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Responses to Vail Homeowners Association Questions from Scott McBride

Overall qualifications:

Throughout my 25-year career as an attorney, I've seen that there are two main approaches to conflict: you can battle it out in a zero-sum game, or you can find opportunities for communication, mutual understanding, and negotiation. No attorneys currently sit on Council. Yet, the entire job involves regulatory (~75%) and judicial (~25%) matters. Both are well-suited for an attorney like me. I've spent decades helping organizations communicate in a collaborative manner, understand multiple sides of an issue and find common ground. I'm confident that my experience would help our Council to better navigate current issues and embrace opportunities in the future.

I have found myself in both the majority and the minority, and I understand when I am on the "wrong" side of an issue. I recognize the importance of relying on subject matter experts in appropriate circumstances. The most challenging issues that humans face today require leaders who are oriented to the collective as opposed to the individual. I want to be a public servant who can contribute to the wellness of the whole as opposed to the enrichment of a few (as I learned on a Board of five that represented the interests of 600 owners). My life experiences both personally and professionally have taught me the value of diversity (of backgrounds, thought, etc.) and the necessity for compromise. We move forward when we can meet in the middle, not by rigidly insisting on extremes. I am a strong negotiator and believe in the power of local government to effect positive change in people's everyday lives.

On a question raised by certain voters:

In 2012, I took a pro bono case to write a "friend of the court" brief to the Supreme Court in *Bowman v. Monsanto*. My client was neither the "big guy" (Monsanto) nor the "little guy" (Bowman): my clients included dozens of universities with strong agricultural research programs and the Association of American Universities. Their interest was to implore the Court to protect federally-funded agricultural research. I took the case pro bono at the request of the late Howard Bremer, who was a pioneer in ensuring that the public benefits from federally-funded research at universities in the U.S.

This case was an excellent example of how many of our problems in society are not black-and-white: often there are multiple interests that simultaneously converge and diverge. To effectively address the relationship between the Town and Vail Resorts, it is critical that we have transparent representatives on Town Council who listen to all sides of an issue and recognize their own limitations.

Part 1 (Open Space Preservation): What steps should be taken to prevent the expropriation of public and private open space?

I support the acquisition of the Booth Heights parcel by the Town of Vail. But the adversity, litigation and expense all took a significant toll on the people of Vail, and that is unfortunate.

Condemnation actions, such as that used by the Town of Vail to acquire the Booth Heights parcel, should be used very sparingly. Those should be instances of necessity for the public or open space. For example, in the Booth Heights dispute, evidence was introduced that the Booth

Heights parcel was critical to the bighorn sheep. Examples of public necessity might include easements for ingress and egress.

The cost of purchasing the Booth Heights parcel is significant not only when compared to the Town of Vail budget, but also when compared to the reserves the Town typically keeps on hand. The cost of Booth Heights is even more significant when one considers that, at least on paper, Vail Resorts went from a \$17M outlay with workforce housing to \$17M of income from the sale of a property it had not known it owned for 35+ years. Judge Dunkelman found a failure of leadership on both sides (Vail Resorts and Town of Vail). The end result is correct—the Booth Heights parcel is a terrible place to build workforce housing—but it comes at a significant cost. Public philanthropy has reduced that cost, albeit with some donors having to plug their noses, while knowing that their contribution essentially goes straight to Vail Resorts. And we continue to hope that the Eagle County Commissioners will follow the recommendation of the Eagle County Open Space Advisory Committee to contribute \$5M to the purchase price.

The next Town Council has a real chance to “restart” the Town’s relationship with Vail Resorts on better footing. The timing may be particularly good for this, as the 2023 election could replace up to four of the seven voting members of the Town Council. And Vail Resorts has had three of its six officers turn over in the last year.

I have extensive experience dealing with Vail Resorts, both cooperatively and adversarially. I served on a Beaver Creek HOA for twelve years (600 owners; \$10M budget). Our HOA arose out of a Vail Resorts project in Beaver Creek (Bachelor Gulch). And our HOA’s primary amenities came via a contract with Vail Resorts. Separately, Vail Resorts sued our HOA in a dispute over a deed restriction. Our HOA settled with Vail Resorts well before trial on very favorable terms.

Part 2: Community Housing Policy. Does the Town of Vail community housing policy adequately address issues of design, diversity, equality and inclusion? If not, why, and what corrective actions should be taken?

As I explained at the voter forum put on by the Vail Chamber & Business Association (VCBA), the biggest threat to Vail going forward is the scarcity of land.

Current Town of Vail community housing policy does not adequately address issues of design. For example, the West Middle Creek project has an inadequate number of units in which to start or raise a family. The vast majority of contemplated units are studios or one bedrooms, with only a handful slated for two bedrooms. So, a server making a decent salary in Vail Village in his/her early 30s will find it difficult to start a family while living in Vail. As a result, effort should be made to increase the percentage of units at new properties, such as West Middle Creek, as units in which an employee could start or raise a family.

Lotteries for the purchase and rental of housing/properties should continue, and demographic and socioeconomic information should be gathered from lottery participants, in an effort to improve the participation of under-represented classes and historically marginalized communities going forward. Also, to the extent permitted by law, the Town of Vail should provide incentives within the Vail Indeed program for lenders to lend to underrepresented classes within that program. I lived in Chicago for 21 years. Chicago had housing opportunities, assisted by the federal government, to permit people of historically marginalized socioeconomic classes to live close to their workplaces. Public/private partnerships can assist with that here: to support people working important and/or essential but often lower-wage jobs - such as in the

hospitality, manual labor and healthcare sectors - in living closer to where they work, especially in certain parts of West Vail. Hopefully over time, this will be one of many solutions that contributes to everyone feeling valued by the Vail community and proud to be a part of it. That said, our living arrangements in Vail will look much different than those in Chicago, but similar principles can be applied (e.g., so that housekeeping professionals do not have to travel from Dotsero or Gypsum to maintain homes in Main Vail or East Vail).

Future Town Councils should attempt to ensure that people of all races, ethnicities, religions, genders, sexual orientations, abilities, ages, and socioeconomic backgrounds feel welcome in the Town of Vail. Principles of diversity, equity and inclusion (DEI) should be centered in Town Council proceedings and policies, such as publicizing jobs in all communities and in multiple languages, and by creating not only a tolerant culture but a welcoming culture where diversity is recognized as the strength that it is, and *everyone* can feel a sense of pride in where they live and work. There should be a constant expansion of opportunities for lower-income residents, BIPOC communities, people living with disabilities and people in the LGBTQIA+ community.

Part 3: Community Design and Planning. Have the Town of Vail land use, master planning, zoning and design review regulations outlived their effectiveness? How can they be made effective and uniformly applied to achieve diversity, equality and inclusion by implementing the community's stewardship goals?

If Vail's Stewardship Roadmap is to be followed (and it should be, as it was adopted in June 2023), modifications will have to be made to the Town's land use, master planning, zoning and design review regulations.

The Town of Vail should not freely make exceptions for any building requirements from the Town's rules governing the exterior architectural design of buildings. High-rises and relief from setbacks and density are not the only ways to accommodate workforce housing.

I attended law school at the University of Dayton. The University mostly avoided high-rise dorms. Instead, over time, it acquired many short-rise homes for student housing. It created blocks and blocks of student-houses. The approach taken at the University of Dayton was very effective at maintaining the "look and feel" of the existing neighborhoods.

While the Town of Vail may not be able to purchase a vast number of homes in Vail due to financial constraints, the concept of avoiding high-rise dorms can still be applied. This can be accomplished by, among other things, limiting deed-restricted properties within the Town of Vail to employees who work in Vail. Accommodations can be made for employees who have to commute to multiple towns for their work (e.g., those who work in trades). Grandfathering and grace periods can be used for fairness. At a minimum, such a rule (for employees working within the Town of Vail only) should apply to funds received from the increased Short Term Rental (STR) tax passed in 2021. Additionally, we can look for space for workforce housing not only in West Vail, but also in other parts of Vail where such housing (especially low-rise units) would fit in with the current architecture and surroundings.

Going forward, we can do better to avoid the aesthetic mistakes of the Residences at Main Vail—e.g., in connection with Timber Ridge and West Middle Creek.

Protecting the environment is part of the fabric of our community and is well-represented in Vail's Stewardship Roadmap. The natural environment is, after all, why Vail began as a destination in the first place. We owe it to future residents of, and visitors to, Vail to continue to

protect the natural beauty in our Town by integrating systems of sustainability into our daily lives—both individually and on the town level—such as waste reduction, renewable energy development and resource conservation, among many others.

In advertising and promotional campaigns, the Town Council and Committee on Special Events (CSE) should take care to space events on the calendar, to the extent possible. October 2023 is a good example of events being held on non-peak weekends (and weekdays). This will help Vail follow Its Stewardship Roadmap.

Part 4: Is the Vail community heading in the wrong direction with only the resort remaining?

An inventory of housing occupancies should be conducted to determine what percent of deed-restricted housing in Vail is occupied by those who work within the Town of Vail and those who work down-valley. Every effort should be made to ensure that employees who work within the Town of Vail are occupying deed-restricted housing. This will ease, but not eliminate, the need for additional workforce housing within the Town of Vail. The most important aspect is that funds from the increased Short Term Rental (STR) tax passed in 2021 should be used only for those working in Vail.

Short Term rentals (STRs) have existed for decades in Vail. They are an important component of tax revenue for the Town of Vail. Efforts to restrict them should be carefully implemented, so that property rights on both sides of the issue are respected. And every effort should be used to avoid any lawsuits that have plagued other communities that have implemented extensive restrictions on short term rentals. It also must be recognized that many owners who operate short term rentals in the Town of Vail use the property for a few weeks or months out of a year. Thus, placing restrictions on such short term rentals will not cause those properties to be placed in the long-term rental pool.

Part 5: Revisiting the Vail Vision - Is Vail becoming too urbanized?

There is a serious risk that Vail is becoming too urbanized. Compare, for example, the low-rises in East Vail along the I-70 corridor with the high-rises in West Vail. This question also lies in how we define “urbanization”: this can mean many things, such as overcrowded, overdeveloped, and under-resourced.

The charm of Vail is due, among other things, to the beauty of nature that surrounds us and the beauty of the buildings that have been carefully planned and built. This includes sight-lines from, around, and over human-made structures. We can get everything right for years, but if we have even a short term lapse in judgment, we can overbuild in a way that cannot be undone for decades, if ever.

We should not have a wall of high-rise worker dormitories in Vail (whether they be in West Vail, Main Vail or East Vail). To avoid further high-rises in Vail, there are locations for workforce housing outside the Vail town limits. Such locations include the Down Junction project, which is still in its early stages. Other locations outside the Vail town limits (e.g., Eagle-Vail, Avon) also may be suitable. Consider, for example, the land on the north side of I-70 near exit 168 in Avon.

The Town Council should also consider open spaces and real estate acquired through the Real Estate Transfer Tax (RETT) to be used for workforce housing. Because the transfer tax was passed by the Town Council, not a public vote, it would make sense to revisit the issue of

whether RETT funds could also be used for workforce housing. (I recognize that workforce housing was part of the originally proposed RETT in 1978, which a public vote rejected). It is notable that the RETT tax had its three highest years of revenue in 2020 through 2022. While 2022 saw a drop off, that trend is likely to continue, given the increased property values (and costs) in Vail.

Part 6: Why Is Vail gridlocked by indecision and factional infighting?

Vail is not alone with the struggle against gridlock: it seems that our nation - and world - has never been this polarized. Trust in public institutions is at an all-time low, and social media and misinformation are all magnifying the culture wars, political chaos and divisive rhetoric permeating our daily lives. This is also an incredible opportunity for people to rise to their best selves and do something to improve their corner of the world. This is a reason why I'm running for Town Council: I have skills in negotiation, a strong moral compass and a love of Vail, and these things are driving me to be part of the solutions to very serious, complicated problems. Polarization and paralysis are not going to move us forward. Moderate, pragmatic people in the middle are the leaders we need right now. Factional infighting can best be avoided if the Town Council members first set common goals—such as to avoid or minimize borrowing to, for example, complete the Vail Civic Center or Hub site. To complete the project, philanthropic interests also will have to be involved, especially when one considers the depletion in Town reserves as a result of the Booth Heights purchase.

On the issue of Dobson Ice Arena and the proposed Civic Center, the following need to be considered. First, Dobson should serve two purposes: (1) community event space and (2) revenue stream. The Town of Vail should do whatever it can to spend within its means and avoid borrowing to complete the project. One positive in this regard is that the Town has \$36M in TIF money that must be spent (or forfeited) by June 2030, which is most likely to be used for this project and possibly others.

Additionally, all efforts should be made to extend the usability of the TOV's municipal complex through improvements, instead of rebuilding or moving the municipal complex. This may involve updating electrical and A/V capabilities of the current municipal complex, which is likely to be much less expensive over the next several years than a rebuild or a move. If the TOV's municipal complex can be incorporated into the Civic Center or Hub site, extension of the usability should be extended through completion of a suitable location within the Hub.

Conclusion:

To effectively address the relationship between the Town and Vail Resorts, it is critical that we have transparent representatives on Town Council who listen to all sides of an issue, recognize their own limitations, and consult subject matter experts when appropriate. We have a real chance to “restart” our Town's relationship with Vail Resorts, and incredible opportunities to invest more in our community and build infrastructure that reflects the caliber of our world-class town.

The people who love Vail deserve nothing less. I would be honored to serve as your representative on Vail Town Council.

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