

Healthy Mountain Communities

STATE OF THE VALLEY READER 2007

*Tools & Strategies for
State & Regional Prosperity*

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MAYORS COLLABORATIVE

Increasing regional understanding & collaboration in the Roaring Fork & Colorado River Valleys

July 24, 2007

Dear Severance Tax Working Group,

The members of the Mayors Collaborative, which consists of the Mayors of communities in the Roaring Fork and Colorado River Valleys, requests a meeting with the Severance Tax Working Group concerning oil and gas development impacts and the role of the state severance tax to help address those impacts.

We would like to meet with you before you complete your work this fall. We are willing to meet with you in our region or in Denver – whichever location is more convenient for the working group members.

Although the oil and gas industry is a welcome addition to our regional economy and community, the development of finite oil and gas resources have had and will continue to have profound fiscal, social, and environmental impacts on the health and welfare of the communities in our region.

Because our region already has first-hand experience with the negative impacts of a “boom and bust” related to energy development in the early 1980s, we want to encourage the Severance Tax Working Group to expand its research beyond evaluating the allocation of existing severance tax and federal mineral leasing revenues.

Recently, communities in our region adopted a resolution (see attached) in support of a comprehensive statewide energy plan and mitigation of the impacts of oil and gas development. The resolution calls for several actions, but three speak directly to severance tax issues. They include:

- **Updating the Energy Impact Fund formula** so that a greater percentage of these funds go directly to impacted counties and communities. (This issue was partially addressed by the passage of
- **Adjusting the severance tax** (on oil, natural gas, and coal) **and /or eliminating the property tax deduction for severance tax payments** to better reflect that value of the severed resource, the impact to public infrastructure (roads, schools, water, air, public health) within the State of Colorado and local communities, and to prepare for the time when these non-renewable resources are exhausted. While the effective severance tax rate in Colorado is 1.8%, the severance tax rate in Wyoming and New Mexico is 6%.
- **Creating a Permanent Trust Fund** at the local and /or state, level to address the long term impacts of the oil and gas development. (Wyoming has \$1 billion trust fund for schools that has been built from severance tax revenues).

Oil and gas development impacts and severance tax issues are critically important to the communities of our region and the state as a whole. We look forward to working on a future meeting date to discuss these issues with Severance Tax Working Group in more detail.

Sincerely,

Roaring Fork and Colorado River Valley Mayors

A RESOLUTION IN SUPPORT OF A COMPREHENSIVE STATEWIDE ENERGY PLAN AND MITIGATION OF THE IMPACTS OF OIL AND GAS DEVELOPMENT:

Whereas, Western Colorado and Garfield County holds significant oil, coal, and natural gas reserves that are currently at the center of extensive exploration, research, drilling, and pipeline construction; and,

Whereas, these natural resources represent a valuable economic opportunity to the oil and gas companies, associated businesses, and communities of the region; and,

Whereas, the supply of natural gas is limited and the technology for oil shale is still developing; and,

Whereas, there is tremendous pressure from national policy and fuel markets to develop these resources quickly; and,

Whereas, although the oil and gas industry is a welcome addition to our regional economy and community, the development of finite oil and gas resources have had and will continue to have profound fiscal, social, and environmental impacts on the health and welfare of the communities in our region; and,

Whereas, our region already has first-hand experience with the negative impacts of a “boom and bust” related to energy development in the early 1980s.

NOW, THEREFORE, LET IS BE RESOLVED THAT:

The local governments listed below support policies at the local, state and federal levels to fully capture the benefits and mitigate the impacts from the extraction and development of oil, natural gas, and coal resources.

Let it be further resolved, that said governments support the following actions and policy changes:

1. **Developing a long-term, comprehensive State Energy Plan** that considers the costs and benefits of non-renewable fossil fuel energy production to the benefit of citizens beyond a short-term production boom. Furthermore, a comprehensive state energy plan should place equal importance and investment in the development of renewable energy (solar, wind, hydro, biofuels) production and energy efficiency programs.
2. **Increasing local input and mitigation power in the oil and gas review process** since the land use implications of oil and gas development can have significant impact on neighboring properties, county roads, demand for services, and the health and safety of county residents.
3. **Improving the balance of representatives on the Colorado Oil and Gas Conservation Commission (COGCC)** to include non-industry perspectives such as human services, environmental health, and local governments.
4. **Balancing the interests of surface and mineral owners** by increasing bonding requirements of oil and gas developers to better protect surface owners from and mitigate for surface disturbances from drilling and accessing drilling sites. The State should also create a process for resolving surface and mineral owner disputes.

5. **Establishing a County auditing program** to ensure that industry accurately reports production and pays the appropriate taxes (in contrast to real estate taxation, where the County Assessor informs a home owner what their home is worth and how much tax they must pay, the Oil & Gas industry informs the County Assessor what their product is worth and how much tax they will be paying the County.)
6. **Updating the Energy Impact Fund formula** so that a greater percentage of these funds go directly to impacted counties and communities.
7. **Increasing the limit of the Environmental Response Fund** above its current level so more funding is available to investigate, prevent, monitor, and mitigate conditions that cause, or threaten to cause, significant adverse environmental impacts related to oil and gas operations rather than excess funding going into the State's General Fund.
8. **Adjusting the severance tax** (on oil, natural gas, and coal) and /or eliminating the property tax deduction for severance tax payments to better reflect that value of the severed resource, the impact to public infrastructure (roads, schools, water, air, public health) within the State of Colorado and local communities, and to prepare for the time when these non-renewable resources are exhausted. (The severance tax in Colorado ranges from 2 percent on gross income from mineral extraction of less than \$25,000 to a flat fee of \$10,750 plus 5 percent of gross income above \$300,000. Under current law, companies may deduct their property taxes from severance tax payments. As a result, the effective severance tax rate is 1.8 percent - the lowest among surrounding states. The severance tax rate in Wyoming and New Mexico is 6%.
9. **Creating a Permanent Trust Fund** at the local and /or state, level to address the long term impacts of the oil and gas development. (For example, Wyoming, which has fewer students than Denver alone, has about \$1 billion in its trust fund for schools, while Colorado has \$300 million.)
10. **Protecting the waters of Western Colorado from adverse impacts of Stormwater Discharge** by supporting the current practice of having the Colorado Water Quality Commission regulate storm water discharges from oil and gas operations that affect one acre or more of land instead of the Colorado Oil and Gas Conservation Commission, and by providing adequate funding for state and county level inspectors.

INTRODUCED, READ AND PASSED BY THE FOLLOWING JURISDICTIONS:

Jurisdiction	Date Adopted
City of Aspen	January 30, 2007
City of Glenwood Springs	February 1, 2007
City of Rifle	February 7, 2007
Town of Basalt	February 13, 2007
Town of Carbondale	February 13, 2007
Town of De Beque	February 12, 2007
Town of New Castle	February 6, 2007
Town of Silt	February 26, 2007
Town of Snowmass Village	February 26, 2007
Town of Parachute	April 12, 2007
City of Grand Junction	April 18, 2007



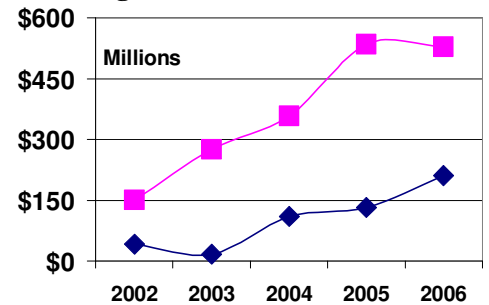
Torched and Burned: Why Does Colorado Subsidize the World's Most Profitable Industry?

"Fossil fuels resemble capital in the bank. A responsible parent will use his capital sparingly in order to pass on to his children as much as possible of his inheritance. A selfish parent will squander it in riotous living and care not one whit how his offspring will fare."

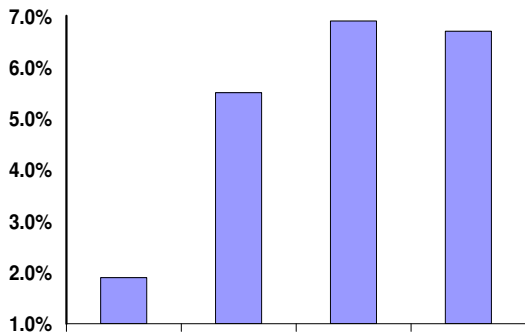
--Admiral Hyman Rickover, U.S. Navy

Coloradans pride themselves on being fiscally conservative. In this cash-strapped state, legislators squabble over quarters and governors take deficits for granted. But there's a paradox here: Even as we suffer migraines over how to fund education, transportation, and health care, Colorado has, in effect, left more than one billion dollars on the table since 2002. How is that possible? The lower line in the chart at right shows the oil and gas severance taxes the State collected between 2002 and 2006. **The upper line represents the taxes Colorado oil and gas producers would have paid had their wells been located a few hundred miles to the north in Wyoming. The cumulative difference, over the five years, is \$1,300,000,000.**

Leaving a Billion Dollars on the Table



Because of our low severance tax rates, Colorado has foregone \$1.3 billion since 2002.



Effective severance tax rates are far lower in Colorado than in adjoining states, says the nonpartisan Colorado Legislative Council

Severed From the Earth

In 1977 Colorado imposed a "severance tax" to recapture, for the benefit of future generations, some of the wealth that is "irretrievably lost" when nonrenewable natural resources are extracted from the earth. Although Colorado assesses a nominal 5% severance tax on oil and gas producers, a dizzying array of exemptions and deductions reduces the effective tax rate to 1.9%, about one-third what the petroleum industry pays in neighboring states. **In 2005, for example, Colorado collected \$132 million in severance taxes. In Wyoming, an identical amount of oil and gas production would have raised \$382 million.** In New Mexico, it would have brought in \$479 million. This additional revenue could have been used to redress the negative social and environmental impacts of the energy boom, and to fund the clean energy alternatives that will be needed when the oil and gas is gone.

Their Fair Share

Each year, when filing their taxes, Colorado citizens must pay the State Treasurer 4.6% of their income. Meanwhile, oil and gas operators—including some of the world's richest corporations—pay the State a mere pittance. **Indeed, an astonishing 75% of the state's oil and gas wells pay no severance tax at all.** As our roads crumble and schools decline, Colorado now rivals Mississippi at the bottom of the public investment ladder. Meanwhile, some Wyoming high school graduates are eligible for free college tuition, paid for with severance taxes. **Enough! It's time to reform our severance tax policies, which now subsidize the world's most profitable industry.**

A Byzantine Tax Code

The \$1.3 billion we failed to assess in severance taxes between 2002 and 2006 is gone forever. **Looking ahead, unless we change Byzantine provisions in our tax code, the State may fail to collect an additional \$10 billion or more over the next 30 years.** To put our fiscal house in order, legislators must reform our antiquated severance tax regulations. Unfortunately, current discussions focus on how to fix the Rube Goldberg-like methods we have invented for returning severance taxes to those counties impacted by energy production. This is a critical issue—but rather than squabble over the existing puny pie, doesn't it make more sense to order a bigger one? If Colorado wants to increase its severance taxes, now is the time since energy prices, production, and profits are at record highs.

Let's stop squabbling about how to divvy up the existing severance tax pie, and order up a bigger one.

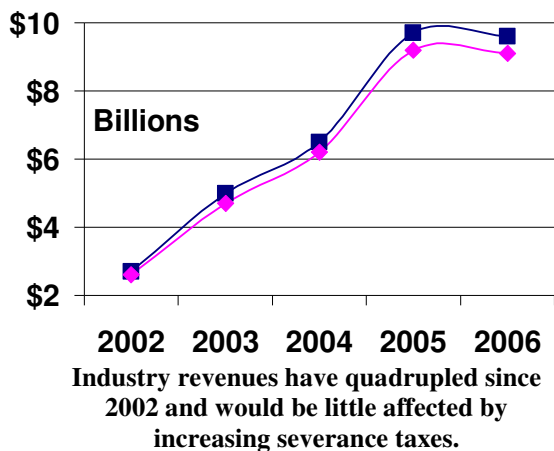
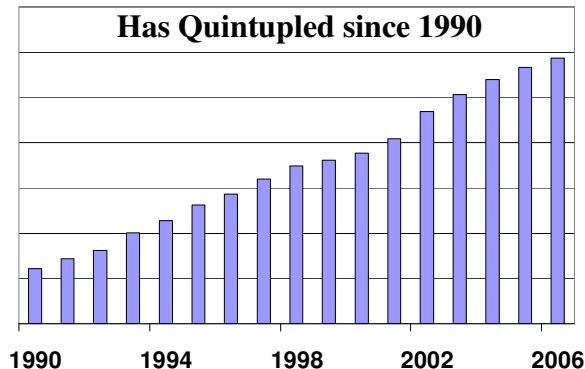
The Big Bonanza

The current drilling frenzy is the biggest boom in state history. Since 1990, Colorado's gas production has increased 500%. **In 2006, oil and gas revenues reached a staggering \$9.6 billion. By 2008, they may exceed \$11 billion.** Experts forecast that 150,000 wells will be drilled here over the coming three decades. During that period, producers of oil, gas, coal, molybdenum, gold, and silver are likely to extract \$400 billion of mineral wealth, a precious windfall that our current tax policies fail to reflect.

Seize the Moment

There are many reasons why it is an excellent time to hike severance tax rates. First, Colorado is the fastest growing gas province in the nation. Second, we are in the early years of what is likely to be a 30-year drilling boom. Third, energy prices are high, and economic fundamentals suggest they are headed higher. (For one thing, **steep declines in existing fields mean that half the nation's gas supply must be replaced with new drilling in the next three years.**) Fourth, oil and gas companies are reaping record profits, and can afford to pay their fair share. Fifth, **most of the natural gas and coal produced in Colorado is exported to heat and power the Midwest, an energy-poor region which will not be able to return the favor later.** Finally, the imminent completion of new pipelines will hike the price our natural gas fetches, thus further enriching energy producers.

Colorado Natural Gas Production Has Quintupled since 1990



Industry Revenues Soar

Paying \$75 for a tankful of gasoline may be painful, but it does not fully communicate how stupendously profitable the energy business has become. **In the next 24 hours, \$30 million of oil and natural gas will be extracted in Colorado. This week, companies will take \$210 million out of the ground. This month, \$900 million.** Who produces this energy? Industry lobbyists refer to “small independents,” suggesting mom doing the books, while dad drills in his bluejeans. This is nonsense. The vast majority of Colorado's wells are owned by very large multi-nationals like BP, Exxon, Encana, Williams, Anadarko, and Chevron. In 2006 these companies' global profits exceeded \$90 billion. That's not income, it's *profit*. Could the Big Six afford to pay more in severance taxes? Intuition says yes. What about analysis? In the chart at left, the

upper line is actual industry revenues in Colorado since 2002. The lower line is what industry revenues *would have been* if severance taxes were as high in Colorado as they are in Wyoming. You have to squint to see it, but the difference between the two lines is the \$1.3 billion we failed to collect in the last five years.

The “Ad Valorem” Deduction

Although Colorado's nominal severance tax rate is 5%, the state actually collects less than 2%. There are two primary reasons for the discrepancy. The first is that Colorado—unlike other states—allows energy companies to deduct the county property taxes they pay from their severance tax bill. This loophole—the “ad valorem” deduction—currently costs the state \$200 million or more each year. If it is not closed, the state could lose \$8 billion or more over the coming three decades.

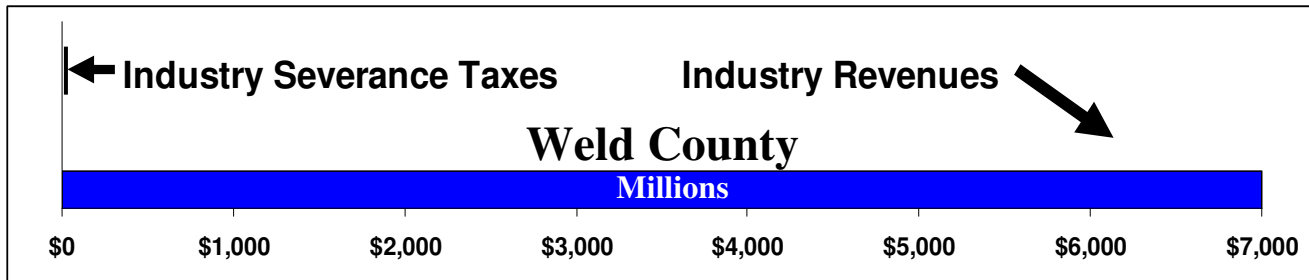
Remarkably, three-fourths of Colorado oil and gas wells pay no severance taxes at all.

Producer's Paradise

This next bit is a stunner: **Three-fourths of the state's wells pay no severance tax at all.** That's because Colorado exempts “stripper wells” from severance fees. Stripper wells produce less than 15 barrels of oil, or 90,000 cubic-feet of natural gas, per day. The exemption is designed to encourage producers to continue operating older, less productive wells. Since it costs \$20,000 per year to maintain a well, this was fair back when oil was \$15 per barrel and natural gas was \$1 per thousand cubic-feet. Since 1999, however, prices have quadrupled. As a result, stripper wells, which provide 60% of Colorado's oil and 20% of its natural gas, have become very profitable, but the state is not sharing in the bounty. In this producer's paradise, some oil wells produce \$400,000, severance tax-free.

Poster Child for Reform

Energy companies hire smart accountants to exploit every legal stratagem to reduce their tax liability. By piggybacking the ad valorem and stripper exemptions together, a clever accountant can work the Colorado tax code like a broken slot machine. The poster child for this phenomenon is Weld County, where producers **extracted \$7 billion of oil and gas between 2002 and 2006. In three of those years, Colorado did not collect one dollar in severance taxes in Weld County.** Over the entire period, the industry paid the state just 0.13% of its income from Weld County. The gap between revenues earned and taxes paid is so out of whack it is difficult to graph, but let's try anyway. The long line below is industry revenues. The short, tiny line at the left is severance taxes paid.



Noble Energy Gets a Free Ride

The Colorado petroleum industry employs more than 10,000 workers. According to a study by the Colorado Energy Research Institute, oil and gas accounts for \$22.9 billion in direct and indirect economic activity. The industry offers many benefits, but it also imposes many costs. At a time when they are reaping record profits, sound public policy would require oil and gas producers to pay their fair share in severance taxes. Sometimes they don't, sometimes they pay *nada*. One of the state's largest oil producers is Houston-based Noble Energy. In 2004 its Weld County properties, including those it would purchase from Patina Oil and Gas, yielded about \$500 million of oil and gas. Because of the stripper well and ad valorem deductions, however, Noble Energy didn't pay a cent of that to the State of Colorado.

In one year, Noble Energy produced \$500 million without paying the state a cent in severance taxes.

King Coal Takes a Pass, Too

Colorado is the nation's seventh largest coal producer, but our coal producers pay much lower severance tax rates than they would in other states. For the last 14 years, the state's surface mines have paid just 54 cents a ton, and underground mines half that. **Indeed, Colorado coal mines now pay three times more to the federal Black Lung fund than they do in severance taxes.** King Coal pays so little severance tax it makes the stingy oil-and-gas industry look like Santa Claus. **Colorado coal companies produce nearly 60% as much energy as does the state's oil and gas industry, but cough up just 4.3% of state severance revenues.** In July 2007 Attorney General John Suthers ruled that the Colorado Department of Revenue had erroneously frozen coal severance taxes in 1993. This oversight has cost us \$40 million. Gold and silver miners have also negotiated a sweet deal, since the first \$19 million they make is tax-free. Phelps Dodge, the state's large producer of molybdenum, pays nothing on the first 2.5 million tons of ore it mines—even though moly prices have soared from \$2 to \$35 per pound. If it produces more than 2.5 million tons, Phelps Dodge must search through the couch cushions to find a nickel a ton. In Colorado, we aren't giving it away, we are paying them to take it.

Coal companies pay so little severance tax they make the stingy oil-and-gas industry look like Santa Claus.

Fascinating Question

Why has the Colorado legislature, which urgently needs additional revenue, been reluctant to claim its rightful share of the state's mineral wealth? The original source of this timidity may trace back to our boom-and-bust history. Colorado has always had a gorgeous landscape, but the pioneers quickly discovered you couldn't eat the scenery. Natural resources—game, fur, timber, grass, silver, gold, and oil—were viewed as gifts of God, and indeed they were. At a time when our population was tiny and our foothold tenuous, it made sense for public policy to encourage their rapid extraction. Today, with our population approaching five million, it is time to adopt a more far-sighted policy.

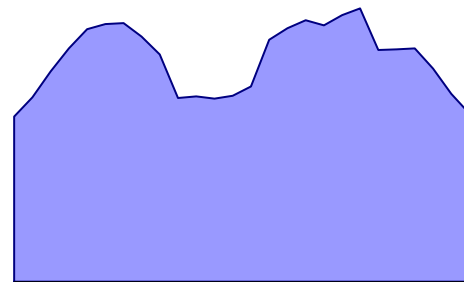
Tale of Two Countries

Mineral riches can be viewed as a windfall to squander or as an inheritance to conserve. In the 1960s, **Norway and Britain each discovered 30 billion barrels in the North Sea. Thereafter, the British government spent most of its oil proceeds each year, as they were received. Easy come, easy go.** The Norwegians, in contrast, salted away a share of their income into a special reserve. This Petroleum Fund has now grown to \$315 billion—about \$70,000 for every man, woman, and child. According to a fund manager, “When oil is extracted, petroleum is transformed into financial assets that belong not only to our generation but also to the future.”

Old Mother Hubbard

The United Kingdom’s management of its oil endowment offers a second cautionary lesson. Most of Britain’s oil was produced in a rush, during a period of rock-bottom prices. With oil now at \$80 per barrel, the Brits wish their cupboard was not so bare. They sold low, and must buy high. **Colorado is one of only eight states that produce more energy than they consume.** The others—think, for example, of California, Iowa, and Ohio—are, from an energy perspective, parasites. Responding to the dictates of the stock market, private corporations generally produce their reserves rapidly. Taking a longer view, the state’s goal should be to husband some of our energy resources for the uncertain future. **Since natural gas production elsewhere in North America is declining, our reserves become more valuable every day.** Wise public policy should recognize that energy is the original currency, that fossil fuels are nonrenewable, that the citizens of Colorado have a legitimate claim to a fair share of the state’s mineral bounty, and that some portion of that wealth must be saved for future generations.

British Oil Production: 1980-2005



Britain sold oil during an era of low prices. Now, as its production falls, it must buy high.

The Navajo have put \$1 billion into their permanent fund. Alaskans get \$1,600 each year from theirs.

If They Can Do It, Why Can't We?

Other governments have established “rainy day” funds similar to Norway’s. Kuwait has a permanent fund. Abu Dhabi has a permanent fund. Alaska and Wyoming and New Mexico have permanent funds. The Alaskan fund is valued at \$40 billion. Each resident of that state received a check for \$1,600 this year. **High school graduates in Wyoming get free college tuition, thanks to the \$3 billion in that state’s fund.** The Navajo Nation, which sprawls across parts of Utah, Arizona, and New Mexico, has put aside \$1 billion into their permanent fund. If they can do it, why can’t we?

On the Backs of Real People

Ten counties produce most of Colorado’s oil and gas, and their citizens are paying for the energy boom with a diminished quality of life. Schools are overcrowded, once-sleepy roads are hammered by heavy truck traffic, air quality is impaired, and housing shortages have led many companies to build “man camps” to bunk their workers. In some places, ranching, hunting, tourism, and wildlife habitat has been severely compromised. As Exxon announces plans to jump its production twentyfold, it is increasingly evident that the paltry amounts of severance tax revenue these counties receive are wholly insufficient to redress the myriad impacts of pell-mell development. For example, Mesa County officials recently estimated that dealing with the impacts of oil and gas might cost \$2.5 billion over the next two decades—but last year the county received just \$3 million in severance taxes.

It’s Broke, Let’s Fix It

In 2006 the State Auditor cataloged the shortcomings of our severance tax system. The Rocky Mountain News called his report “scathing.” **The Auditor suggested that the Legislature could eliminate the ad valorem property tax deduction, phase out the stripper well exemption above a certain trigger price, tie the severance tax on coal to its selling price, and trim exemptions for silver, gold, and molybdenum producers.** Alternatively, the State could simply levy a new excise tax on producers, whenever the price of oil, gas, coal, or minerals exceeded certain levels. Both approaches have merit. **Adopting these reforms would bring an additional \$1 million per day into the state’s coffers.** Half the money should go directly to those counties most affected by energy development to mitigate the industry’s social and environmental impacts. The second half should be channeled to a Permanent Fund, to be held in trust for the citizens of Colorado.

In 2006 the State Auditor published a report on severance taxes that the Rocky Mountain News called “scathing.”

Torched and Burned:

Notes, References, Further Reading



Colorado Energy Fundamentals

Colorado oil production peaked in 1957, half a century ago, but our natural gas output has quintupled, and exports exploded, since 1990. Historical data on the state's oil, gas, and coal production is available from the U.S. Energy Information Administration at www.eia.doe.gov The Colorado Oil and Gas Conservation Commission has a wealth of information at <http://www.oil-gas.state.co.us/> Colorado's energy is critical to the U.S. economy and our minerals have growing strategic significance. To understand why, see a presentation by the State Geologist at



www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocSeverGlobalframeworkforColorado.pdf.

Primary Sources

Estimates of effective severance tax rates are derived from a 2006 Colorado Legislative Council Staff memo available at www.coloradopetroleumassociation.org/tax/EffectiveSeveranceTaxRates.pdf The best, and most thorough, introduction to Colorado severance tax policy, warts and all, is the 2006 State Auditor's report. It is online at www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocSeverTaxPerfAud.pdf The Legislative Council has plumbed the creaky innards of the Rube Goldberg machine that kicks severance taxes back to local governments in www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocSevTaxMemo.pdf. Other statistics and facts in this report are documented in the "Citations" section below.

Price Forecasts

Experts predict upward pressure on oil and natural gas prices in the decades ahead. A peak in world oil production is likely by 2015. By 2025 the U.S. population will have grown by 50 million. As for natural gas, North American production peaked in 1972, the year we last walked on the Moon. Today, half the nation's gas comes from wells less than three years old. **Because depletion never sleeps, 30,000 new wells are now required each year simply to keep American production flat.** Gas production in most other states is declining. The Rockies are a bright spot, as is the Barnett Shale play in Texas. To learn more, visit www.theoil drum.com or www.aspo-usa.org.

We Will Drill the Other Planets Later

This report was written by Randy Udall. I direct the Community Office for Resource Efficiency, a nonprofit energy office in the Roaring Fork Valley. My thanks to all those who graciously shared their expertise with me. If you have comments, or suggestions for fixing Colorado's severance tax problem, email me at rudall@aol.com

Energy is an IQ test Americans tend to fail. Recently, I saw a bumper sticker on a drilling rig. "Earth First," it read, "We Will Drill The Other Planets Later!" Unfortunately, our children are unlikely to harvest energy on Mars. Although I admire the energy industry's wizardry and the roughnecks who work grueling shifts on drilling rigs, **we must remember that severance taxes are designed to recapture, for the benefit of future generations, some of the wealth that is "irretrievably lost" when nonrenewable natural resources are removed from the Earth.** By this standard, our current severance tax practices are unjust and must be reformed. There's no time to waste. By equalizing its rates with those of neighboring states, Colorado can capture an additional \$7 million each week. That's essential, because it will take billions to redress the negative impacts of energy development, and we should plow billions more into a Permanent Fund. We've played the rube long enough. In Colorado's Piceance Basin, the cost of a new gas well is often recovered in a matter of months. Isn't it time we stopped subsidizing the world's wealthiest corporations?

Citations

Leaving a Billion Dollars on the Table

According to a study by Marc Carey and Todd Herreid of the nonpartisan Colorado Legislative Council Staff, in 2004 effective severance tax rates on oil and gas production were 1.9%, 5.5%, and 6.9% in Colorado, Wyoming, and New Mexico, respectively. www.coloradopetroleumassociation.org/tax/EffectiveSeveranceTaxRates.pdf (Severance tax rates on coal and hard rock minerals were even lower.) During the five year period between 2002 and 2006, the petroleum industry extracted \$33.57 billion of oil and gas in Colorado, and paid \$513.6 million in severance taxes. <http://oil-gas.state.co.us> Wyoming would have collected \$1.85 billion on the same amount of energy revenue. The difference, \$1.3 billion, is the figure cited here and shown in the chart. A more recent July 10th, 2007 memo from the Legislative Council Staff confirmed the findings of its 2006 study.

Severed From the Earth

Because of the tax differentials, Wyoming would have collected 2.9 times more and New Mexico 3.6 times more than the \$132 million Colorado did in 2005, or \$382 million and \$479 million, respectively.

Their Fair Share

Because of the ad valorem and stripper well exemptions, some oil and gas companies pay less than the average severance tax rate of 1.9%. See the Noble Energy citations below. To grasp why three-fourths of Colorado wells pay no severance tax, see page 7 of www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocMineralMemo.pdf. Wyoming high school graduates with good grades are eligible for “Hathaway Scholarships” funded by severance taxes. <http://www.wba.vcn.com/hathaway.htm> (The scholarships honor the late Wyoming governor who in 1969 imposed a 1.5% tax on mineral extraction, and deposited the proceeds into a permanent Trust Fund now worth \$2.25 billion.) Rob Reuteman has written a column about Wyoming’s use of severance tax funds to lure a \$60 million supercomputer facility to Cheyenne. Ironically, the facility is for the National Center for Atmospheric Research, whose headquarters is in Boulder, Colorado.

www.rockymountainnews.com/drmn/cda/article_print/0,1983,DRMN_82_5639049_ARTICLE-DETAIL-PRINT.00.html

Byzantine Tax Code

Based on production forecasts and reserve estimates by the U.S. Energy Information Administration, the Potential Gas Committee, and the Colorado Geological Survey, we estimate that Colorado will produce 1.1 billion tons of coal, 40 trillion cubic feet of natural gas, and 500 million barrels of oil over the next three decades. Forecasting energy prices can be a fool’s errand, but the coal is likely to bring \$35 billion, the natural gas \$320 billion, and the oil \$40 billion, for a total of \$395 billion. Under its current severance tax system, Colorado will receive approximately 1.5% of this, or \$5.9 billion. An equivalent amount of energy production in Wyoming would produce an additional \$10 billion in severance tax.

The Big Bonanza

Natural gas data is from the Energy Information Administration. <http://tonto.eia.doe.gov/dnav/ng/hist/n9050co2a.htm> Oil and gas revenues are from the Colorado State Auditor’s severance tax report and the Colorado Oil and Gas Conservation Commission. www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocSeverTaxPerfAud.pdf. Brian Macke of the COGCC estimates 2007 revenues at \$11 billion. www.vaildaily.com/article/20070924/NEWS/70917038

Seize the Moment

On a percentage basis, Colorado has been the nation’s fastest growing gas province. Colorado and Wyoming have each added more than 1 trillion cubic feet of production since 1990. <http://tonto.eia.doe.gov/dnav/ng/hist/n9010wy2A.htm> Numerous experts have commented on steep declines in existing gas fields, and compared it to running on a treadmill whose speed increases each year. This slide depicts the phenomenon: www.axpc.us/policy/pdf/061228.pdf State statistics are at <http://tonto.eia.doe.gov/state/> Ohio uses 7 times more energy than it produces, Nebraska 300 times more. Iowa produces no energy at all.

Industry Revenues Soar

Industry revenues are at <http://www.oil-gas.state.co.us/> Annual profits for the “Big Six” are at their web sites. Exxon plans to increase its Colorado production twentyfold. www.denverpost.com/business/ci_6821998 BP’s goals are at www.bp.com/genericarticle.do?categoryId=9006198&contentId=7028047 The illustrative chart in this section shows actual industry revenues (top line) and revenues minus the 5.5% severance tax paid in Wyoming (bottom line).

The Ad Valorem Deduction

Is described in www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocSeverTaxPerfAud.pdf, the State Auditor’s report, and in www.coloradopetroleumassociation.org/tax/EffectiveSeveranceTaxRates.pdf from the Legislative Council Staff. It permits producers to deduct 87.5% of county property taxes from state severance taxes. No other state does anything similar.

Producer's Paradise

For a stripper well summary, see page 7 of www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocMineralMemo.pdf Certified Public Accountant Mary Ellen Denomy estimates that annual cost to operate a stripper well ranges from \$15,000 to \$25,000. A Google search for “energy prices soar” returns 1.7 million hits. The first half of the 1990s was barely profitable for natural gas and oil producers, but at \$75 per barrel, a single stripper oil well could produce \$410,000 severance-tax-free. Jeffrey Rubin, CIBC's chief economist, believes that we are moving into a world of \$100 oil. <http://www.energybulletin.net/35271.html>

Poster Child for Reform

Weld County producers paid no state severance tax in fiscal years 2001-02, 2002-03, and 2004-05, according to page 8 of http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocMineralMemo.pdf Weld County gas production is on page 14 of the same document. Weld County oil production is at <http://www.oil-gas.state.co.us>. Oil and gas composite prices are at the same web site, and can be used to determine total Weld County oil and gas revenue in the five-year period. Dividing severance taxes paid by Weld County oil and gas revenue yields 0.13%.

Noble Energy Gets a Free Ride

Weld County produces half of Colorado's oil. According to the Greeley Tribune, Noble Energy produced 4.2 million barrels of oil in Weld County in 2006. Two year earlier, in 2004, Noble (and the company it would soon acquire, Patina Oil and Gas) produced about 3.7 million barrels and 61 billion cubic feet of natural gas worth approximately \$500 million in Weld County, without paying any severance taxes on that revenue in 2005. Of course, no other Weld County oil and gas company paid severance tax in 2005, either. Sources: www.oil-gas.state.co.us, www.greeleytrib.com/article/20070705/NEWS/107040117, and www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocMineralMemo.pdf.

King Coal Takes a Pass

In 2006 Colorado coal companies paid \$28.4 million in Black Lung taxes and just \$9.2 million in state severance taxes. <http://www.coloradomining.org/COMiningFacts.html> The 36 million tons produced in that year contained about 800 trillion British Thermal units, approximately 55 to 60% as much energy as the state's oil and gas operators produced. But coal severance tax represented a mere 4.3% of the State's total severance collections. Attorney General Suthers' ruling is online at www.ago.state.co.us/agopinions/AGO_PDFs/AGO07-1.pdf. News coverage is at www.denverpost.com/technology/ci_6953496 Severance tax of hard rock minerals is in www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocSeverTaxPerfAud.pdf Molybdenum prices are at www.infomine.com/Investment/HistoricalCharts/ShowCharts.asp?c=Molybdenum

A Tale of Two Countries

Oil data is provided by BP at www.bp.com/sectiongenericarticle.do?categoryId=9017903&contentId=7033469 Norway's Petroleum Fund has been renamed the Government Pension Fund. Norwegian attitudes about their nation's energy endowment are described in www.npd.no/English/Produkter+og+tjenester/Publikasjoner/Faktaheftet/Faktaheftet+2007/coverpage.htm

Old Mother Hubbard

Colorado (and Wyoming's) status as energy exporter is described in www.wsgs.uwyo.edu/Coal/DNR_RE_Study.pdf The U.S. Energy Information Administration has state energy data at <http://tonto.eia.doe.gov/state/> For an overview of why our gas is likely to become more valuable, www.aspo-usa.com/fall2006/presentations/pdf/Hughes_D_NatGas_Boston_2006.pdf

If They Can Do It, Why Can't We?

Information about permanent funds in Wyoming, Abu Dhabi, Kuwait, and New Mexico is online. In 2007, Alaska residents received a \$1654 “dividend.” www.apfc.org/alaska/dividendPrgrm.cfm The Navajo Nation Permanent Trust Fund is described in www.gallupindependent.com/2007/june/062707jch_ptfsveitoruseit.html

On the Backs of Real People

Mesa County energy impacts are outlined in a letter from Western Colorado Congress to the Legislative Committee investigating severance taxes. Other groups share WCC's concern. For example, on March 12, 2007, Club 20 Executive Director Reeves Brown sent a letter to Governor Ritter lamenting “billions of dollars in unmet [energy impact] needs.”

Let's Fix This Problem

The 2006 State Auditor's Report described a number of ways to improve Colorado's severance tax system in its June 2006 report. www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/comsched/07AllocSeverTaxPerfAud.pdf Some of the easy fixes have already been adopted—but the larger issues remain unresolved. Because of our low severance tax rates, Colorado is foregoing **\$1 million a day** in severance tax revenues. We can do better.

Understanding and Adapting to Change in Mountain Resort Communities

A White Paper

2006

Abstract

This paper addresses a number of factors that are influencing the look and feel today of mountain resort communities. Significant changes are taking place in these destinations creating challenges for public policy makers, resort companies, small businesses, and residents. A most important question addressed in this paper is “Can we sustain the character and qualities that brought most residents to these communities without attracting so many that we choke on our own success?” Wealth, the large number of Baby Boomers, and a favorable tax code on real estate purchases have all contributed to change that is affecting housing, local workforce and the demographics of these communities; these factors in turn are affecting the quality of community life. The value of mitigation strategies such as affordable housing and workforce policies are discussed and suggestions provided on their implementation.

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Introduction

Not since Milton's *Paradise Lost* has so much unrest been felt among the ranks of those fortunate enough to live in paradise. The complaints about "lost soul" are by now familiar to all residents of the scattered paradises throughout the western United States². Statements such as "My town has lost its soul;" "It feels like a Theme Park;" "I am a stranger in my own town;" "Nobody lives here or too many people live here;" are commonplace in the west's most amenity-rich and desirable resort communities. Complaints by residents range from the intangible and spiritual to the very measurable and physical.

The material changes that are noted by these same people are likewise familiar: "Too much traffic; rising prices for everything; our children can't live here; urban style development in rural areas; loss of clean air, clean water, and views! Many of the complaints stem from the consequences of economic achievement that most chambers of commerce strive for as one did the "Holy Grail": rising property values, job creation, a feature article in *Outside Magazine* identifying that place as a "Most Desirable Place to Live".

The problems are nonetheless real if less dire than those afflicting most communities and resorts everywhere seem to be struggling with one basic question: "Can we sustain the character and qualities that brought most residents here without attracting so many that we choke on our own success?" Various tools for dealing with the consequences of economic success have been proposed and implemented including land use controls, restrictions on development, real estate transfer taxes, affordable housing policies, open space acquisition and public transportation systems.

The premise of this paper is that understanding the underlying causes of demand for resort real estate is the most important analytical tool in trying to reconcile economic prosperity with other community values. And, of all the tools used in addressing real estate demand, affordable housing comes closest to being an indispensable prerequisite for addressing root causes of the complaints voiced in Paradise.

Changes in Population Distribution

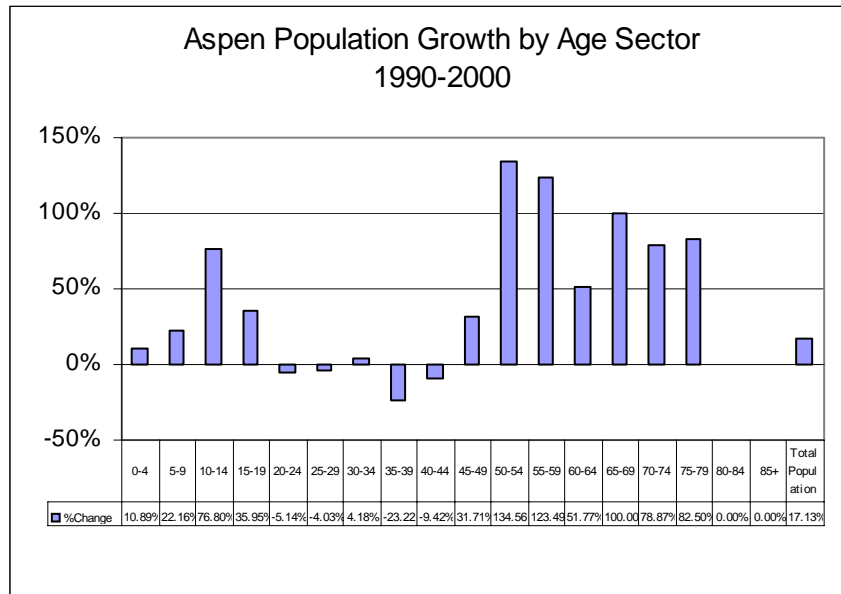
Relatively few resort communities have systematically analyzed the profound demographic changes in their communities over the past ten years. Although most elected

² Although much of what is written in the paper in fact applies to resort communities across the United States and throughout the World, this paper focuses primarily on issues facing mountain resort communities in the western U.S. and Canada.

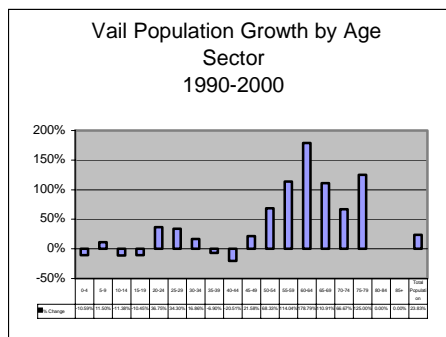
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officials and public policy makers have a clear intuitive sense that their community's population is changing in ways that are creating public policy problems, most are surprised to see how thoroughly their younger and middle class populations have been declining over the past few decades.

For much of this paper, I will rely on the experiences of Aspen and other western U.S. resorts where detailed information is available and where I have confidence in the reliability of the data. For example, this chart shows changes in Aspen's age demographics for 1990-2000.



The depiction of age distribution in this chart is fairly typical of the results of similar analysis in Vail, Breckenridge, and Steamboat Springs, Colorado. During the 1990s, Aspen experienced about a 1.7% population growth per year with most of that growth coming from annexation. The above table shows absolute losses for virtually every adult population group



under 45.³ Although the pattern varies somewhat among the various resort communities included in this analysis the results typically show a “lost generation” between the ages of 20 and 45 with slower than average growth for those groups but explosive growth in the 45 and older categories. Vail’s pattern was very similar to that of Aspen. Similar

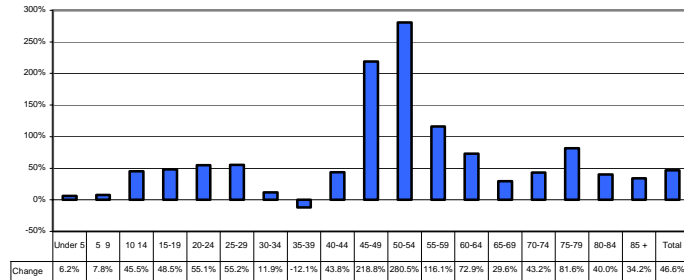
³ Aspen’s population increased in the 1990’s by 17% from 5,049 to 5,914. However, census block data available for those years’ shows only about 400 persons were added to the area included within the city’s 1990 boundaries.

Understanding and Adapting to Change in Mountain Resort Communities

complaints are often heard in these two competing resorts although Vail has not had as vigorous of an affordable housing effort. Both are extremely expensive resorts with median free market housing prices at or above \$2 million and each are home to the wealthiest of U.S. families; median income for second home owners in both communities having been measured in excess of \$350,000 per year.⁴

Steamboat Springs shows a similar pattern but without the dramatic “lost generation” valley between 20 and 45. However, Steamboat still shows a loss for the 30-34 age group and also shows another characteristic seen in resort communities that being low or

Steamboat 1990 - 2000



declining numbers of new births as well as explosive growth in the 50-60 age group.⁵ Aspen’s median age increased by almost six years during the 1990s and Steamboat’s increased by about three years during that same period.

Affluence, Job Growth and Commuter Patterns

The new resident immigrants and second home owners are typically very affluent. Although census data does not measure this very precisely, Pitkin County and the Northwest Colorado Council of Governments⁶ have conducted several studies that measure the impact of this affluence on job growth and commuter patterns.

In Pitkin County, for example, where Aspen is located, Clarion and Associates concluded that the percentage of the local workforce housed within the county had fallen from about 73% in 1985 to about 44% in 2004, meaning that the county was increasingly reliant on imported labor for its workforce with consequent increases in traffic and commuting. The exodus of the

⁴ The census doesn’t do a very good job measuring extreme wealth. The top category in the 2000 census was “\$250,000 and above,” somewhat akin to lumping all NBA players above 6’ 6” as “very tall.”

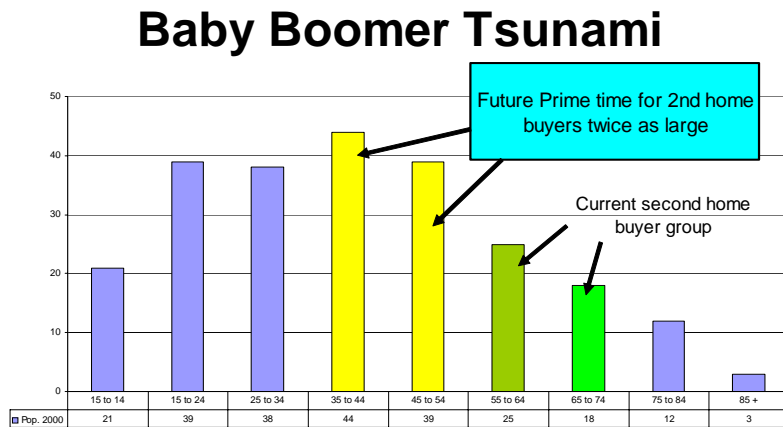
⁵ Although Aspen’s strict land use controls are often blamed (and surely contribute) to the demographic changes in that community, it is very apparent that these controls are not the driving force of these changes as so many resorts with few restrictions are experiencing similar changes. For instance, Steamboat’s 50-54 population more than doubled, and it’s 55-59 age group almost tripled during this time period illustrating the demand side component of the changes.

⁶ The Northwest Colorado Council of Governments is a voluntary association of towns, cities and counties in North central Colorado.

younger residents combined with the affluence of their successors and second home owners meant that jobs were growing while the available population to serve them was falling. Additionally, by 1993, the average daily traffic over the two lane bridge at the west end of Aspen approached 23,000 vehicle trips per day and controversial traffic demand measures (TDM) were implemented to limit this growth in traffic.

Clarion and Associates also measured jobs generated by second homes finding that second homes created about 5,000 jobs, approximately one third of the county workforce and that job creation rose in a steep exponential curve with house size.⁷ Taken together, the change in demographics accounts for the seemingly paradoxical complaints that resorts are at once too busy and lacking in vitality. Housing units that once hosted local workers have been converted into job centers, or as one Pitkin County Commissioner put it, “luxury cruise ships on land.”

Resort communities have historically been expensive places to live. The relatively recent



The group most likely to buy a 2nd home 55-70 years old. The market will double in the next two decades as baby boomers reach the 55+ age groups.

exponential growth in housing prices and the influx of baby boomers is a qualitatively as well as quantitatively different phenomenon driven by three changes in the national economy. First, the number of baby boomers in their prime second home buying years has increased

dramatically and will continue to do so for the next decade.

Second, wealth has become even more concentrated in recent years with the result that the Baby Boomers have the financial means to outbid locals and others for resort housing properties. The following chart is based on the AARP’s study of Net Financial worth (Net

⁷ The logarithmic relation ship between house size and employment generation found by Clarion was:

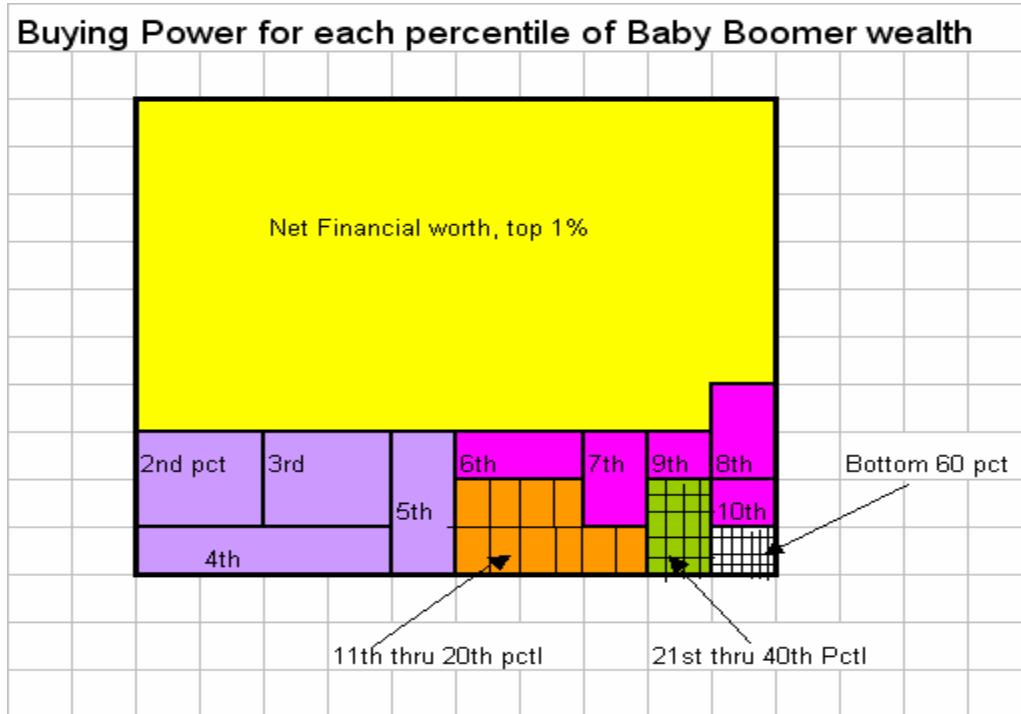
$$y = -4.67138e^{(0.000328x) + 2.01}$$

which meant they predicted a 12,000 square foot second home would create

about 4.0 jobs (or FTEs) for post construction operation. Of course, job generation is thought to be a function of the homeowner’s wealth which is only roughly correlated with house size. A similarly sized locally owned home was predicted to generate far less employment, about .24 jobs for a locally owned house.

Understanding and Adapting to Change in Mountain Resort Communities

Worth-Home equity) for Baby Boomers. Each of the 100 squares below represents one percent (1%) of the total Net Financial Worth and the colors represent how much of this net worth is controlled by the respective groups. For example, the yellow represents the percentage of the wealth controlled by the top 1% of Baby Boomers; the purple squares represent what the 2nd, third, fourth and fifth percent control and so on.



Without government interference in the form of zoning and various land use controls it is not difficult to imagine the above distribution as a plat map for a hypothetical resort community after sufficient time has passed for local residents to sell their property to the highest bidder. By many measures, the concentration of wealth has increased considerably in the past few decades with the result that the modest increases in wealth enjoyed by the bottom 60% have left them unable to compete for prized property.⁸

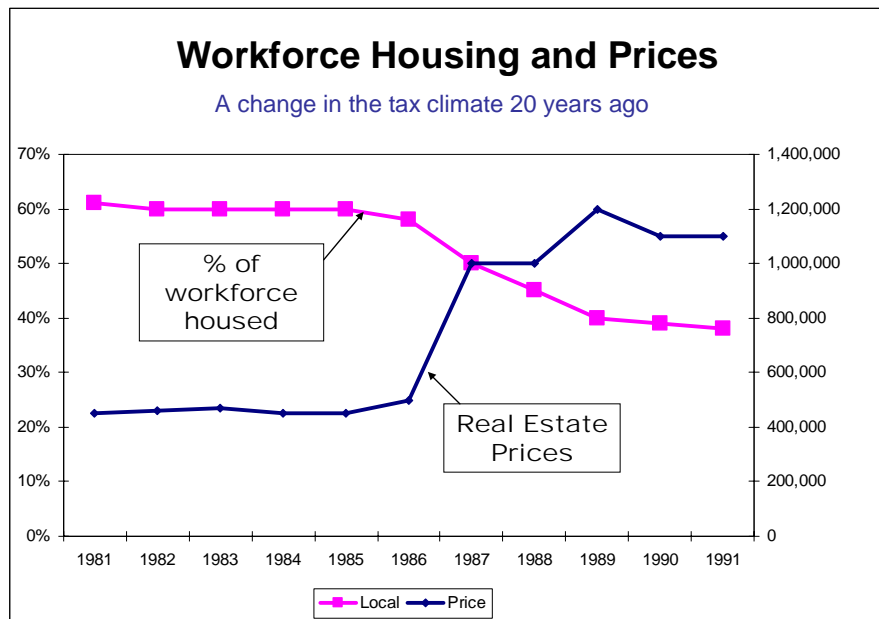
⁸ The fact of increasing wealth concentration is not seriously debated; see for example The Economist January 6, 2005, *Ever higher society, ever harder to ascend*. There is a wealth of literature on wealth concentration and a measurement called the Gini Index that measures this phenomenon on a scale of zero (perfect equality) to 1 (one person owns everything). The current index is about .43, and has been rising steadily since the early 1980s. See <http://www.nber.org/data-appendix/w8467/w8467-app.pdf>, National Bureau of Economic Research - income data

Understanding and Adapting to Change in Mountain Resort Communities

Of course, America has always had a fairly top heavy wealth distribution (as the Economist and others note) in spite of contrary egalitarian ideals. Other factors contribute to the demand for real estate that is reshaping resort communities including the ability to more easily access resorts and stay connected with the outside world from rural locations.

Tax policy also plays a significant role. In general, the most recent tax cuts and those enacted in the 1980s were clearly geared to those most likely to buy luxury properties to begin with. Perhaps more importantly from a resort perspective, genuine tax reforms supported by liberals and conservatives alike tilted the playing field toward resort and real estate properties. Prior to 1986, it was possible to parlay a relatively small investment into large tax shelter using borrowed money to leverage the available deductions, depreciations, and credits. The result was investment geared toward harvesting tax savings rather than profits and a boom in office real estate, gas pipelines, chinchilla farms and any number of unprofitable schemes.

The changes in 1986 basically leveled the playing field making resort real estate much more attractive as a place to invest accumulated earnings. Many resorts report 1986 as the year their world changed. In Aspen, the following result was obtained:⁹



⁹ Aspen Pitkin Housing Authority 1993 study for the Aspen Area Community Plan is the source for the percentage of workforce data. Aspen Board of Realtors is the source for median free market house prices in dollars adjusted for CPI-U.

Gentrification, Community Response and Public Policy

Community response to the changes brought by gentrification is often slow in developing and for good reason. To begin with, the first properties to be gentrified are sometimes undesirable in appearance and serve the least politically influential residents. Policy makers and elected officials tend to be insulated from housing market failures since they are most often drawn from the middle aged and middle to upper class groups. In resort towns, longevity is often a critical credential for electoral success and thus candidates are typically well established and own their residences. Many community leaders earned their prominence and position through hard work and perseverance. The difference between their difficult struggles and the near impossible market conditions faced by the next generation are not immediately obvious especially to a group of people usually more celebrated for “people skills” than for their inclination to quantitative analysis.

In addition, the transformation of a resort into a second home-dominated community may be a welcome change in its early phases as the benefits are clearly more tangible. Property values rise, unused rental housing stock (if any) may be put to improved use. Property may be spruced up in appearance, jobs are generated and sales tax revenue may increase. Many of these changes accrue directly to members of the policy making class as long time residents and property owners.

The darker aspects are slower in appearing. As the real estate/second home industry ascends, competing uses are gradually crowded out as leases expire. Businesses serving the newer, older, more affluent residents including art galleries, higher end restaurants, and retail fur stores, displace locally serving businesses such as shoe repair shops, general merchandise purveyors and other high volume, low margin enterprises.¹⁰

The first noticeable adverse impacts of gentrification are often traffic congestion related to the need to import a larger workforce and loss of familiar, rural view-scapes. The traffic issues may be addressed symptomatically through traffic studies, parking plans and capital expenditures. Scenic issues may be addressed through open space purchase programs or often

¹⁰ One of the competing uses that transforms commercial districts is residential housing. Most zoning schemes contemplate commercial development as a “higher and better” use and therefore do not prohibit the conversion of property from (*commercial to residential use*). Zoning is more often seen as a means of protecting residential property values from detrimental commercial development. In fact, the earliest zoning cases revolve around the attempts of neighborhoods to protect themselves from the “evils” of bars and gas stations ruining the neighborhood and those battles continue to this day over parking, noise, traffic, and character issues.

controversial attempts to preserve historic property or limit development using scenic criteria such as ridgeline review, increased setbacks or architectural controls.¹¹

None of these policies address the root cause of a community's transition and may serve to make the community even more attractive to part-time residents and retirees. Wider highways and transit systems may speed the exodus of the middle class to newly accessible subdivisions. Architectural controls and open space protection may limit the supply of residential development driving the prices up further.

Recognition of the fundamental change in character (and loss of characters) is usually slower in coming. Traditional zoning schemes and master planning is usually focused on physical facilities and land forms usually emphasizing a perceived need to separate incompatible uses and foster tax revenue producing enterprises. Notions of new urbanism, mixed use and walking neighborhoods are not widespread. The loss of emergency service personnel and middle level professionals such as teachers, nurses and skilled crafts people is often the first indicator that the community transformation is more than a transient or superficial change. The increased difficulty in staffing a cherished local hospital or school is anecdotal grist for the local media and may turn public attention toward changes in character and the plight of the younger, less affluent members of the community.

Loss of Sense of Place

Isolated anecdotes begin to coalesce into a perception that the community is losing "vitality," "soul" or "character." Parents begin to notice their children can't afford to live in their own hometown. Others observe that night spots that were once gathering places for the young are disappearing. An influx of foreign immigrant labor becomes more obvious as the immigrants move out of the kitchens and climb the job ladder to more visible and responsible positions.

Although some European resorts have effectively coped with these losses by restricting property ownership and sales to local residents, that sort of regulatory approach has little appeal in the United States. First, it conflicts with notions of property rights and may even be unconstitutionally, suspect. More importantly, by the time character and housing issues come to

¹¹ Twenty years ago Aspen was one of the few resort cities in Colorado with a public transit system. Today, virtually every resort community has at least a local bus system if not a regional system. The Aspen bus system has grown into a regional carrier providing four million rides per year in 11 towns and three counties, with a \$10 million budget and a system of trails.

the forefront it is usually politically impossible to tell the remaining locals they will not be allowed to cash out for five or twenty times their purchase price as their neighbors have done.

Affordable housing and retail commercial zoning protection are effective tools in addressing the character issues; housing programs can provide a foothold for entry level workers and a stake in the community that gives them a means to invest in its future. Housing local residents who are active in the workforce provides a revenue base that may allow locally serving businesses to survive. And essential service workers who would otherwise depart or be forced to depart have the opportunity to stay. Obviously, each worker housed in or near the community's center is one less who needs to commute long distances to and from work.

Implementation of this workable solution appears to require something of a political denial-bargaining-grief-acceptance process. In the absence of a firm understanding of the economic dynamics that drive gentrification, many public officials and policy makers hope for a market place salvation from their predicament, as if investors, property owners and developers would suddenly start making bad economic choices for an unarticulated common good.

Plowing New Ground

As noted earlier, most of us in the local policy business don't have first hand experience with the forces in play during the transformation of a community from a traditional resort economy to one based on real estate and second homes. John Edward's campaign pitch about two Americas is a little shy of describing a resort community. The reality is that there are really three Aspens, three Steamboats, three Vail's living in parallel but sometimes overlapping universes.

First, there is a migrant work force, which may or may not have a large foreign component but almost always fills the jobs that were once held by locals. Most of these workers commute into town, some from extraordinary distances and few of them have any stake in the community or its success.¹² Some may be embittered ex-locals, former denizens of low income property or mobile home parks cleared to make way for high end development.¹³

¹² While still small, the Hispanic population grew by a factor of 2.5 in the 1990s in Steamboat Springs. In Carbondale, about 100% of the population growth under age 45 was Hispanic. The same is true in Sun Valley, Idaho where Hispanics were much younger than the population as a whole.

¹³ Aspen and Pitkin County have participated in the purchase of four mobile home parks totaling about 350 units. These neighborhoods were resold as individual lots to former tenants with resale restrictions approximating the rent formerly paid by the owners.

Understanding and Adapting to Change in Mountain Resort Communities

One local pastor who serves the foreign immigrant community typically asks one key question of policy makers at regional housing conferences: How often do you meet with Mexican workers on a personal basis? The response to this and similar queries usually demonstrates that few of us in the policy business have first hand experience with immigrant laborers, their families or their day-to-day experiences. All of us have interesting anecdotes and urban legends of course but most of what we know is second hand.

Secondly, although about half the second homes in Pitkin County are held by the top 1% of the food chain (definitely the have-lots-mores), there is relatively little social interaction between them and the policy makers. At public meetings, the wealthy are generally represented by attorneys and professional land use planners. Again, anecdotes and legends abound in the absence of first hand experience.¹⁴

The remaining group, largely the enfranchised middle and working class, is thus without the benefit of the very tool that brought them to power in the first place; that is intimate familiarity with their constituents and their local economy. Having participated and advised in many local elections it is clear to me that most county and municipal office holders and other board members come to power without the aid of an organized, strategic campaign driven by issues. Absent a crisis or the sudden arrival of Wal-Mart, most campaigns are about personal qualities, general reputation in the community and informal networking.

The policy makers are thus deprived of their most familiar and reliable policy making tool, personal experience and firsthand knowledge. Casual observers are often struck by the detailed knowledge of individuals and properties carried by local officials who can go on for hours about the condition of an old bridge at the end of an obscure road, the status of a boiler contract 20 years ago, or a controversial land use approval. As property values soar, the stakes are higher and the ability of consensus oriented government to reach a middle ground is lessened. Often the first response from local government facing housing shortages and related problems is

¹⁴ One of the goals of the ongoing second home research at NWCCOG is to learn more about this group. As noted, the census provides little distinction between mere haves (\$250,000 a year administrators, for example) and the have a lots. The goals and needs of this group are critical to planning, for example, how many second home owners are hoping to eventually become permanent residents, what services to they need or want, and what community activities they will support.

to focus on “working with” the developers or amending the land use code to make applications for affordable housing easier.¹⁵

Change in Commercial Districts

Local leaders confront a similar dilemma in trying to preserve a vital, local serving commercial core. Intervening in the business sector is less familiar and even more controversial than proactive housing efforts. The “shopping experience” has become an important amenity for resort economies as Americans become older and less athletic. Ski resorts are finding that the quality of that experience is a major factor in choosing a resort.

The traditional resort economy and government financing schemes assume that the basic economic driver is a large number of outsiders coming to town, spending a lot of money, staying for a while and leaving in time for the next wave to come and do the same thing. In important ways this model is in competition with a second home based economy which thrives on fewer people making larger purchases. The more powerful second home economy may “crowd out” or out bid the local sector for the available commercial space, rendering the downtown commercial core less attractive to both locals and “low end” visitors.

The sudden replacement of thriving businesses by fractional real estate offices is at first inexplicable to local residents. Local merchants quickly understand the adverse impact of proliferating office uses on foot traffic and browsing. Local serving uses are especially vulnerable as they face rising rents even while their customer base is declining.¹⁶

For about a century, Aspen Drug, a popular and successful operation that could be considered an “anchor” for the adjoining Hyman Avenue Mall, occupied a prominent downtown corner. It served for most of the last 50 years as a provider of tourist-oriented, general merchandise and souvenirs in addition to prescription drugs and was described by the former tenants and owners of the business as very profitable.

¹⁵ While tinkering with land use codes is an effective solution for the types of problems traditional resort economies face, the available incentives such as fee waivers or one step review processes are inconsequential relative to the investment alternatives at stake. Nor does up zoning in and of itself seem to help: there is no way the market can be saturated with enough housing to bring the price down to affordable levels in high end resorts. And there is little political will to risk the experiment when the community already feels traffic and construction is a problem.

¹⁶ Several resorts including Aspen and Park City have contemplated or adopted zoning to prohibit offices uses in ground floor spaces in the commercial core. The effectiveness of this strategy is unproven.

About a year ago, the space was converted into a “Discovery Center” for the as yet unbuilt Snowmass Village Base Village project.¹⁷

Capitalizing on Our Investment

By the time the underlying demographic changes and driving forces become apparent at the local level, many options are closed. Local property owners have a vested interest in capturing the appreciation that has accrued. The new arrivals have an interest in protecting their investments. Simple up-zoning to create a supply side answer to retaining or replacing the “lost generation” is not only unlikely to work given the demand for high-end properties but is also unlikely to be politically possible. Creating housing through direct intervention in the market or by providing access to the market for working locals is not as simple as it sounds.¹⁸

Assisting locals in accessing the current market requires careful analysis. One danger is that, in the absence of a deed restriction or other limitation the newly enfranchised locals may “flip” their rapidly appreciating property in the near future. Several communities have had bad experiences with creating enhanced access to the market at a subsidized or other favorable price. For example, Boulder, Colorado, required a developer to make a certain number of units available at an artificially low price as a condition of approval of a more lucrative project. The only restraint on the resale of the lower priced units was that they could not be sold within a year. All of the units were purchased at the lower price and sold a year and a day later at the higher market prices inaccessible to locals. “We’ll never do that again,” was the county planner’s response to that outcome.¹⁹

Pitkin County had a similar experience with a mobile home park. The county demanded that the mobile home lots be sold a price equivalent to the rental income stream as a condition of a redevelopment of a larger adjacent property. Many of the mobile home park buyers later asked that they be allowed to sell their lots without restriction. The county held firm although litigation was threatened and some concessions were made.

¹⁷Base Village is approximately 600 condominium units and 90,000 square feet of commercial space. It calls for structures much larger and much taller than allowed by the recent master plan. Some affordable housing is included in the project. The marketing target is expected to be the usual 55-65 year old Baby Boomers. Pitkin County has objected to the failure of the plan to include substantial road impact mitigation for the primary two lane serving Base Village.

¹⁸It appears that CAST refers to “demand” and “supply” side solutions, that is, access through mortgage financing, down payment assistance etc. as “demand” solutions and direct creation programs as “supply” solutions. Not to be confused with “supply side” economics or any other hocus-pocus.

¹⁹ Vail had a similar unhappy experience when an apartment complex with a 20 year deed restriction had to be repurchased (“bought down”) to preserve affordability.

Understanding and Adapting to Change in Mountain Resort Communities

Affordable housing construction with deed restrictions can be an effective but costly remedy. “Impact” or “Mitigation” housing obtained through exactions is generally limited to offsetting job creation or price effects generated by a development approval.²⁰ The state of federal “takings” law and some statutory law is such that impact fees are not permitted to address existing infrastructure shortfalls. Thus, a community with a goal of housing a certain percentage of its workforce can not exact part of the shortfall from new development.

Incentive zoning, PUD processes, and pre-annexation agreements are generally more effective tools for going beyond “break even” housing creation, especially in combination with some system of growth management. If development rights are rationed in some manner, would be developers may be willing to provide a large amount of affordable housing in return for the right to create lucrative free market residences. Pitkin County and the City of Aspen have used discretionary “70-30” zoning that calls for 70 percent affordable housing for every additional 30 percent free market.

Aspen is blessed with two powerful revenue streams that support the creation of new affordable housing through buy down and preservation of existing units and the construction of new units. Although Pitkin County is home to approximately 2,300 affordable units under varying degrees of restriction, only about 1,100 of those are new construction resulting from city or county action. Others are “buy downs” (such as the trailer parks mentioned earlier and mitigation or 70-30 units provided by developers as a condition of approval. Aspen has a one percent RETT (Real Estate Transfer Tax), approved by the voters in the early 1990s and renewed in the year 2000, both times by a 70-30 margin. Aspen also has a .45% housing and day care tax approved and renewed by similar margins in approximately the same time frame.²¹

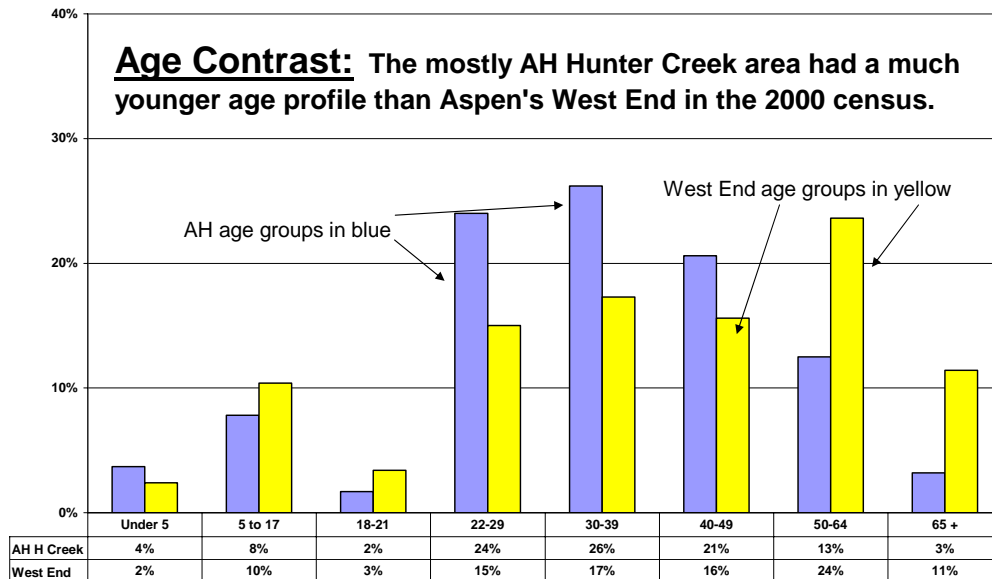
Given the \$1.6 billion in real estate sales in Pitkin County in 2004, with most of those sales occurring in Aspen, the RETT can provide up to \$10 million a year. That’s a fair amount

²⁰ Pitkin County formerly based affordable housing requirements on the presumed impact high end development had on the local market. This approach makes little sense when a project’s economic impact might move the typical housing price from very unaffordable to extremely unaffordable. Pitkin County now attempts to measure job generation from residential construction in a manner akin to the measurement of employee generation by retail or other commercial activities.

²¹The first \$100,000 in sales are exempt from the housing RETT. An additional .5% RETT supports the historic Wheeler Opera House. You might have seen the author of this paper there in 1983 appearing in the Marriage of Figaro but probably not.

of money but does not provide a great many units given land prices and construction costs of \$150 -\$200 per square foot.²²

Embarking on a tax and build program takes a certain political courage. New arrivals owning high end units have mixed feelings about any growth, traffic generation or scenic degradation that could adversely impact their quality of life. They may also recognize the absence or rapid decline of entire demographic slices of the community can rob Paradise of the very vitality that attracted them in the first place. Nonetheless, Aspen and Pitkin County have justly earned a national reputation for creating and preserving affordable housing. While the median age for free market housing owners is approaching 60 and the median age for all residents in such units is about 46, the median age for affordable housing occupants was about 36 in the sample studied from the 2000 census.²³ One significant advantage of the deed restriction is that the units tend to “turn over” to younger buyers. While some residents within the program have aged, the median age appears to have stabilized around 36.



A review of census data for the year 2000 found the predominantly affordable housing in Hunter Creek had a much different age profile from Aspen's West End. The largest age group in Hunter Creek was the 30-39 set while in the West End the largest group was 50-59. Other AH neighborhoods also showed a much younger age profile than the city as a whole.

²²Land prices are also driven upward by federal and state ownership of areas surrounding resorts. Pitkin County, for example, is about 87% national forest and Bureau of Land Management land.

²³The census data is, of course, not classified by “free market” and “affordable” units. However, some census blocks are almost purely one or the other. About 918 affordable units in nearly “pure” census blocks were studied for age and number of school aged children per unit along with a like number of free market units in almost “pure” census blocks. Another 230 free market units were matched against voter registration records to check the conclusion. The voter match project found a median age of 60 for those owners. Pitkin County also did a community survey in 2004 that showed affordable housing owners to be much younger than free market residents.

Understanding and Adapting to Change in Mountain Resort Communities

The above chart contrasts two census neighborhoods from which detailed age data is available. Note that in the West End (Free Market) neighborhood, the largest age demographic is 50-64 with almost a quarter of the residents falling in that category.

A word of caution is in order regarding “Base Villages” and other development solutions to declining vitality. Many resorts (Copper Mountain, Aspen Highlands, Snowmass Village, Whistler) have embarked on massive development projects in hopes of restoring vitality. The argument is that allowing hundreds or thousands of fractional or condominium units will allow an infusion of capital investments in ski infrastructure and amenities. Such proposals are properly viewed with healthy skepticism.

First, it must be kept in mind that the real estate is typically marketed to the 55-65 year old set. Notwithstanding the extremely vigorous lifestyle enjoyed by many in this demographic, it simply isn't a seven day a week skiing, partying and dance crowd. As noted, a good many resorts are over supplied in this demographic with little indication that the influx of the AARP eligible has restored vitality to any of them.

In addition, high end luxury unit sales are service employee intensive, meaning more workers will be drawn to a resort putting further upward pressure on whatever housing stock is within their reach. Transportation systems will also be stressed by the need to import service workers. In at least several instances, this strategy has failed. At Copper Mountain, in Colorado, sources close to the developer claim the project's retail operation is in financial trouble. At the Aspen Highlands, predicted retail revenue at the base village is less than half the promised level.²⁴

Conclusion

Creating a sustainable resort community or area implies some notion of a self contained community with a diverse demographic base not overly dependent on imported labor. “Theme Park” resorts where the residents are basically drawn from a demographic monoculture serviced by non residents has well documented adverse social and environmental impacts. Preserving a vital community requires an understanding of the basic economic drivers and social forces that

²⁴ The Aspen Highlands base area did lead to the replacement of aging ski lifts but, thus far, no dramatic increase in skier numbers. Although the retail enterprise is admittedly a failure in spite of hard work on the part of local merchants and low rents, that does not mean the developer took a loss overall. The real estate is apparently selling well and at high prices. The Aspen Skiing Company is seeking approval of a larger base village at Snowmass and blames the lack of vitality at the Highlands on the county commissioner's failure to approve more units. The open question remains, however: would three times as many sixty year olds create vitality at Aspen Highlands?

Understanding and Adapting to Change in Mountain Resort Communities

drive resorts toward the Theme Park model. In the absence of understanding these forces and their results, communities may be tempted to adopt policies that address only a few symptoms without grappling directly with root causes.

Matrix of Possible Affordable Housing Tools, Policies, and Programs

Excerpt from Regional Affordable Housing Initiative Final Report - www.hmcnews.org/housing/FINALHOUSING-jan2000.pdf

For additional information visit www.hmcnews.org/housing.htm

MATRIX OF AFFORDABLE HOUSING PROGRAMS								
TYPE	Program Selected Communities Employing	Program Description	Public Administrative Responsibilities	Number of Units Produced	Types of Units Produced	Primary Group Served	Political or Legal Issues	Considerations & Unintended Consequences
INCENTIVES	Density Bonus <i>Aspen/Pitkin Cty. Rancho Mirage, CA San Miguel Cty. Aspen/Pitkin Cty. Garfield Cty.</i>	Provisions allowing an increase in density if all or part of the increased density is deed restricted	Administration of zoning and deed restrictions/ If price controls are a part of the deed restriction, additional responsibilities may include development, construction management	Up to 100% of housing needed by middle income households, less where price controls are required	Single-family, or multi-family where price controls or required	Wide range of needs may be met	Nexus not required/ conflict w/open space goals, growth rate concerns./ N.I.M.B.Y. (Stipulating maximum bonus might help mitigate political issues)	Price controls are strong disincentive to private sector participation/ Without price controls low income, seasonal and entry level housing needs are unlikely to be met
	Accessory Units <i>Aspen/Pitkin Cty. San Miguel Cty. Snowmass</i>	Optional, small second units attached to or within single family units	Administration of zoning and deed restrictions	Most successful in high cost areas	Small apartments	Seasonal, Singles, Couples	Growth rate & quality of life concerns (may be addressed w/size & occupancy regs.)	Should be deed restricted, occupancy requirement extremely difficult to enforce
EXACTIONS	Inclusionary Zoning Requirements <i>Aspen/Pitkin CO/60% San Miguel Cty./15% Snowmass/45% Basalt, CO/20% Garfield/10%</i>	Mandatory inclusion or setaside of affordable or local housing units (usually the same type or similar to other units in development), or cash-in-lieu, as a quid quo pro for development approval	Administration of zoning and deed restrictions	Limited only by political & economic tolerance, and "takings" rulings	Single-family, Multi-family	Target income group, Singles, Couples, Families	Nexus not required, Only impacts development community	Potential adverse effect on value of free market units, Locational issues including transportation impacts and the desirability socio-economic mix within developments
	Commercial/ Industrial/ Lodging Linkage <i>Aspen/PitkinCty./60% San Miguel, CO/15% Snowmass, CO/45% Whistler, B.C./20-30% Basalt, CO/20%</i>	Zoning provisions that require new development to provide funds or housing to meet some portion of identifiable impacts of new development (15% to 60%) range, common	Administration of zoning and/or deed restrictions	Up to 100% of housing need generated (limited only by political & economic tolerance)	Multi-family	Low & moderate income households, Entry level, Seasonal, Singles, Couples, Young families	Strong nexus, Development pays its way, Only impacts development community	Possible mass and scale consequences, Site suitability issue (Local residents may not want to live among short-term accommodations)
PRODUCTION	Fees-based <i>Whistler, B.C. San Diego, CA</i>	Using dedicated fee-based funding sources to fund a housing trust fund (e.g. linkage fees, Business license fees)	Administration of fund allocation and program compliance	Up to 100% of seasonal & low income housing need	Most likely limited to multi-family	Low income households, Entry level, Seasonal, Singles, Couples, Young families	N.I.M.B.Y./Fees have highest nexus standards, Increased spending is subject to Tabor, Multiple funding sources can spread burden thru community	Tendency to use funds for low and moderate income groups/ Middle income & families needs might not be met (unless complemented with other programs)
	Tax-based <i>Boulder, CO \$0.25/ft Basalt, CO \$0.50/ft.</i>	Using dedicated tax-based funding sources to fund a housing trust fund (e.g. sales tax, housing excise tax, head tax, property tax)	Administration of fund allocation and program compliance	Up to 100% of seasonal & low income housing need	Most likely limited to multi-family	Low income households, Entry level, Seasonal, Singles, Couples, Young families	N.I.M.B.Y./Increased spending is subject to Tabor – may require a vote of people/ Multiple funding sources can spread burden thru community	Tendency to use funds for low and moderate income groups/ Middle income & families needs might not be met (unless complemented with other programs)
	Community Land Trust <i>Hundreds of examples across the U.S. Boulder Colorado Sprgs Denver Jackson Hole</i>	Effective method to maintain affordability/ Covenant requires improvements be sold and/or leased to households meeting defined income requirements/Land cost usually not included in total dev. costs	Oversight by non-profit	Depends on the underlying zoning	Townhomes and single family homes	Low to moderate Income Households	Crafting a 99-year land lease with covenants that is acceptable to lenders, tenants and the oversight entity	Establishing a self-managing entity to oversee the land trust requirements

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TYPE	Program Selected Communities Employing	Program Description	Public Administrative Responsibilities	Number of Units Produced	Types of Units Produced	Primary Group Served	Political or Legal Issues	Considerations & Unintended Consequences
P R O D U C T I O N	Land Banking	<i>Land is purchased or donated or acquired when purchasing property for other public purposes (e.g. park and open space) and held for future affordable housing development</i>	Zoning oversight and possibly covenant/ restrictions imposed as a condition land purchase	Number and types of units produced depends upon the parcel size & zoning	Multi-family and single family homes	Mixed Income	NIMBY/ Adjacent residents become accustomed to thinking of the land-banked property as open space	Land values can increase over time, causing some to suggest "rolling" the parcel to raise money to acquire more housing
	Community Dev. Corp. or Other Entity As Developer <i>Aspen/Pitkin Cty. Telluride</i>	Community Development Corporation or other public or quasi-public entity assumes an active role as developer and builds needed affordable housing	Development, Construction monitoring, Management, Administration of zoning and deed restriction	Limited only by political will & financial capability	Single-family, Multi-family	All types, including entry level, seniors, singles, couples, young families	Nexus not required, N.I.M.B.Y.	Requires experienced staff, exclusively dedicated to development and management tasks
P L A N N I N G A N D Z O N I N G	Size Restrictions	Restricting the size of units implies that over time they will remain relatively more affordable	Zoning administration	Town homes, single-family /moderate-income households	Condos, townhomes and small single family	Low to moderate income households	Developers often do not like to consider size restricted housing	In high cost areas, smaller units' resale value can quickly outpace the ability of low to moderate-income households to purchase or rent
	Mixed Use	Residential uses are integrated with commercial or industrial uses, ideally in pedestrian-oriented project	The public body would oversee the zoning and land use requirements	Units produced will vary	Apartments or condos	Small (1-2) households	Concerns about the density, parking and shared spaces.	Site suitability and design are primary considerations
	Mobile Home Park Zoning	Mobile home parks are a primary source of single family, owner occupied units in many areas	Zoning Administration	About 10 per acre	Single-family, mobile homes	Low to moderate to incomes households	N.I.M.B.Y. / Landowners tend to hold them for redeveloped into a higher and better use	A mobile home w/ deeded lot can escalate much faster than a mobile home on a rental lot, lot rents can become excessive.
	Flexible Development Standards <i>Aspen/Pitkin Cty. San Miguel Cty. Montgomery Cty, MD</i>	Modification of zoning, site, street & other design requirements to lower housing costs	Zoning and deed restriction administration/ Increased plan scrutiny	Developers can address broader market if combined with density increase	Single-family, Multi-family	All income households and groups	Potential conflicts w/other master planning goals/Difficult to verify that cost savings directly reduce sales costs.	Site plan standards must be carefully designed and towns must conduct thorough review to ensure quality projects
	Annexation Policies	Annexation policies can require that land with significant development or redevelopment potential, include affordable housing	Develop and enforce an annexation policy and affordable housing requirements	Results depend upon the parcel size and amount off affordable housing required			Determination that affordable housing is a community benefit as part of a comprehensive planning process/Requires high level of coord. with county.	This program is not popular among landowners.
	Fee Waivers or Deferrals <i>Many examples</i>	Fees payable for services or for public costs incurred used to subsidize housing development	Establish specific criteria and procedure, Administration of program	Marginal increase in available units	All	All	Program is subject to potential equal protection challenge, unless fee funds reimbursed	Facility/service revenue shortfalls should be made up (i.e. General Fund, other source)
	Fast Track Approvals	Shortening of public review process & limit public comment and participation	Prioritize affordable housing reviews/ Faster completion of thorough review	In the long run, no more units produced	All	All	N.I.M.B.Y. exacerbation, Potential conflicts w/other master planning goals	Potential for poor quality projects and conflicts w/ flexible development standards

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MATRIX OF AFFORDABLE HOUSING PROGRAMS								
TYPE	Program Selected Communities Employing	Program Description	Public Administrative Responsibilities	Number of Units Produced	Types of Units Produced	Primary Group Served	Political or Legal Issues	Considerations & Unintended Consequences
FINANCIAL	Rehabilitation Loans (Revolving Fund)	Low (3-5%) loans made available to income qualified households for code and safety repairs/ Loans are typically repaid upon sale	Administration, inspections to determine rehab needed and estimate of cost, obtain bids and const. mgt.	Maintains existing stock		Mostly low-income households are served	Creating contracts/ liens to be recorded against the property	Requires seed funds and a mechanism for inspection, contracting, recapturing funds
	Downpayment Assistance and Gap Financing	Down payment assistance is provided to income qualified buyers in exchange for deed restriction on resale	Covenant adm. and enforcement /Works best where a list is kept of interested, qualified, buyers /Homebuyer-training program	No units produced; however, existing housing stock is made more affordable	Program typically involves townhomes and condos, depending on cost and availability	Moderate-income households	Lenders will be concerned about their ability to foreclose upon loan default and to the notes on the secondary market	High cost of housing relative to the income of targeted households /Resale risks/ Works best in high-end markets
	Low Income Housing Tax Credit	Federal program used by both private and non-profit developers to generate equity for affordable housing/ Must set aside not <20% of units for households earning <50% of the AMI, or, not <40% for households earning <60% of the AMI for not <15 years	Zoning administration/ Support of the developer for the tax credits	Tax credit projects work best if at least 100 units are developed	This is a rental program	Primarily low to moderate-income families	Very few political or legal issues for the locality. Projects require local support to receive the credit	Tax credits are very competitive and are awarded on a point system/ Most developers provide more than the 60% set aside & either permanent or 30-year affordability requirements
	Community Development Block Grant/HOME and Other State Funds	Federally funded programs administered by State/ CDBG provides funds for a broad range of uses, including affordable housing	Local support required to receive funds.	Varies	All types of units/ New and acquisition	Households earning no more than 80% of the AMI	Usually involves using funds from several different sources. This can be confusing to the developer	Competition for fund is keen and most developers set aside housing for households earning less than the 80% of AMI
	Non-Profit Corp./ Private Developer Partnership (63-20) Finance Program <i>Edwards/Lake Creek Avon/Eagle Bend Keystone/WinterGreen</i>	Tax exempt financing issued for non-profit, project-specific corporation formed under Internal Revenue Tax Code No. 63-20/ Employers can participate with subordinate financing	Sponsorship of formation of corporation and issuance of revenue bonds (no general obligation)	Not less than 100 units per project due to bond issue, underwriting, and placement costs/ ownership reversion to sponsoring gov.	Multi-family, Rentals	Low & middle income households/ Seasonal workers (up to 50% of units may be master leased)	Projects are tax exempt/ Impacts to school district and other taxing authorities/ N.I.M.B.Y.	No public staffing required/ Sponsoring government controls the board of the corporation

Real Estate Transfer Taxes and Local Voter Choice: Time to Amend TABOR ?¹

Overview

Amending the Taxpayer's Bill of Rights (TABOR) to address challenges to the state budget has been an important topic of discussion during the last few legislative sessions. Crafting an amendment could be the defining issue of 2008 legislative session. As lawmakers debate the details of a proposed amendment to TABOR for voter approval, there is one specific change that many communities would like to be included – reinstate the powers of local communities, with voter approval, to use real estate transfer taxes.

This brief offers some background on real estate transfer taxes and why local voters in Colorado should have the choice to use them again to address critical issues like affordable housing at the local level.

What are Real Estate Transfer Taxes (RET Taxes)?

Real estate transfer taxes are state and local taxes that are assessed on real property when ownership of the property is transferred between parties. These taxes have been used by states and local communities across the U.S. to fund a wide variety of programs – from affordable housing and open space acquisition to child care and capital improvements.²

Most states and the District of Columbia allow RET taxes but thirteen, including Colorado, do not. Some states allow for variable rates depending on the value of the property, while others have a flat rate. The rate is usually a small percentage (.01% - 4%) of the total value of the property.³

Background on TABOR and Real Estate Transfer Taxes

Real Estate Transfer Taxes were allowed in Colorado until the adoption of the Taxpayer' Bill of Rights Amendment (TABOR) to the Colorado Constitution in 1992. At that time, 13 communities in Colorado had a RET tax. Since TABOR's adoption, only one community has rescinded it's RET tax (Glendale in 1996).⁴ These communities were allowed to vote to continue their RET tax after Tabor's approval (Table 1). Many voters were unaware that language removing the local option of using RET taxes was included in TABOR.

Table 1: Communities with a RET Tax	Rate
Aspen	1.5%
Avon	2.0%
Breckenridge	1.0%
Crested Butte	3.0%
Frisco	1.0%
Gypsum	1.0%
Minturn	1.0%
Ophir	4.0%
Snowmass Village	1.0%
Telluride	3.0%
Vail	1.0%
Winter Park	1.0%

¹ This brief was prepared by Colin Laird. Questions or comments should be sent to claird@rof.net.

² www.realtor.org/libweb.nsf/pages/fg717#topicb & <http://nmrealtor.com/transfertax/transfertaxes-by-state.pdf>

³ <http://nmrealtor.com/transfertax/transfertaxes-by-state.pdf>

⁴ Colorado Association of Ski Towns (www.coloradoskitowns.org)

In Article X (Revenue), Section 20 - The Taxpayer's Bill of Rights, 8(a) specifically prohibits real estate transfer taxes:

(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

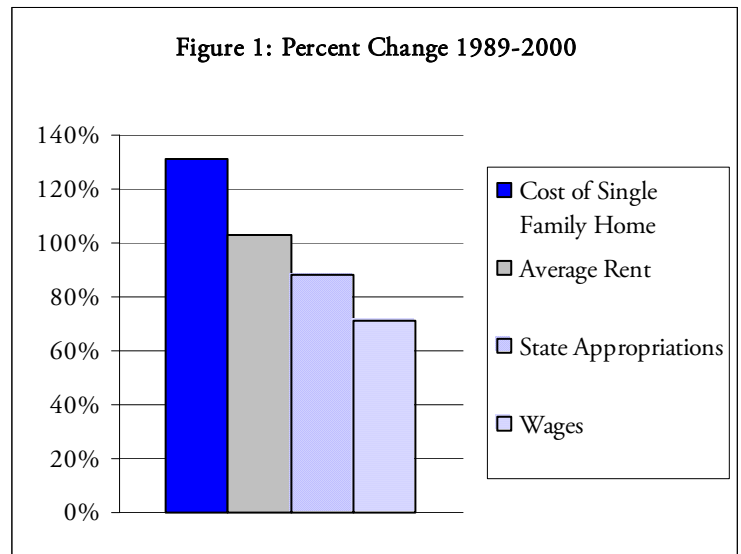
The impact of prohibition of Real Estate Transfer Taxes

The prohibition of Real Estate Transfer taxes in TABOR has severely limited the ability of communities to mitigate the impacts of rapidly appreciating land values and the increasing number of second homes. While real estate sales set records in sales and dollar volume in many parts of the state, many local governments are postponing capital expenditures and infrastructure maintenance for lack of revenue. In Mountain Resort communities in particular, the construction of multi-million dollar homes has driven up the price of workforce housing so that critical personnel, such as teachers, police officers and town staff can no longer live in the community they work in. The Colorado Fiscal Policy Brief, Tabor and Affordable Housing⁵, writes that in 1992, when TABOR was enacted, the issue of affordable housing was not the pressing issue it is today. Unfortunately, the prohibition on real estates transfer taxes included in TABOR eliminates a crucial tool communities could use (with voter approval) to address critical housing needs in many part of Colorado.

Except from July 2002 Issue Brief from the Colorado Fiscal Policy Institute

TABOR AND AFFORDABLE HOUSING INTRODUCTION: THE GROWING NEED

Since the passage of TABOR in 1992, Colorado's need for affordable housing has grown more acute. According to the Rocky Mountain Regional Office of HUD, between 1989 and 2000, in the Denver metro area, average rents increased 103 percent and the price of a single family home increased 131 percent while wages grew by only 71 percent and state appropriations by 88 percent.¹ (Figure 1) Throughout the decade, economic trends forged an ever-widening gap between what people could afford and what they found in the market. By 2001, in Colorado:



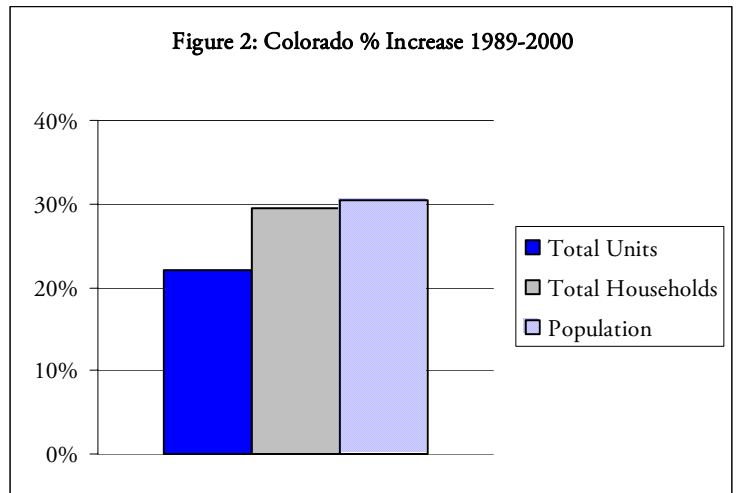
- *A low-income household earning \$18,030 (30% of the Area Median Income of \$60,100) could afford monthly rent of no more than \$451, while the Fair Market Rent for a two-bedroom unit was \$792.*

⁵ Tabor and Affordable Housing: An Issue Brief. Colorado Fiscal Policy Institute, July 2002. (www.cclponline.org/whatsnew/taborhousing702.pdf)

- *A minimum wage earner (\$5.15 per hour) could afford monthly rent of no more than \$268. A minimum wage earner would have to work 118 hours per week in order to afford a two-bedroom unit at the area's Fair Market rent.*
- *An SSI recipient (receiving \$512 per month) could afford monthly rent of no more than \$154, while the Fair Market Rent for a one-bedroom unit was \$605. Colorado had earned the unfortunate distinction of being one of the ten least affordable states for housing in the nation.*
- *A report on the financial condition of Colorado municipalities found more than 70 percent of the survey respondents cited affordable housing as a problem in their communities.*

In addition, Colorado's population boom of the 1990s left private and public entities scrambling to meet the rising need for more units. (Figure 2)

Yet, despite the emerging and increasing need for affordable housing, Colorado's ability to respond has been constrained, in part due to TABOR. While nothing in TABOR expressly prohibits Colorado governments from expanding their role in the provision of affordable housing, the restraints TABOR places on the ability of state and local governments to finance solutions to emerging problems sets the parameters of the debate.



Section (8)(a) of TABOR explicitly prohibits new or increased transfer tax rates on real property. What does this mean for Colorado communities?

- *TABOR denies local communities the freedom to vote to implement or increase a real estate transfer tax to address their local needs.*
- *Only those Colorado jurisdictions with real estate transfer taxes in effect in 1992 have the option of utilizing this funding stream. They cannot increase this tax, even with local voter approval.*
- *Any attempt to institute or increase a real estate transfer tax could only be undertaken after a successful statewide campaign to amend the Colorado constitution.*

Why reinstate local choice on Real Estate Transfer Taxes in Colorado?

Reinstating the powers of local governments to use real estate transfer taxes would be akin to the enabling legislation the General Assembly has approved in regard to rural transportation authorities and multi-jurisdictional housing authorities. Both pieces of legislation enable local communities with a set of potential financing mechanisms to address a specific local issue, if approved by voters.

Enabling real estate transfer taxes would allow local communities to potentially create a funding source for affordable housing that is directly connected to a cause of the lack of affordable housing and begin to mitigate the negative impacts of in t growth of expensive second homes (a recent study by the Northwest Colorado Council of Governments, the growth of expensive second homes.

We know that RET taxes have been critically important to addressing affordable housing challenges in some communities. A significant part of the City of Aspen's affordable housing stock (over 1,000 units) was made possible from the revenues (currently \$10 million annually) from a 1% RETT. Winter Park has been able to make important capital improvements, and Crested Butte has been able to purchase property for schools and open space with the revenues from their RET tax. Unfortunately, today many more Colorado communities face affordable housing challenges without the possibility of using a RET tax to fund the development of affordable housing.

Affordable housing is offered as one potential use of RET tax revenue, but as mentioned earlier, this RET tax revenue is currently being used to support open space acquisition, capital improvements to road and recreational infrastructure, child care, and the arts.

Who pays a Real Estate Transfer Tax?

Usually, the buyer is responsible for paying the RET tax and it is normally paid just before recording the purchase deed at the County Clerk and Recorder's Office. In effect, a RET tax acts much like a sales tax. However, since a RET tax makes the most sense in communities with high value and volume real estate sales (where there are also often more second home sales), its impact is greatest on people with the resources to purchase multiple properties or the most expensive properties. In some case, like Aspen, the first \$100,000 in land or home value is except from a RET tax as are deed restricted affordable housing units.

Conclusion

While the General Assembly deliberates on language to amend TABOR and address issues relating to the state budget, reinstating the ability of local communities to use real estate transfer taxes (see draft amendment language on the next page) is a change to TABOR that would give local communities the option of asking voters to approve an important revenue tool to address critical issues such as affordable housing, transportation, open space, and capital improvements at a time when the state budget has its own pressing fiscal challenges.

Resources

Real Estate Transfer Taxes, PolicyLink (www.policylink.org/EDTK/RETT/default.html)

"Field Guide to Real Estate Transfer Taxes", National Association of Realtors
(www.realtor.org/libweb.nsf/pages/fg717)

Tabor and Affordable Housing: An Issue Brief. Colorado Fiscal Policy Institute, July 2002.
(www.cclponline.org/whatsnew/taborhousing702.pdf)

Colorado Association of Ski Towns (www.coloradoskitowns.org)

Potential Amendment Language

Amending TABOR to enabling real estate transfer taxes requires an amendment to the Colorado Constitution and must be approved by the voters in a general state election. The following is draft language crafted by the Colorado Association of Ski Towns in 2002.

SENATE CONCURRENT RESOLUTION 01-_____

BY SENATORS.....

Also REPRESENTATIVES.....

CONCERNING THE SUBMISSION TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO OF AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO, AUTHORIZING THE VOTERS OF ANY MUNICIPALITY OR COUNTY TO ADOPT A NEW OR INCREASED TRANSFER TAX RATE ON REAL PROPERTY

WHEREAS, Colorado electors should have the right and privilege to vote on tax increase or changes in tax policy; and

WHEREAS, the right to vote on a Real Estate Transfer Tax was taken away from Colorado Electors in 1992; and

WHEREAS, a Real Estate Transfer Tax has proven to be an appropriate revenue source to deal with the impacts of growth in twelve Colorado municipalities; and

WHEREAS, because of Colorado's growth, a Real Estate Transfer Tax is an appropriate revenue source to help fund transportation improvements, open space purchases, and regional revenue sharing.

Be It Resolved by the Senate of the Sixty-third General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:

Section 8 of article X of the constitution of the state of Colorado is amended to read:

Section 8. Revenue Limits. (a) ANY MUNICIPALITY OR COUNTY MAY ADOPT A NEW OR INCREASED TRANSFER TAX RATE ON REAL PROPERTY, IF SUCH TAX IS APPROVED IN ADVANCE BY THE VOTERS OF THE MUNICIPALITY OR COUNTY. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

SECTION 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either “Yes” or “No” on the proposition: “AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO, AUTHORIZING THE VOTERS OF ANY MUNICIPALITY OR COUNTY TO ADOPT A NEW OR INCREASED TRANSFER TAX RATE ON REAL PROPERTY”.

SECTION 3. The votes cast for the adoption or rejection of said amendment shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress, and if a majority of the electors voting on the question shall have voted “Yes”, the said amendment shall become a part of the state constitution.

PRESIDENT OF
THE SENATE

SPEAKER OF THE HOUSE
OF REPRESENTATIVES

SECRETARY OF
THE SENATE

CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES