



Illustrated in lemon yellow are portions of Tract E and Lot D-1 covenant protected publicly accessible open space that were recently acquired by VailPoint, owner of the adjacent Kindel lot, through a claim of adverse possession and are proposed to be rezoned from Agriculture/Open Space to Public Accommodation. Rust colored area was being considered to be sold to VailPoint by Vail Resorts, but the TOV rejected the proposal in 2017.

VAIL HOMEOWNERS ASSOCIATION

VHA Report – Proposed Rezoning of Publicly Accessible Covenant Protected Open Space Land.

August 2, 2018

The Vail Homeowners Association urges the Vail Town Council to deny a proposed rezoning of two parcels (portions of Tract E and Lot D-1) of covenant protected publicly accessible open space lands recently acquired through a claim of adverse possession by VailPoint LLC. We oppose this rezoning both as a matter of principle and legality. Since its inception, the Vail Homeowners Association has advocated for the protection of lands designated as covenant protected open space. It has done so through its advocacy to public officials, private property owners and by legal action in the courts. The land in question has been covenant protected open space since the earliest days of Vail. Specifically the land:

shall be used ...at all times as a vacant and undisturbed open area in its natural condition.

Notwithstanding the protected status of this property, in the late 1960's or thereabouts, the then mayor of Vail, Ted Kindel, erected a fence surrounding his property at 366 Hanson Ranch Road. The fence went beyond his property lines and included portions of two parcels of open space land (portions of Tract E & Lot D-1). At that time, and up until recently, that land was owned by Vail Resorts. VR took no action to have the fence removed, and it remained in place for years. The TOV, for its part, zoned all of Tract E & Lot D-1, which included the fenced in portion of those parcels, as Agriculture and Open Space which essentially precluded any development and maintained the parcels as open space.



The Kindel fence a barrier to Vail's covenant protect publicly accessible open space.

Kindel wanted to purchase the encroached upon covenant protected open space lands and, also, have the TOV rezone the encroached upon covenant protected open space land to the same commercial zoning (Public Accommodations) that existed on his property. Town authorities demurred because Kindel's proposal could have potentially created a precedent whereby other property owners could mimic the encroachment behavior in other similar situations, thereby eroding the purpose and function of covenant protected publicly accessible open space lands. The authorities also took the position, to remove the incentive to obtain a financial gain via an encroachment, that should a claim of adverse possession prevail in the courts, it would not sanction a rezoning of covenant protected open space lands to a higher density zoning category.

More recently, the current owner of the property in question, VailPoint LLC., brought suit to claim ownership of those portions of the covenant protected open space lands within the fence by virtue of adverse possession. According to the prospectus for its proposed development, VailPoint wants to use the additional property "to accommodate a slightly larger footprint", which means a large site coverage/setback allowances. The court awarded those two portions to VailPoint LLC., so that it now owns the land within the fence, and it now seeks to have

the property rezoned as Public Accommodations (“lodges and residential accommodations”) which would destroy its open space status.

As a matter of principle, this rezoning should not be allowed. Vail is blessed with generous open spaces which are a vital part of its unique character, especially so in the case of these parcels which lie at the heart of the community. It is no accident that Vail’s open spaces exist. It was part of the original vision for the community, one that was protected by restrictive covenants that pre-dated the formation of the Town. That vision also informed the original zoning when the Town was formed in 1966.

VailPoint acquired the property in question with full knowledge of the open space covenants on the fenced-in area. In the past few years, the TOV has adopted a “zero tolerance” toward property owners who have encroached upon covenant protected publicly accessible open space lands which it received from Vail Resorts and now owns. It would seem that the same “zero tolerance” should, also, apply to the rezoning of privately owned publicly accessible covenant protected open space lands as it does to Town owned publicly accessible covenant protected open space lands. The Town Council should make it clear, as it considers this rezoning application, that this property is to be fully and completely maintained as open space.

Rezoning this land as Public Accommodations is also illegal. Covenants run with the land and cannot be rezoned away. The Town Council should not be misled by representations that the covenants will still apply. The property is only open space if it is publicly accessible, and Public Accommodations zoning is inherently inconsistent with public accessible open space land, especially if the land is fenced or landscaped so as to exclude the public. Rezoning this property to Public Accommodations, therefore, would make the TOV party to violating the covenants that apply to this land.

In 2017, VailPoint submitted to the Town a proposal that included a proposition that it purchase from Vail Resorts additional publicly accessible covenant protected open space. Such actions required the prior consent of both property owners, VailPoint and Vail Resorts. VailPoint, in its application to the Town, submitted a landscape design that would have effectively limited public accessibility to that portion of the covenant protected publicly accessible land. The proposition would have created a precedent that would allow other portions of covenant protected open lands to be similarly sold to 3rd parties. The Vail Town Council considered and rejected the proposal.

Vail Town Council 1st of two public hearings re: Tract E and Lot D-1 rezoning, evening meeting, Tuesday, August 7, 2018

Community Service Link:

**Vail Valley Foundation
Colorado Pro Classic Bike Race Stage 1 & 2
August 16-17 2018**

[Vail Road Closures:](#)

[TOV – What neighbors should expect re: closures.](#)

[TOV – Get Questions Answer Meetings re: Neighborhood impacts from Colorado Pro Bike Race.](#)

Please provide us with Community service links that you find useful.

VHA [Membership:](#)

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