



The Vail Golf Course - area where outdoor commercial events are proposed to occur

Vail Homeowners Association Newsletter

News, Analysis, and Commentary for Vail Homeowners

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The Golf Course Clubhouse Lawsuit

A new judge, the fourth, has been assigned to decide the ongoing legal dispute between the Town of Vail and a group of neighborhood property owners over the redevelopment of the Vail Golf Clubhouse and its environs that has been ongoing since October 2012. In general, the neighborhood group opposes the design and proposed uses in the Town's redevelopment plan claiming that they are incompatible with their adjacent residential properties and the protective covenants providing for the operations of the Golf Course. The judge's ruling is expected within the next several weeks. It is by no means the final decision as further appeals are possible.

**Version of Club House Plan with
commercial event rooms**

Town Council Electioneering Dispute

In the meantime, in recent months, the lawsuit seems to have spawned a new dispute between the parties. This new dispute involved Town charges over electioneering associated with last November's regular election for vacancies on the Vail Town Council. This has not been one of Vail's proudest moments and could have a chilling effect on those who attempt to exercise their legitimate rights to participate in local elections.

By way of background, some Golf Course neighborhood property owners formed a committee under the name of the "Citizens for Responsible Government" (CRG). The purpose of the committee was to place political advertisements in the local newspaper (Vail Daily) recommending a slate of candidates for open seats on the Town Council. Colorado election laws require that when such a committee is formed, it must be registered with the "appropriate officer". At the time, the Town of Vail person serving as the "appropriate officer" and Designated Election Official was in an "acting" capacity, as the Town was involved in a personnel change due to health related matters. According to a [complaint filed by the CRG committee](#), its representative sought to fulfill the requirement to register their intent to fund advertised endorsement of a group of Council candidates with the Town of Vail and asked for any additional requirements to be made known, but due to an apparent misunderstanding on the part of the Town's Designated Election Official resulting in a lack of communicating clear procedures, the CRG allegedly missed a filing deadline.

Vail Town Council Chambers

Without considering whether the missed deadline was due, at least in part, to the Town's own conduct and without written notice to the CRG, the Town levied a \$50 per day late filing

penalty. This was done notwithstanding that the Town's Designated Election Official has the latitude to weigh the circumstance of the deadline violation as to whether a penalty is warranted. The CRG saw this as a retaliatory action by the Town in response to the ongoing litigation over the Golf Course Clubhouse. If so, this may be the first instance of the Town of Vail responding so aggressively to an alleged non-compliant election filing procedure. It is emblematic of the intensely adversarial nature of the redevelopment issues that involve the Town's own financial investment in the Clubhouse and calls into question the appropriateness of the exercise of its regulatory/enforcement powers.

The local newspaper was made aware of the missed deadline by Town officials. The path of communications among Town officials that led to this disclosure to the press is not currently known. The disclosure caused the matter to become a campaign issue, when a day prior to the election, the [newspaper printed an article](#) detailing the CRG's alleged late filing and also listing campaign finance contribution information on all the candidates, including unrelated contributions by individuals on the CRG committee. The CRG electioneering activities, were prominently featured in the newspaper article along with the names of their committee's favored Council Candidates.

The CRG referred the matter of the alleged late filing fee to the committee's attorney. The Town's Designated Election Official, without first providing written notice of the violation to the CRG committee, referred the matter to the office of the Vail Town Attorney. The conflict escalated between attorneys representing the CRG and the Town of Vail over procedural matters, resulting in the CRG filing the aforementioned election complaint with the Colorado Secretary of State.

Contained in the CRG complaint was an allegation that the Town of Vail's administration of the procedures for the filing of the paperwork establishing them as an Independent Expenditure Committee was manipulated in retaliation for the ongoing dispute involving neighborhood property owners over the Town's redevelopment of the Golf Clubhouse. The attorney representing the Town in the Independent Expenditure Committee filing dispute is also involved on the Town's behalf in the ongoing litigation over the proposed redevelopment of the Golf Clubhouse.

The CRG's registration as an Independent Expenditure Committee, as is alleged in its complaint, was in part frustrated by the Town's "acting" Designated Election Official, causing the committee to miss the filing deadline, and the issues were further exacerbated when the matter was referred to the Town's attorney for a decision, contrary to procedure prescribed by State election law. State election law requires that decisions over filing disputes are to be made by the Town's appropriate officer, not to be delegated to others, including the Town's attorney.

The dispute was heard by an [Administrative Law Judge \(ALJ\) for the State who ruled](#) that the Town of Vail did not comply with the applicable procedures because the appropriate officer, the acting Designated Election Official, rather than deciding the issue by giving written notice, referred it onto the Town's attorney. While the ALJ found no evidence that the Town's appropriate officer acted with intent to harass, he did find that she failed to properly give notice to the CRG's for its alleged failure to comply with committee registration requirements.

Lessons Learned

Perhaps some of the lessons learned are that the Town should first officially notify the appropriate parties that they have run afoul of election procedures, before they unofficially inform the press of oversights and risk affecting election outcomes. The benefit of the doubt should be given to those who have taken the initiative to engage in the political process. Many people who become involved in political activism are novices; the governing authorities should not discourage their participation by using legal technicalities of the election process to intimidate their opponents. More importantly, the authorities need to resist demonizing anyone who does not agree with them, so much so that they fear retribution for making their required filings, or from being involved in the political process.

Voter "Initiative Election" to Stop the Golf Course Clubhouse Project Remains an Option

According to research conducted by critics of the project, the redevelopment of the Clubhouse can still be brought back before the voters. There are those who believe that the Town, when it first brought the issue of funding before the voters, was not sufficiently transparent in articulating the full scope and consequences of the Golf Clubhouse redevelopment proposal. The Town of Vail decision with respect to the redevelopment proposal could be overturned through an "Initiative Election". According to the [Town Charter](#), an [Initiative Election](#) requires at least 15% (639) of those registered to vote (4,257) in the [last Town regular election](#) (November 2013) to sign a petition that contains the exact language to be placed on the ballot.

Vail Recreation District Board Election in May 2014

The controversy surrounding the redevelopment of the Golf Clubhouse may also have a "spill over" effect in the upcoming Vail Recreation District Board of Directors election to be held on May 6, 2014. The Vail Recreation District (VRD) manages the Golf Course and Clubhouse under a management lease from the Town of Vail, which owns the Clubhouse and the land on which the Golf Course is located. The VRD is run by a 5 member Board of Directors elected by Colorado registered voters who reside in or own taxable real or personal property within the District. Spouses or civil union partners of owners of taxable real or personal property within the VRD are also eligible to vote as long as they are registered to vote in Colorado. The District's boundary encompasses the area from East Vail to the Vail Town boundary on the west, near Dowd Junction. A considerable number of those eligible to vote in the VRD election are from the Denver metropolitan area (Front Range). However, typically voter turnout is low, both from local residents and those eligible from throughout the state. Also typically, many choose to vote by absentee ballot. But this year to vote by absentee ballot in the VRD election, each voter must submit an [Application for Absentee Ballot](#) to the [District's Designated Election Official](#); there is no automatic "Mail-in Ballot" form sent to all voters as will be done for the Eagle River Water & Sanitation District (ERWSD) election this year. It remains to be seen whether the Golf Course Clubhouse issues and related disputes will cause a larger voter turnout.

The Vail Homeowners Association urges that the foregoing electioneering dispute is not repeated in the upcoming VRD, ERWSD or any future Town of Vail election. Those engaged in political activities need to respect the Colorado election laws. These laws create a firewall that protects the integrity of the Designated Election Official from being, wittingly or not,

drawn into the political process by elected officials, governmental staff, or electoral opponents. It is the goal of the Association to encourage transparent and fairly conducted elections on behalf of all that are eligible to cast a ballot in fulfillment of their democratic obligation.

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