, but declined to specify the company’s plans.

#### **Base Village vesting extension unresolved**

Discussions between Snowmass Village Town Council and Related Colorado over the extension of initial vesting rights at Base Village, which are due to expire in Nov. 2014, were addressed last month, but no decision was made. Town Engineer Dean Gordon also brought up the Wood Road roundabout, which the developer is responsible for, urging that it be built as soon as possible.

Related Colorado is seeking to extend vested rights at least five years to provide additional time for planning, building and marketing buildings, and completing the improvements.

#### **Town OKs changes to Viceroy**

Construction at Base Village will begin next spring, after a five-year lull, with the Viceroy Hotel's second phase, adding 67 units and a workout facility. The revised unit mix approved by Snowmass Village Town Council last month will include more two-bedroom units. Another change is that employee units will be rental instead of ownership. Related Colorado also agreed to guarantee associated utility improvements, which begin this fall, with a cash security.

#### **Rebates won't affect sales math for affordable units**

Recently amended housing guidelines allow homeowners to recover energy- and water-conservation investments when they sell their units, up to 10 percent of the property's value. But town officials never resolved whether energy investment incentives such as rebates and grants should be factored into that 10 percent limit. They ultimately decided not to subtract rebates from the amount homeowners can recoup, noting that energy and water efficiency investments make properties more livable.

#### **Basalt —**

##### **Council revises land use code to facilitate Pan and Fork redevelopment**

Basalt Town Council approved a number resolutions and ordinances last month designed to facilitate redevelopment of the Pan and Fork Mobile Home Park.

Most significantly, an ordinance cutting replacement-housing requirements from 100 to 45 percent was approved on first reading and will go to a public hearing Sept. 10. The co-owner of the property, Roaring Fork Community Development Corporation, spent two years attempting to comply with the 100 percent requirement, but found it infeasible. A separate compensation plan has been adopted for the current residents, many of whom own trailers that cannot be moved.

Council signed off on relocation plans for residents in 11 trailers in the section of property that will become a public park. It also supported an ordinance approving the site-plan for the park and exempting it from being classified as an environmentally sensitive area.

The council also referred a ballot question to voters seeking bonding authority to pay for flood mitigation along the banks of the river, and infrastructure improvements needed to support development plans on the remaining portion of the property.

##### **Pan and Fork relocation plan set**

Basalt officials unveiled a plan to compensate Pan and Fork Mobile Home Park residents forced to relocate so the property can be redeveloped. The formula factors the length of each tenant's tenure the number of children they have. It also includes a payment of \$7,800, or one year's rent in the trailer park, a payment of \$5,000 for a deposit on a new trailer or home, and a lump sum payment of \$7,500 for either abandoning or relocating each trailer.

The site is slated to eventually become home to commercial space, a nonprofit campus and a town park. Before the land is sold to a developer, however, 122 residents in 38 trailers have to be moved.

##### **Sales tax collections remain strong**

June sales tax collections were up almost 25 percent, with the town collecting \$359,519 compared with \$288,427 in June 2012. Year to date, Basalt has collected 21.62 percent more sales tax revenue than last year, thanks primarily to the addition of Whole Foods Market at Willits.

Retail food sales, including groceries, which account for nearly half of all sales tax revenue collected by the town, were up 34 percent in June compared with one year ago. Other categories posted strong sales as well: general retail was up nearly 43 percent. Sporting-goods were up 20 percent, restaurants with bars 10 percent and retail liquor sales 17 percent.

#### **Valley View Hospital expanding presence at Willits**

Valley View Hospital has purchased an entire floor, roughly 20,000 square feet, for medical offices in the building under construction immediately south of Whole Foods Market at Willits Town Center. The space will, beginning next summer, house family doctors, specialists and rehabilitation services, such as physical therapy, occupational therapy and speech therapy.

#### **Tenants confront new owner of Shadowrock development**

North Carolina-based First Citizens Bank acquired Shadowrock Townhouses in July through foreclosure, and immediately served residents of four units a notice of eviction and a claim that they owe rent for March through August.

The units in question have temporary certificates of occupancy, which First Citizens is using to support its eviction efforts. Dan Stanek, Eagle County's chief building official said there are no life-safety questions regarding Shadowrock. The hold up on the final CO was tied to the fact that the units in question are not supposed to be reviewed independently of a larger, yet-to-be-completed phase of the development.

At least one family says it has been paying diligently, and does not owe back rent. They plan to remain in their home through the 90-day notice period mandated by federal law.

### **Pitkin County —**

#### **County OKs greenhouses for pot and veggies**

The Pitkin County Commissioners signed off on two applications that mark a first in county history — and both involve greenhouses. First the commissioners agreed to a commercial greenhouse at Cozy Point, at the intersection of Brush Creek Road and Highway 82. It is the first time a commercial greenhouse that will benefit a private organization has been approved on publicly owned property. It will support a CSA that supplies paying members with vegetables throughout the growing season.

The second is an approval for multiple greenhouses on a 4.7-acre parcel at Holland Hills that will grow marijuana for recreational sales. The commissioners, by a 3-2 vote, reduced the floor area of the growing area to 25,000 square feet, from 37,500 originally proposed. Commissioner Michael Owsley voted against the final approval because he thought the reduced size was too small.

The question of commercial marijuana production proved much easier for Pitkin County to answer than the town of Basalt, which had been asked to comment on the issue in advance of the decision. Town planning staff recommended denial, the town planning commission recommended approval, and the Town Council deadlocked and wasn't able to offer any opinion.

#### **Health of Fryingpan River under study**

A program to count the number of macroinvertebrates will be under way for several months on the Fryingpan River, following up on a similar count a decade ago. The presence of the American dipper bird population will be studied as well, because it is regarded as an indicator of a healthy ecosystem. The water flows and temperatures will also be assessed. And it will also study the extent of *Didymosphenia Geminata*, an invasive algae also known as rock snot.

The study is being paid for by the Roaring Fork Conservancy and the town of Basalt. The Fryingpan River is one of the most popular fly-fishing spots in the state and pumps millions of dollars annually into the local economy.

#### **Airport task force begins work on design guidelines**

A 12-member task force comprised of area residents, designers, and representatives from the city of Aspen, Aspen Chamber Resort Association, and the real estate and aviation industries will formulate guidelines to ensure that upcoming development at Pitkin County airport is consistent with community values. The task force will develop protocol so that development doesn't interfere with airport safety and efficiency and is compatible with the surrounding neighborhoods.

#### **Insurer uses policy exclusion to deny coverage for rockfall damage to area home**

Conundrum Creek homeowner James Valerio is suing Chartis Property Casualty Co., now owned by AIG, for its refusal to pay damages after a large boulder crashed into his master bedroom.

The insurer's "investigation revealed that the boulder was dislodged from its location due to ice-jacking," where water enters a crevice in the mountainside freezes and expands, loosening rocks. It is a common springtime phenomenon, but Chartis denied coverage based on an exclusion for losses caused by "earth movement, including volcanic eruptions, landslides, mudflows and the sinking, rising or shifting of land."

Chartis' letter of denial relied on the Colorado Geological Survey's definition of rockfall — as the falling of a newly detached mass of rock from a cliff or down a very steep slope. It said Valerio's "policy excludes coverage for any loss to your house or other permanent structure caused by earth movement, including landslides."

Valerio disputes that interpretation.

#### **Hunt, electric fence considered as means to deter bears at landfill**

Last year, 16 bears were regular diners at the county landfill, primarily in the compost area. Pitkin County Public Works Director Brian Pettet says one solution is to enclose the compost area with solar-powered electric fencing. He also told the county commissioners that fences create challenges in managing landfills, so the simplest and most cost effective solution may be to shoot the bears. None of the commissioners openly supported killing bears however, directing Pettet to start with a fence.

#### **Thunderbowl transformation under way**

Work on a multimillion-dollar project that will give the Aspen Valley Ski and Snowboard Club a dedicated training course is under way on Thunderbowl at Aspen Highlands. Crews from Aspen Skiing Co. and private contractors are replacing existing pipe and creating new lines to add 17 acres of snowmaking capacity. Other work includes smoothing out the terrain and installing two new surface lifts. The project is funded by AVSC.

### **Regional —**

#### **Bill would protect water rights and increase stream flows**

A measure proposed by state Sen. Gail Schwartz would address severely low flows in the Crystal River and other watersheds by permitting ranchers and farmers who adopt more efficient irrigation practices to leave unused water in the stream for environmental purposes without losing their rights to that unused water.

Schwartz attempted to pass a similar bill last year but met strong opposition from cities and farmers on the Front Range that want to divert water from the Western Slope.

In 2012, flows near the Crystal River fish hatchery south of Carbondale fell to a trickle of just 1 cubic foot per second, well below the amount needed to sustain a normal mix of plants, insects and fish.

#### **Eagle County supports land buy**

Eagle County agreed to spend \$3 million for a joint purchase with Pitkin County of the Glassier property near Emma. The cost for the 137-acre property on Hooks Spur Lane is \$5.9 million. The land will be managed as open space to provide access to the Roaring Fork River and preserve agricultural lands.

### **Carbondale moves ahead with recreational pot regulations**

Carbondale is poised to become the only jurisdiction in Garfield County to allow recreational marijuana production and sales on Jan. 1, 2014. The town has been working to devise and adopt an ordinance governing sales and production ahead of the Oct. 1 deadline set by the state. If it does adopt an ordinance in time, the town will be able to license recreational marijuana businesses at the beginning of next year.

Glenwood Springs is also working on an ordinance to allow recreational sales, but will not meet the deadline. Rifle will not address the matter until after its municipal election in mid-September, making it unlikely to meet the Oct. 1 deadline. Silt's trustees are badly split over the matter. And Garfield County has banned all recreational marijuana commerce.

### **Outside Magazine names Carbondale among top 10 active towns in U.S.A**

Carbondale has been voted one of the top 10 active towns in the country by readers and participants in a poll by Outside Magazine, which bills itself as "America's leading active-lifestyle publication." Carbondale is featured in the September issue of the magazine. Park City, Utah, won the top ranking in the list. Others in the top 10 included Bozeman, Mont.; San Diego, Calif.; Boston, Mass.; Oklahoma City, Okla.; Spokane, Wash.; Greenville, S.C.; Honolulu, Hawaii; and Waitsfield, Vt.

### **From the National Association of Realtors —**

Congress adjourned for its August Recess, and will not return until Sept. 9. The recess represents an important opportunity for REALTORS® to directly engage with Members of Congress on our home field. To maximize our home field advantage, Government prepared materials for use by all REALTORS® who may meet with a Member of Congress. The issues facing REALTORS® affect the fundamental elements of real estate: financing, taxes and property protection, it is critically important that we take our messages to Congress this summer.

#### **Talking Points:**

The talking points will focus on 3 vital issues of importance to REALTORS®

- 1. FHA/Fannie and Freddie Reform:** In July, the House Financial Services Committee voted on, by a nearly straight party line, [H.R.2767 the PATH Act \(Protecting American Taxpayers and Homeowners Act of 2013\)](#). The bill would end the housing finance system as we know it by eliminating Fannie and Freddie and drastically reducing the accessibility to FHA backed loans for many qualified homebuyers. While Congressional action on this legislation may not occur until the late Fall, we have to reiterate our **strong opposition** at every opportunity. In the Senate, [S. 1217, the Housing Finance Reform and Taxpayer Protection Act of 2013](#), known as Corker-Warner GSE Reform, deals only with reform of Freddie and Fannie and contains provision consistent with NAR policy on GSE Reform, most notably an explicit government guarantee of mortgage backed securities issued by the proposed replacement for Fannie and Freddie. A separate Senate FHA reform bill has been introduced by Banking Chairman Tim Johnson (D-SD) and Senator Mike Crapo (R-ID), the committee's ranking member. Moving forward NAR anticipates the need for a **Call for Action** on these issues in the fall of 2013.
- 2. Tax Reform:** Many of you have asked about a direct outreach to Consumers regarding Tax Reform. NAR is currently engaging in a direct email campaign to more than 75 million homeowners asking them to sign a petition to Congress to protect real estate tax provisions in any reform proposal. When we deploy the information will depend on the pace of tax reform in Congress. Again, it is critical for REALTORS® to re-educate members of Congress about our position on tax reform. Moving forward additional **Calls for Action** regarding tax reform **could be required this fall**.
- 3. Flood Insurance:** In response to the concerns of REALTORS® the House of Representatives has passed a proposal for a one-year delay in changes to the National Flood Insurance Program rate structure. A similar delay has passed through the Senate Appropriations Committee. Without adequate and affordable flood insurance for

properties in flood plains real estate transactions could be disrupted across the country. The additional pressure from REALTORS® during recess is essential. Internally, NAR President Gary Thomas has appointed a **21-member Presidential Advisory Group, chaired by Donna Smith**, 2013 Land Use Property Rights and Environment Committee Chair, to further address NFIP issues.

**ORM/QM Update:** Occasionally, good news emerges from Washington, D.C. and this is one of those times. Although not officially announced by the Federal Regulators, NAR has learned that the agencies will soon propose a **QRM rule that contains no down-payment requirements**. This would mark a **significant victory for REALTORS®** and the dozens of other housing-industry participants and consumer groups who joined an NAR backed coalition of opponents to the rule, commonly known as the Qualified Residential Mortgage rule.

#### **From the Colorado Association of Realtors —**

To see what's happening at the state level that may affect your business, access CAR's legislative link: <http://www.coloradorealtors.com/government-affairs/>.

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