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July 23, 2014

Aspen Edge Condominium Association
Mr. Cliff Mohwinkel, President
1235 East Cooper Avenue
Aspen, CO 81611

RE: DEVELOPMENT ANALYSIS FOR ASPEN EDGE CONDOMINIUMS

Dear Condominium Association Members,

The Condominium Association has asked me to prepare a development analysis of the property located at 1235 East Cooper Avenue in Aspen, commonly known as the Aspen Edge Condominiums. The legal description of the property is Lot 2 of the Buckwheat Subdivision, City of Aspen.

In completing this analysis I reviewed the City of Aspen Land Use Code and held a meeting with Sara Adams, Senior Planner for the City of Aspen. I also reviewed the following recorded documents and public files:

1. The Final Plat of the Buckwheat Subdivision, which is recorded in Plat Book 8 @ Page 23 of the Pitkin County Records.
2. Condominium Map of the Aspen Edge Condominiums, which is recorded in Plat Book 13 @ Page 60 of the Pitkin County Records.
3. Condominium Map of the Ute East Residences, which is recorded in Plat Book 64 @ Page 18 of the Pitkin County Records.
4. Planning Department case files for the property kept in the Aspen City Clerk's Office.

The recorded plats document that the Buckwheat Subdivision was approved by the City of Aspen in 1979 as a two lot subdivision. Lot 1 was approximately 6,028 square feet in size when the subdivision was approved and was improved with a single family residence (which has since been replaced with a duplex). Lot 2 was approximately 22,656 square feet in size when the subdivision was approved and was improved with a two story multi-family residential building that is known today as the Aspen Edge Condominiums.

Some other facts that can be ascertained from a review of these plats are as follows:

- There is an *underground utility and private access easement for Lots 1 and 2* that is dedicated by the Final Subdivision Plat. The easement is 24' wide by approximately 106 long, so it has an area of approximately 2,500 square feet. The easement is located almost entirely on Lot 2, with a small portion that extends onto Lot 1. Table 26.575.020-1 of the Aspen Land Use Code states that areas within a dedicated private vehicular easement are excluded from a property's net lot area for purposes of calculating floor area and allowable density.
- The plat for the Ute East Residences established a new access point from State Highway 82 for the driveway into a new duplex that had been built on Lot 1. This duplex does not utilize the private access easement across Lot 2 and instead has its own private driveway that is located entirely within Lot 1.
- While most of Lot 2 is flat, there is an area at the rear of the lot that is labeled as *area of 30%+ slopes*. This area covers the entire 91' length of this part of the lot and varies in width from as much as 25' to as little as 16', so I estimate its area to be 1,700 to 1,900 square feet. Table 26.575.020-1 of the Aspen Land Use Code states that areas with a slope of greater than 30% are excluded from a property's net lot area for purposes of calculating floor area, provided the total reduction in floor area due to slopes cannot exceed 25% of the property's allowable floor area.

Zoning Analysis

The subject property is zoned Medium Density Residential (R-6). This zone district is intended to provide areas for long-term residences, short term vacation rentals, and accessory uses. Sec. 26.710.040 B of the Code lists the permitted uses in the R-6 zone district. Table 1, below, provides a list of the permitted, accessory and conditional uses in this zone district that could reasonably be considered for this property.

TABLE 1 USES ALLOWED IN THE R-6 ZONE DISTRICT		
Permitted Uses	Accessory Uses	Conditional Uses
Single Family Residence	Accessory Buildings/Uses	Arts, Cultural & Civic Uses
Duplex	Home Occupation	Academic Uses
Two Detached Single Family Residences	Accessory Dwelling Unit or Carriage House	Recreational Uses
	Vacation Rentals	Group Home or Child Care Center

The most significant conclusion that can be reached from reviewing this list is that multi-family units are not permitted in the R-6 zone district, so the existing condominium units are a non-conforming use. Nonconforming uses are regulated by Section 26.312 of the Land Use Code. The key provisions of this section are as follows:

1. Non-conforming uses are permitted to continue (that is, there is not an abatement policy for nonconforming uses in Aspen).
2. Normal maintenance of a structure containing a non-conforming use may be performed, provided the maintenance activities do not exceed 10% of the replacement cost of the structure during any 12 month period.
3. The non-conforming use cannot be extended or expanded. This means there cannot be any increase in the area or dimensions of the structure and the structure cannot be modified to occupy additional lands.
4. A structure containing a nonconforming use cannot be relocated within the parcel. It may be relocated to another parcel if the use and structure would conform on that parcel.
5. The use can only be changed to use that is allowed in the R-6 zone district.
6. If the use is discontinued or abandoned for 12 months or more it cannot be re-established or resumed and any future use must be conforming in the R-6 zone district.
7. If a non-conforming use is purposefully demolished by the owner it cannot be restored. If a non-conforming use is destroyed by an act of nature or other non-willful form of destruction (such as a fire) it may be re-established if a building permit for reconstruction is issued within 12 months of the date of destruction.

Table 2, on the following page, summarizes the dimensional requirements of the R-6 zone district and evaluates whether the existing conditions conform to these requirements. However, because the dimensional requirements are a function of the use of the structure and multi-family use is not allowed in the R-6 zone district, several of the most basic dimensional requirements (minimum lot area per dwelling unit and maximum floor area ratio) have no minimum or maximum allowance in the R-6 zone.

Table 2 is useful, however, in understanding the potential for re-development of the property. It shows that this lot substantially exceeds the minimum lot size in the R-6 zone district and is large enough to be subdivided into up to 3 conforming-sized lots. Two of the lots would be 6,000 square feet in size (large enough for a detached residence) and one would be 9,000 square feet in size (large enough to accommodate a duplex). This possibility is discussed in greater detail in the development options section of this analysis.

TABLE 2 R-6 ZONE DISTRICT ANALYSIS FOR 1235 EAST COOPER		
Dimensional Requirement	Code Standard: R-6 Zone District	Existing Conditions on this Lot
Minimum gross lot area	6,000 sq. ft.	22,656 sq. ft. (conforms).
Minimum net lot area per dwelling unit	4,500 sq. ft. per detached or duplex unit; multi-family units are not allowed.	8 multi-family units on the lot (does not conform).
Minimum lot width	60'	88.5' (conforms)
Minimum front yard	Principal building: 10' Accessory building: 15'	Approximately 100' from S.H. 82 (conforms).
Minimum rear yard	Principal Building: 10' Garage/Accessory Building: 5'	Building is more than 10' from the rear property line (conforms).
Minimum side yard	5' for each side yard; total of 15' for both yards	Building encroaches into one of the side setbacks (non-conforming).
Maximum site coverage	50%	Less than 15% (conforms)
Minimum distance between detached buildings on lot	5'	Not applicable – only 1 building exists on the lot.
Maximum height	25'	Information not provided.
Maximum allowable floor area	Not applicable because multi-family units are not allowed in this zone	Estimated to be approximately 6,000 sq. ft.
Minimum off-street parking	2 spaces per dwelling unit.	15 spaces exist (1 less than is required).

Key Development Issues

1. Nonconforming Use

As explained above, the existing multi-family use is not permitted in the R-6 zone district. While this non-conforming use may be continued and maintained, it may not be expanded and if it is willfully demolished it may not be replaced.

Given these limitations, there are two basic options available to an applicant who wishes to remove the existing structure and replace it with new residential units. One option would be to subdivide the property into several smaller lots and replace the multi-family units with new single family or duplex units that conform to the underlying R-6 zoning. The other option would be to propose to rezone the property to a zone district in which multi-family units are a permitted use and develop a new multi-family project on the property. These two options are discussed in greater detail in the next section of this report.

2. Replacement Housing Program

The Aspen Edge Condominiums consists of 8 free market multi-family dwelling units (6 two bedroom units and 2 three bedroom units) which have all at one point in time or another been owned and occupied by working residents of Aspen. Therefore, demolition of these units will trigger the provisions of Section 26.470.070.5 of the Land Use Code, Replacement Housing, which requires replacement units to be provided whenever existing multi-family housing is demolished.

The following three re-development options are available under this program:

- An applicant can replace 100% of the number of units, bedrooms and net livable area that are demolished. The replacement units must be deed restricted as Resident Occupied (RO) affordable housing units. The remainder of the site may be used for free market units, up to the number of free market units that were demolished, and there will be no further affordable housing mitigation required for the new free market units.
- An applicant can replace 50% of the number of units, bedrooms and net livable area that are demolished. The replacement units must be deed restricted as Category 4 affordable housing units. The remainder of the site may be used for free market units, up to the number of free market units that were demolished, but affordable housing mitigation will be required for the new free market units.
- An applicant can replace 100% of the number of units that were demolished with deed restricted affordable housing units. If no new free market units are built, then the new affordable housing units will each generate a Certificate of Affordable Housing Credit, which can be sold to other applicants who need to meet their own affordable housing mitigation requirements.

Generally, the program requires the affordable replacement units to be developed on the same site on which demolition has occurred. However, if the applicant can demonstrate that replacement would conflict with the property's underlying zoning or would not fit on the property due to physical site constraints, the following shall occur:

a. The applicant shall replace the maximum number of units on-site which the Aspen Planning and Zoning Commission determines the site can accommodate; and

b. The remaining units may be replaced off-site, at a location determined to be acceptable by the Commission. Replacement may be via the development of new units or the conversion of existing free market units to deed restricted status. A cash-in-lieu payment may only be used to mitigate for a fractional unit mitigation requirement.

During my meeting with staff, I pointed out that this Code section is silent on whether certificates of housing credit can be used to satisfy this off-site requirement. Staff responded that certificates can be used to meet the off-site replacement housing requirement (since a certificate is a credit for an actual unit that was built). A written staff interpretation confirming this position was pending when this report was issued.

So, in conclusion, because the site is not zoned for multi-family residential use, it will not be possible to replace all 8 units on-site. Therefore, an applicant who wishes to re-develop this property would need to develop the replacement units off-site or purchase and retire the requisite number of certificates of affordable housing credit. Moreover, because the Code gives the Planning and Zoning Commission the authority to require the applicant to replace the maximum number of units on-site which the site can accommodate, it is possible that as part of a single family/duplex redevelopment scenario, some of the new on-site units could be mandated to be affordable housing.

This situation is further complicated by the fact that Ordinance 19, Series of 2014 (a/k/a/, the "Lodge Incentive Program") is currently under consideration by the Aspen City Council. Among its many proposed revisions, this Ordinance would make significant changes to the Replacement Housing Program. The ordinance would offer the following two replacement housing options to applicants:

- An applicant can provide replacement housing for 100% of the full time equivalent (FTE) employees whose units are demolished. The replacement units must be deed restricted as Category 4 affordable housing units and be developed on the site on which demolition occurred. The remainder of the site may be used for free market units, up to the number of free market units that were demolished, and there will be no further affordable housing mitigation required for those free market units.
- An applicant can provide replacement housing for 50% of the FTE employees whose units are demolished. The replacement housing must be deed restricted as Category 2 affordable housing. The replacement housing may be provided via construction of replacement units on- or off-site, conversion of free market units off-site, or by purchasing/retiring certificates of affordable housing credit.

The remainder of the site may be used for free market units, and the applicant will not have to provide affordable housing mitigation for up to the number of units and the square footage of free market housing that were demolished.

So, in summary, the proposed ordinance would be much more restrictive in terms of the categories of replacement affordable housing that must be provided. The ordinance would also eliminate the option of paying cash for any fractional replacement obligation. However, the ordinance would eliminate the ability for the Planning and Zoning Commission to mandate on-site replacement of some of the units and provide multiple off-site options (including retiring affordable housing certificates) to satisfy the requirement. It would also give the developer a credit for the existing units/square footage towards the affordable housing mitigation that must be paid for the new on-site free market units. That credit is provided under the current and proposed Code for the 100% option and would be added to the 50% option under the proposed Code.

The staff expects that Ordinance 19 will be under consideration by City Council for the next few months until adoption occurs. I would recommend that the Condominium Association monitor the progress of those hearings and participate in the process, particularly when the discussion of the replacement housing program takes place. I think it will be important for the owners to make City Council aware of what a significant burden the replacement housing program places on this property and what it does to residents of this community who have met their own housing needs, at no cost to the community, for many years. The changes contemplated in this Ordinance will significantly increase the cost of providing replacement housing. Following is an example to demonstrate how costly these changes will be.

The 2014 Housing Guidelines state that each Category 4 FTE costs \$142,822 while each Category 2 FTE costs \$244,195. A two bedroom unit represents 2.25 FTE's. Therefore, following is the replacement cost for 50% of the FTE's under today's Code versus proposed Ordinance 14:

Today: \$142,822 x 2.25 FTE's x 0.5 = \$160,675.
Ord. 14: \$244,195 x 2.25 FTE's x 0.5 = \$274,719.

So there would be an increased cost of almost \$115,000 per unit to replace the 6 two bedroom units under the proposed ordinance versus today's Code. Running the same type of analysis for the 2 three bedroom units (which represent 3.0 FTE's) leads to an increased cost of over \$150,000 per unit. So whereas today an applicant would be looking at approximately \$1,390,000 in replacement housing costs using affordable housing certificates, under the proposed ordinance the cost would be approximately \$2,380,000. This means the total increased replacement housing cost to an applicant proposing to re-develop this property using this option is almost \$1 million.

I do not believe Council has had any significant discussion of the impacts of this proposed Code amendment on residents of the community. The Council members need to hear from owners like you. While there is a considerable benefit to your complex of changing the regulations to state that none of the units must be replaced on-site, the cost of having to comply with the more restrictive categories would be quite extraordinary and is deserving of a full public discussion.

3. Access Easement

As explained above, there is a surface access easement that is 24' wide by approximately 106' long that is located almost entirely on Lot 2 (with a small portion that extends onto Lot 1). Table 26.575.020-1 of the Aspen Land Use Code states that areas within a dedicated private vehicular easement are excluded from a property's net lot area for purposes of calculating floor area and allowable density. Therefore, the portion of the easement that is on Lot 2 (in excess of 2,000 square feet of land) reduces the lot area that is available for calculating how many dwelling units may be built on the property and how much floor area those units are entitled to.

Since the configuration of Lot 1 has changed since the time of the original subdivision, allowing access to be obtained directly onto this lot from Highway 82, Lot 1 is no longer dependent upon this easement for its access. This means that there is an opportunity to vacate the easement, which would eliminate this lot area deduction. I would recommend that the Condominium Association enter into a dialogue with the owners of the units on Lot 1 to see whether they would be willing to vacate the access aspect of the easement and if so, what type of compensation they would request from the Condominium Association in exchange for vacating that right. The sub-grade utility easement does not affect lot area, so that aspect of the easement does not need to be vacated.

Likely Re-Development Options

Considering all of the above information, there are several potential re-development options for the subject property. Looking at the neighborhood in which the property is located, I find that it contains a mix of single-family/duplex type residences and multi-family buildings. Therefore, it would be possible to justify either of these two types of development as being appropriate on the subject property. Therefore, the re-development options that I believe are the most likely for the Aspen Edge Condominiums are as follows:

Subdivision to Permit Single-Family/Duplex Residences; and
Rezoning to Permit Multi-Family Residences.

Each of these options is evaluated below.

Option 1: Subdivision to Permit Single-Family/Duplex Residences.

The subject property is approximately 22,650 square feet in size. The R-6 zone district establishes two standards for lot area to determine how many units may be developed on a property. The minimum gross lot area is 6,000 square feet. So each lot created in this zone district must be a minimum of 6,000 square feet to be conforming. The minimum net lot area per dwelling unit is 4,500 square feet. Net lot area takes into account the features of a property that must be deducted from lot area, such as the private access easement that currently affects this property. So considering both of these standards, following is a feasible re-development scenario for this property.

The property can be split into three lots, two of which would be a minimum of 6,000 square feet in size and one of which would be 9,000 square feet in size. The two lots that are a minimum of 6,000 square feet each would be large enough for a single-family residence. The lot that is a minimum of 9,000 square feet would be large enough for a duplex. (Note: Another option would be to split the property into two lots, each of which is at least 9,000 square feet in size, large enough to develop two duplexes.) Following are the maximum allowable floor areas for lots of this size in the R-6 zone district:

6,000 square foot lot = 3,240 square feet for a single-family residence.

9,000 square foot lot = 4,080 square feet for a duplex.

A key variable that will need to be addressed is the private access easement. As was explained above, the area of the easement must be deducted from the gross lot area to arrive at a net lot area for purposes of density calculations. The Code requires 4,500 square feet of net lot area per dwelling unit. So a scenario that involves four dwelling units (two single family units and one duplex) requires a minimum of 18,000 square feet of net lot area (4 units x 4,500 square feet per unit).

Since the gross lot area of this property is approximately 22,650 square feet and the area of the access easement is only about 2,500 square feet, it would appear that the resulting net lot area would be more than sufficient to allow the development of these four units. However, a shared driveway will likely be needed to serve the three lots. The area within that shared driveway will also have to be deducted from the gross lot area of the property. So unless the driveway is located within the area where the access easement is now located, it will be beneficial to vacate the existing access easement so there are not two access easements affecting the property that could limit the allowable density of the project. Moreover, since the area within an access easement also does not count towards floor area calculations, an applicant will want to minimize the amount of land that is dedicated to access so as not lose any more of the above-stated floor area allowances for the three lots.

The applicant will need to provide affordable housing mitigation for this option. There will be two components to that mitigation. First, the applicant will need to choose whether to utilize the 100% replacement option or the 50% option. Which of these options is chosen will depend upon the developer's analysis of these options and also whether Ordinance 19 is adopted or not. If it is not adopted, the developer faces the possibility that some of the proposed on-site units could be required to be affordable housing by the Planning and Zoning Commission. If it is adopted then the 50% option will become the developer's obvious choice, since the 100% option under the proposed new ordinance must occur on-site while the 50% option can be achieved via purchase of affordable housing certificates. So until the City decides whether Ordinance 19 will be adopted and if so, what it will require it is somewhat difficult to predict how the replacement housing will be provided.

The second component of the mitigation is the required housing for the new on-site units. Again, the amount of such mitigation that is required is a function of which replacement option is chosen and whether or not Ordinance 19 is adopted. If the applicant chooses the 100% replacement option, no further mitigation is required for the new free market units. Mitigation is only required under the 50% option and would be paid as cash-in-lieu or by retiring affordable housing certificates. The amount of cash due will depend upon how much new free market square footage is built and whether the Code that is in effect gives the applicant a credit towards the fee payment based on the square footage that has been demolished. The current Code gives no such credit, whereas the proposed ordinance would give the applicant a credit for the square footage in the eight free market residences that currently exist on-site.

Option 2: Rezoning to Permit Multi-Family Residences.

The other way to re-develop this property would be to request a rezoning so the property could be developed with multi-family residences. There are two possible zone district designations that could apply to the property, these being Residential/Multi-Family (R/MF) and Affordable Housing (AH).

Looking at the City's zone district map, I find that the R/MF zone district does not currently extend east of the Roaring Fork River, despite the fact that there are several free market multi-family complexes located east of the River along Highway 82, including the subject property. The fact that there is no R/MF zoning in this area would make it difficult, but not impossible, to justify a rezoning to R/MF.

There are, however, several areas east of the River that are designated Affordable Housing (AH), including the Lacet Lane project, Crestahaus and Alpine Cottages. AH is a high density/multi-family type of zone district which is intended primarily for development of deed restricted affordable housing units, although free market development is permitted to offset the cost of the affordable housing units.

The AH zone district requires a minimum of 70% of the bedrooms on-site to be deed restricted as affordable housing. The 70% standard may be reduced to 60% for an "exceptional project (a project restricted to the lower categories of affordable housing).

The primary reason an applicant would want to rezone this property to AH would be to meet the replacement requirement on-site while also developing a limited number of free market residences (single-family, duplex or multi-family) on the same site. I do not view this as a particularly desirable option because the affordable units on-site will limit the marketability and value of the free market units. However, if Ordinance 19 is not adopted and the City requires the maximum number of affordable replacement units to be built on-site, this would be a way to achieve that outcome.

The more attractive multi-family option for this property would be a rezoning to R/MF. The R/MF zone district is intended for denser residential uses, vacation residences and short term vacation rentals. The maximum number of multi-family units that can be developed on the property is a function of unit size and density. The Code provides incentives (higher floor area ratio and greater height) for an applicant to develop smaller units at a higher density. So, for example, under today's Code, if an applicant proposes to build less than 1 unit for every 1,500 square feet of gross lot area, his floor area ratio is just 0.75:1. So on the subject property, if an applicant proposed to build 15 or fewer multi-family units on-site (that is, less than 1 unit per 1,500 square feet of lot area), the allowable floor area would be 0.75 multiplied by the net lot area which would be somewhere in the range of 13,000 to 15,000 square feet of floor area.

However, if the applicant proposed to build 16 or more multi-family units on-site, the allowable floor area ratio would be 1.25:1, which equates to somewhere in the range of 22,500 to 25,000 square feet of floor area. Similarly, the height for a lower density project would be just 25' while the height for the higher density project can be up to 32'.

It is also important to note that the maximum unit size allowed in the R/MF zone district for parcels such as this which are located outside of the Aspen infill area is 2,500 square feet of net livable area, increasable to 3,000 square feet by retiring one historic transferrable development right (TDR). So if an applicant wanted to build fewer multi-family units on site and have those units be as large as possible, this is the maximum multi-family size that can be achieved in this zone district today.

The R/MF zone district is also proposed for some notable changes under Ordinance 14. The intent of the proposed changes is to require an applicant to create even higher density to be eligible for the floor area and height incentives. So for an applicant to achieve the greater height (32') and the greater floor area ratio (1.25:1) the parcel must be developed with at least 1 unit per 1,250 square feet of gross lot area (in the case of the subject property, at least 19 units would need to be developed on site to achieve these incentives).

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Conclusion

The above represents my analysis of land use/zoning issues and development options for Aspen Edge Condominiums. This analysis has been based on a preliminary review of the facts and regulations applicable to the subject property.

The City of Aspen's development review process can be discretionary, and interpretations of relevant provisions can vary with changes in staff and officials. Moreover, because the development options I have evaluated will require approval of an application at a public hearing, it is difficult to accurately predict the outcome of the review process. Consequently, no warranty of the facts, opinions, or interpretations contained herein is either expressed or implied by Alan Richman Planning Services, Inc.

I trust that this report provides the information you require. Please feel free to call me if you have any questions as to its contents or if you wish to discuss any of my conclusions.

Very truly yours,

ALAN RICHMAN PLANNING SERVICES, INC.

A handwritten signature in black ink, appearing to read "Alan Richman". The signature is stylized and cursive.

Alan Richman, AICP