



**Bighorn Sheep herd occupies the site, as its primary winter habitat, the ownership of the plans to develop the site are in dispute.**

# **VAIL HOMEOWNERS ASSOCIATION**

**February 1, 2021**

The following is correspondence between the Vail Homeowners Association and the Town of Vail Town Council with respect to the February 2nd meeting regarding the potential abandonment of efforts to preserve the Booth Heights open space as a wildlife sanctuary for bighorn sheep. The Town Council hearing will be a Zoom meeting. Register now on the TOV website to speak at the meeting. A copy of the amended Pre-Development Agreement is attached to the Town Council agenda, which is posted on the TOV website. This is not going to be a long meeting so the Pre-Development Agreement should come up shortly after 6 p.m. Please clear your calendars and [REGISTER HERE](#) to attend Tuesday's Council meeting. You may also send comments to the Town Council via [towncouncil@vailgov.com](mailto:towncouncil@vailgov.com).

*For addition information see VHA Report [January 30, 2021](#)*

*Please take the time to weigh in with the Vail Town Council about your opinion on this issue.*

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01/31/21

Dear Mayor and Town Council:

Attached are the Vail Homeowner's comments on the current version of the Pre-Development Agreement with Triumph Development. As you will note, we object to the approval of the agreement in its present form.

As we have made clear on multiple occasions, we are not opposed to the plan that underlies the agreement, just how the rights and obligations of the parties are described, particularly in paragraph 4, "Booth Heights." For the reasons stated in the attached comments, that provision is not sufficient to carry out what we believe is the Council's intention: to see that the Booth Heights project does not get built. To be constructive, the VHA suggests that paragraph 4 should be redrafted to provide guarantees that the previously approved Booth Heights development will not take place.

The redrafting should (1) make it clear that the Booth Heights provisions are part of the essential consideration for the agreement so that any default on Triumph's part would void the agreement, (2) make it clear that Triumph warrants it owns both the plans and the development rights, (3) make it clear that Triumph will not only not pursue the Booth Heights project, but that it also will not sell or transfer the plans or development rights to anyone else, (4) require Triumph to release all development rights for the Booth Heights project, and (5) provide broad protections for the Town in the event VR sues.

Triumph should readily agree to such changes. In its January 19, 2021 letter to VR, Triumph unequivocally states that it owns both the plans and all the development rights and approvals for the Booth Heights project, so it should be willing to warrant those facts and agree not to sell or transfer those rights. Triumph has also already made clear its willingness to transfer those rights to the Town, so there should be no objection to releasing and forfeiting those rights as part of the deal with the Town. And since Triumph is getting a hugely advantageous deal to develop Lot 3 and the right of first refusal on Timber Ridge, it has also already agreed to protect the Town from VR's litigation, so those provisions should also be agreeable. If for any reason, Triumph now is not willing to make these agreements, which we do not expect, then the Town should put the Lot 3 project out to bid.

To be even more specific, the VHA offers this proposed rewrite of paragraph 4:

4. Booth Heights. As an integral and necessary consideration for this agreement, without which this agreement is void, Triumph agrees as follows:
  - a. Triumph warrants to the Town that it is the sole owner and holder of all studies, reports, plans and other items included in the development applications filed with the Town for the Booth Heights project in PEC19-0018, PEC 19-0019 and DRB19-625 (the "Plans") and that it is the sole owner and holder of all approvals and development rights authorized in PEC19-0018 & 0019 and DRB19-652 ("the Booth Heights Project").
  - b. Triumph agrees that it will not pursue any development that would otherwise be permitted under the development applications filed with and approved by the Town in the Booth Heights Project. Triumph further agrees that it will not sell, assign, relinquish or otherwise transfer any right or interest in the Booth Heights Plans or the Booth Height Project to any other person, corporation, institution or entity.
  - c. Upon execution of the final development agreement, Triumph will provide the Town, in a form satisfactory to the Town, a written release, forfeiture and abandonment of all development approvals and rights for the Booth Heights project.

- d. Triumph agrees to indemnify and hold harmless the Town and its officers, insurers, agents, and employees from and against any and all losses, costs, liabilities, expenses and damages incurred by the Town, including reasonable attorney fees, arising out of any claim from any third party based upon the Booth Heights Plans, the Booth Heights Project or the effect or alleged effect of this Agreement, including without limitation claims of diminution of value, inverse condemnation and violation of vested property rights, and agrees to defend the Town against any such claim.
- e. To the extent any third party successfully establishes a property interest in any portion of the Booth Heights Plans or the Booth Heights Project, Triumph agrees to reimburse the Town for all of the Town's costs and expenses incurred in the Middle Creek Project, up to the date of final approval of the development applications, including without limitation the management fee.

These changes will eliminate the possibility that Booth Heights will be constructed under the current plans and approvals. We note that there is some confusion about the correct DRB number, whether it is 19-625 or 19-652. It is described both ways in different versions of the agreement; it seems obvious that one of those versions is a typo. That needs to be clarified.

There is one other step that the Council should agree needs to be done. Once the Town gets Triumph's release of all development rights, it should rescind the extension of the development rights which was recently approved.

If the agreement were re-drafted as above stated, the VHA is prepared to recommend to its members that the agreement be supported.

Finally, as stated in our attached comments, the VHA believes that the Town should immediately begin a condemnation process for the Booth Heights property.

Although not part of the Pre-Development approval, we also note that Vail Resorts' current posturing about the Booth Heights project is completely at odds with its avowed Code of Ethics and Business Conduct. In introducing its most recent update to that Code, Rob Katz, VR's Chairman and CEO, stated:

I believe that we all understand what it means to carry out our business and conduct ourselves ethically. Simply put, ethics is doing the right thing even if nobody is watching. This Code of Ethics and Business Conduct provides guidance to help us live by our values and responsibly serve our five key stakeholders - our employees, our guests, our communities, our environment and our shareholders. *In essence, this Code gives us guidance to operate with integrity and to do the right thing, knowing that it leads to the right outcome.*

The Code then provides that one of VR's key values is its collective commitment to "Do Good: Preserve our natural environment and contribute to the success of the community." Further it requires "Fair Dealing with Others:

We learned about playing fair on the playground, and even now it's important that we "play fair" with our guests, suppliers, vendors, competitors, and other employees. Officially, this means not taking unfair advantage of anyone through manipulation, concealment, abuse of confidential information, falsification, misrepresentation of material facts, or any other intentional unfair behavior."

In its "Epic Promise – Commitment to Zero" progress report on the 2019-2020 season, VR stated that "The environment is our business, and we have a special obligation to protect it" and VR's focus is on "preserving

the incredible outdoor places where we live, work, and play.” The Town should not hesitate to remind VR that it has an obligation to be a socially responsible citizen of Vail and to live up to those promises. The proposed land swap of Lot 3 for the Booth Heights property would accomplish those goals. VR would obtain employee housing (at a much more advantageous location) and, at the same time, it would be protecting the environment and the endangered bighorn sheep.

We hope that the foregoing is helpful. Thank you for your consideration of these comments.

Please see attachment that follows.

Jim Lamont  
Executive Director

A handwritten signature in black ink that reads "Jim Lamont". The signature is stylized with a large, sweeping initial "J" and a long horizontal stroke extending to the right.

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The VHA has been fighting to protect the bighorn sheep for years. If this is an issue that concerns you, we invite you to join VHA or become a paid subscriber to our reports. Contact us at [vailhomeownersassoc@gmail.com](mailto:vailhomeownersassoc@gmail.com) Our most valuable tool in influencing decision makers is through the proactive engagement of our informed readers. Your support will ensure that the VHA can continue to bring such matters to the community’s attention and, by doing so, make a difference for the good and the future of our community. It is you, our members and subscribers, who sustain our efforts with financial and vocal support.

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