

# VAIL HOMEOWNERS ASSOCIATION

***Board of Director/Members/Constituencies: To keep you up to date on the fast moving developments on the appeals of the Booth Heights housing development, here is a letter that was sent yesterday to the Town Council by Larry Stewart.***

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September 25, 2019

Mayor and Town Council  
Town of Vail  
75 South Frontage Rd  
Vail, CO 81657

RE: Booth Heights Appeals

Dear Mayor and Town Council:

I have concerns about the direction in which the Town is heading in the appeals of the PEC Booth Heights decision that may constitute a denial of due process to the appellants. There are apparently seven appeals in which the appellant(s) has been determined to have standing. It appears however from the standing letters that the Town may be trying to use those letters to dictate the issues that can be raised by the appellants; in the case of these appeals, in every case to limit the issues that can be raised.

If that is true, it is wrong and would be a violation of the Town Code, contrary to all other forms of appeal and would amount to a denial of due process. If that is happening, whoever is directing it either doesn't know what they are doing or is engaged in willful malfeasance. I have handled hundreds of appeals in both state and federal courts, including up to the U.S. Supreme Court and nowhere has standing ever been held to or been allowed to limit the issues that can be raised on an appeal.

It is fundamental to any appeal process that all issues can be raised and will be decided; otherwise there is no or only a limited right of appeal and that would violate due process. There is also no basis in a proper appeal process for an Administrator to decide what can and cannot be raised in the appeal. Indeed, no such thing is authorized in the Town Code. The only authority for the Administrator in the Town Code is to decide whether an appellant has standing; the Administrator has no authority to decide which issues can be raised or to in any way limit the issues.

In the case of the seven appeals of the Booth Height decision, now that the appellants have been found to have standing, they should have the right to raise any issue that goes to the PEC decision. That would include whether there was appropriate mitigation of the harm to the bighorn sheep; whether the development was compatible with the surrounding neighborhood, whether the mass and density of the project met the design criteria; whether there was adequate parking; whether the project would adversely impact traffic infrastructures; whether the visual pollution of the project at the entrance to Vail violated the design criteria; whether various aspects of the project violated the Town

Code and Plans; and whether the decision was flawed because of a conflict of interest of one of the participants. Anything less would be a denial of due process.

Reportedly there are another 15 cases in which the Administrator has found that there is no standing to pursue an appeal. I have not yet seen those determinations of no standing as they are being hidden from public view. Those may raise different process issues.

It has also been indicated that the Council may use an Executive Session to decide appeals of standing determinations or to adopt rules for the appeals on the merits. That would also be wrong. The public has a right to observe and be heard in all important decisions. That is a fundamental guarantee of the Town Charter. Nothing could be more important for these appeals. Standing decisions decide at the threshold whether an appeal can go forward. In all other judicial processes, they are always treated as one of the appeal issues and are always decided by the appellate court as part of the overall appeal process. Standing issues should be presented in full public view, not considered and ruled on in secret. Rules can impact the ability of parties to present their cases. Rules should be discussed and debated in the light of day; not in a secret meeting for which there is no public scrutiny.

Finally I point out a fact that you must be aware of—the town has refused to produce the names of the appellants or their appeal documents or standing determinations absent a CORA request. These are public records and the town has no right to hide them from view. This is a matter that should be immediately corrected.

Very Truly yours,

Larry Stewart

*In addition here is a letter to the editor that appeared in yesterday's Vail Daily.*

## **Letter: Time for the Vail Town Council to step up**

Vail Daily Opinion | September 25, 2019

The Town of Vail faces a monumental decision on the Booth Heights development and so far the town council has ducked the issue; first when the property was up for rezoning in 2017 and then [last month in refusing \(on a 4-3 vote\) to call up the decision of the Planning and Environmental Commission](#) to approve the development. Now [there are citizen appeals of that decision](#) and the future of the development and the bighorn sheep is once again in the lap of the town council.

This should not be a tough issue. Protection of the natural environment is supposed to be a core function of the town government. And this project threatens iconic wildlife — the town's bighorn sheep herd. That is why the community has rallied together like never before. And that doesn't even count that this project would be a huge eyesore at the entrance to Vail and incompatible with East Vail neighborhoods.

The project was approved by the PEC on a 4-3 vote but that should count for little since one of those voting in the majority was a Vail Resorts employee who cast his vote after VR sent a corporate officer and the COO of Vail Mountain to urge approval of the project.

It's not like there are no other options to build affordable housing in Vail; there is Timber Ridge, West Middle Creek, the former Roost Lodge and Ever Vail to name just a few. While Triumph and/or Vail Resorts has a "right of use" to this property, that doesn't mean that it has to be developed in a way that would be massively out of character with East Vail and which has the potential of being an extinction event for the resident bighorn sheep herd.

So yes, it is now time for the town council to step up. A hearing has been set before the council on Tuesday, Oct. 15. This needs to be a full hearing of all involved issues, not a one-sided presentation in which public input is arbitrarily limited to just a few minutes like it was at the PEC hearings. The council also needs to hear from the independent experts. Only in those ways will the real aggrieved parties — the bighorn sheep — get a fair hearing.

And, on the subject of a fair hearing, one member of the council — Greg Moffet — should be disqualified from any further involvement. Back on June 25, when little was known about the project, Mr. Moffet announced in this paper in glowing terms that he supported this project. He is not, therefore, an impartial member of the council to judge the merits of the proposal.

**Larry Stewart**

**East Vail**

***Here is the letter from Greg Moffet and others which appeared in the Vail Daily on June 25<sup>th</sup>, 2019.***

## **Letter: Support for East Vail housing project**

Vail Daily - [Opinion](#) | June 25, 2019

Triumph Development has filed an application with the town of Vail's Planning and Environmental Committee for approval to build 61 workforce and 12 market-rate homes on the East Vail parcel that was rezoned last year to the town's housing district. This new neighborhood is proposed to be a mix of rental apartments and for-sale townhomes to serve a variety of residents, including our front-line workforce and families seeking townhomes similar to the recently completed Chamonix community.

Triumph submitted a development application of May 28, 2019, that conforms to the town's housing district uses by right. The application seeks neither variances nor financial subsidies from the town. Triumph and a wildlife biologist have developed a comprehensive wildlife mitigation plan with extensive measures designed to protect and bolster the site's bighorn sheep population. The site plan has been designed through measures to create more open area that will actually enhance more than 15 acres of private property, formerly zoned to allow the construction of duplex home sites. Rules and regulations have been developed for residents to minimize off-site wildlife impacts in partnership with the town of Vail.

The Eagle County Housing Task Force has heard several presentations by Triumph Development and supports this critical project **without any reservations**. This project will have a substantial contribution to the town of Vail's 2027 plan that established the goal of creating 1,000 new homes for locals between 2017-2027.

The Eagle County Housing Task Force Members:

**Bobby Lipnick and Michael Hazard (co-chairs)**

**Mick Daly**

**Michael Glass**

**Elyse Howard**

**Scot Hunn**

**Morgan Landers**

**Greg Moffet**

**Molly Morales**

**Chris Romer  
George Ruther  
Kim Williams**

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