



Vail Village - 2:15pm, Wednesday, January 5, 2022

Letters to Vail

VAIL HOMEOWNERS ASSOCIATION

The 3-Minute Rule

January 6, 2022

The VHA's Letters to Vail on equal treatment before the Town of Vail drew a response from the Town Manager, Scott Robson, objecting to VHA's description of the 3-minute limit on members of the public to speak before the Council and Town boards as denying the public a right to present timely all-inclusive verbal argument on issues of concern. [A full copy of Robson's email is attached below]. Essentially, Robson said that the TOV would not suspend the 3-minute rule because it is only used on "rare occasions"; its purpose is to strike a balance between the public's right to address elected officials and effective public meetings. On "virtually any issue," Robson says, the 3-minute rule has proven adequate time, and the public has the option of providing written comment.

Some history is in order. The rule was devised not for some high-minded purpose but to limit one person in particular from speaking. It came about as a means to silence Michael Caccioppio, one of the TOV's most ardent critics. Caccioppio was not shy about speaking up and trying to shine light on what he thought were missteps and improper actions of Town officials. A variety of tactics were used by a succession of mayors attempting to silence him. The Caccioppio Rule became the 3-minute Rule based upon an argument that it was necessary to allow equal treatment of all citizens. In more recent times (think about Booth Heights and Residences at Main Gore), it has been used to muzzle opponents of projects. In Booth Heights, which involved complex scientific considerations, while the proponent was given unlimited time to make

its case and present its “experts”, the rule was used to prevent any effective arguments against the project before both the PEC and Council. And, when the DRB decision on the Residences at Main Gore was appealed to the Council, the rule was used to prevent DRB members from defending their decision while the Housing Director was given unlimited time to criticize the decision and promote the project’s design.

VHA responded to Robson pointing out that the 3-minute rule was, in fact, being used to suppress public comment, resulting in one-sided presentations on critical matters and that forcing opponents to have to rely on written comments, while allowing proponents unlimited time for their presentations, was an inherently unfair process. [A full copy of VHA’s reply is attached below].

At this point, the way the 3-minute rule is being used has all the appearances of Town officials who do not care about hearing “the other side,” who have already made up their minds and are only giving lip service to public input. Robson stated that the chair of meetings has the discretion to allow a member of the public to continue speaking longer than 3 minutes if the content is meaningful but that is not being done. He also made clear that the TOV has no intent of suspending the rule. Given that recent history shows that it has been wielded without any discretion, even at some meetings with a clock monitoring each speaker, VHA believes that its description of the rule was entirely correct. For its part, the VHA will continue to advocate for a return to the days when the Council and Town boards gave an open-minded hearing to each of its citizens, giving respect to those who took the time to participate in their government by speaking out on matters of concern. Because, in the end, there is no sound reason why an effective chair should not be able to manage the flow of comments during a meeting without resorting to an arbitrary 3-minute rule.

VHA’s Response to Town Manager:

From: Jim Lamont <JFLamont@Vail.Net>
Sent: Wednesday, January 5, 2022 2:56 PM
To: Scott Robson <srobson@vailgov.com>
Subject: VHA/JFL/SR: Scott - We were disappointed by your note on the 3-minute rule.....

Scott: We were disappointed by your note on the 3-minute rule. The VHA seeks to promote good governance in which citizens have the right to speak up on important issues and there is a fair and impartial process for decision making. While reasonable minds can differ on a wide range of matters, there should be no debate on how the 3-minute rule has been used in Vail to suppress public comment. As examples, to name just two recent instances, with both Booth Heights and the Residences at Main Vail, the 3-minute rule prevented opponents from having a fair opportunity to present their views. These were not isolated or rare instances, and no discretion was exercised. As a result, the Council and the PEC received only a one-sided view of the issues. Forcing opponents to submit written comments in advance of meetings, while giving proponents unlimited time at meetings where they can react to developments of the moment and take as much time as they want to rebut written comments, is not a fair process and prevents effective public comment. Nor is this necessary since an effective chair should be able to manage the flow of debate and discussion without having to arbitrarily limit opponents to 3 minutes.

You state that the rule is always at the discretion of the meeting chair. That has not been the case in the past with time clocks being used to stop speakers and some chairs being instructed to not allow any speaker more than 3 minutes. While a 3-minute rule might be reasonable for routine matters, it is not for special or controversial matters, especially when the hearing is of a quasi-judicial nature. Suppressing opposing views in those instances denies public input, information and context. It was particularly upsetting in the appeal of the DRB decision on the Residences at Main Vail to see members of the DRB limited to 3 minutes to defend their decision while the Housing Director was given unlimited time to present his views.

We will continue to hope that a desire for good governance will carry the day, and the 3-minute rule will become a relic of the past.

Sincerely,

The Vail Homeowners Association

The Town Mangers E-mail to VHA:

From: Scott Robson <SRobson@vailgov.com>

Date: January 4, 2022 at 11:34:59 AM CST

To: vailhomeownersassoc@gmail.com, Vail Homeowners Assoc <vha@vail.net>, Larry Stewart <lstewart@stfblaw.com>, Jim Lamont <JFLamont@vail.net>

Cc: Kim Langmaid <KLangmaid@vailgov.com>, Ludwig Kurz <ludik@comcast.net>, dcahill.vail@gmail.com

Subject: 3-minute public comment rule

Jim, Larry and VHA Board,

I've read in your latest membership letter a criticism once again of the Town of Vail's 3-minute limit on public comment per item, which is implemented on rare occasion at Town Council meetings, PEC and DRB. If you are not aware, a 3-minute rule for speakers during public comment periods is not unique to Vail. In fact, across Colorado and the US a time limit rule is more common than not within local government and is a rule used for decades as a way to strike a balance between the public's right to address its elected officials, and facilitating reasonably efficient, orderly, and effective public meetings.

There seems to be a confusion within VHA leadership that Town Council, PEC or DRB meetings are forums meant to provide the public an opportunity to present, "all-inclusive verbal arguments" in your words. They are not. These are not court proceedings at which two opposing parties are granted equal time present their arguments in front of a judge. As Jim Lamont knows based on his time in local government, these meetings are at most quasi-judicial hearings during which council/boards consider applicant's requests on various matters, and public comment is solicited as a tool to add context and information for the boards. On virtually any issue, 3-minutes has proven adequate time for an effective and organized speaker to highlight issues that are important to them. Courts have ruled favorably on this issue multiple times as well. *Ribakoff v. City of Long Beach (2018)*

As the VHA knows, it is always at the discretion of the Mayor or the Chair of PEC and DRB during public comment to allow a public speaker to continue speaking longer than 3 minutes if the content is meaningful. And, the public always has the option of providing written public comment for consideration before a meeting which can be as lengthy and comprehensive as the speaker likes. The Town of Vail will continue to place importance on soliciting public comment on a broad range of critical issues important to our community and I can say that after 20 years of experience in Colorado local government, Vail's process for soliciting public input through various platforms meets or exceeds that of our peers. Based on that, the Town of Vail will not be suspending the 3-minute rule for public comment as we feel it's important to allow many speakers to take the floor and express their opinions on a given matter rather than letting only a few stand and dominate a public meeting with no time constraints.

Best,

Scott Robson

Town Manager



srobson@vailgov.com

vailgov.com

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