

# VAIL HOMEOWNERS ASSOCIATION

July 13, 2020

## CALL TO ACTION

### Extremely Important Town Council Public Hearings, July 21 & August 4

**On these dates there will be important public hearings concerning protection of the bighorn sheep and preservation of TOV open space. Both meetings will begin at 6 p.m. and while COVID-19 rules will be in place, you will be able to appear before the Council and make your views and opinions known. This is EXTREMELY IMPORTANT because the Council does respond to public input.**

*VHA Editor's Note - 07/16/20. Based on the record as it existed at the time, we incorrectly identified the Vail Local Housing Authority as the proponent of the Alternative Housing Sites Initiative. Since then we have learned that the Initiative is the work product of the Town Council. That was not apparent earlier since the Town Council's work was done in executive session.*

**What's at Stake.** These public hearings are for the purpose of reviewing a draft Memorandum of Understanding (MOU) which is intended to set forth the parties' objectives in replacing the Booth Heights development with one at Middle Creek. Unfortunately, it goes far afield and once again puts the sheep in jeopardy. It also proposes invading open space lands, namely the Donovan Park Middle Bench.

If these are matters that concern you, the VHA urges you to read on. Regrettably, this is a lengthy document but that is because the proposals are complicated and convoluted, and it, therefore, takes time to explain them.

**The MOU.** Much of the draft MOU outlines a straightforward land swap in which the Booth Heights property would be exchanged for an alternative housing site at Lot 3 of the Middle Creek property where Triumph can construct an equal number of housing units (144 or more units). The TOV will in turn receive title to the Booth Heights property, and it, along with a large swath of USFS adjacent property, will be restored and enhanced as sheep foraging land, all in all, a win-win proposition for all involved and importantly for the sheep. As enticement for the deal,

certain costs will be funded by the TOV, and Triumph will get a right of first refusal to redevelop the Timber Ridge Village Apartments.

If that had been the extent of the MOU, it would have been the “win-win” deal that was proposed by the Town Council, one which the VHA would have enthusiastically supported. But instead of just dealing with the proposed land swap, the draft of the MOU seeks to sweep in the Vail Local Housing Authority’s (VLHA) “Alternative Housing Sites Initiative” which would turn a straightforward land swap on its head, making the MOU a VLHA housing plan that puts the sheep in jeopardy and threatens development of the Donovan Park Middle Bench.

**Sheep and Donovan Park Middle Bench in Jeopardy.** The sheep are put in jeopardy by delaying the transfer of title to Booth Heights until 450 units of additional housing have been built, failing which, Booth Heights would still be built even if Middle Creek is built and occupied. When the MOU was explained at last Tuesday’s Town Council meeting, there was no mention that either Vail Resorts or Triumph wanted to withhold transfer of title. That’s no surprise because neither Vail Resorts nor Triumph is looking for this deal to be a matter of negative publicity. So, what’s left is that the current draft is something that has been dreamed up by housing advocates as a means of forcing the approval of the housing projects set forth in the VLHA Alternative Housing Sites Initiative, including putting housing on the Middle Bench of Donovan Park. And to make sure that happens, title to Booth Heights would be held hostage until the VLHA’s Alternative Housing Suites plan was accomplished.

**The Alternative Housing Sites Initiative (AHSI).** The AHSI is a little-known five-year plan of the VLHA to rezone and/or develop certain properties for employee housing. It has not been the subject of any public hearing nor has it been officially approved by the Town Council. It does, nonetheless, include the Middle Bench of Donovan Park as a future housing site. Other sites targeted for rezoning and/or development in that plan are the Timber Ridge Village Apartments, a CDOT East Vail site and West Middle Creek.

The AHSI was developed because the VLHA is significantly behind in its plan to create 1,000 housing units by 2027, and the VLHA saw the sheep situation as an opportunity to force agreement to the AHSI projects by incorporating them into the MOU and tying them to the transfer of the Booth Heights title. Thus, even though the AHSI has not been formally approved, if it slips by as part of the MOU, the VLHA will be able to claim that it has been adopted and that its provisions must then be followed; i.e., it could, for example, “stack the deck” for the rezoning of the Middle Bench of Donovan Park. At the very least, it would force approval of the AHSI projects since, if the community didn’t go along with future housing projects proposed by the VLHA up to 450 units, the transfer of the title to Booth Heights would not happen, and the sheep would be put, once again, in jeopardy.

**How the AHSI Is Tied Into the MOU.** The AHSI is tied into the MOU both by its title, “MEMORANDUM OF UNDERSTANDING ALTERNATE HOUSING SITES INITIATIVE”

and the second Whereas clause of the MOU which states that it is intended to “implement the Alternative Housing Sites Initiative.” As acknowledged at Tuesday’s Council meeting, the purpose of that is to create a long-range housing plan as part of the MOU. But the tie-ins are much more extensive and insidious.

One would think that when the Middle Creek development is completed (by November 2022) title to the Booth Heights property would have also been transferred to the TOV. But to ensure that there is no interference with the AHSI projects, the proposed MOU would delay title transfer until the acquisition of a net 400 additional new housing units (a number that was upped at last Tuesday’s Council meeting to 450 units) which must include completion of the Timber Ridge redevelopment (with at least 100 additional units).

Since the Timber Ridge redevelopment is not scheduled to be finished until October 2024 and who knows when the TOV will reach an additional 450 housing units (the new Middle Creek project and Timber Ridge are only projected to yield an additional 244 units), title transfer would be delayed until probably 2026 or later. All during that time, title to the land and protection of the sheep could be held hostage to prevent opposition to VLHA’s plans because, if they are not completed, Booth Heights would then be developed. Indeed, that very scenario is expressly provided for in the MOU. This is the very thing that the land swap was supposed to prevent.

The specific provisions of the draft MOU that implement this plan are: ¶¶ 4(k)(ii) & (iii) and ¶ 5(g) *Step Seven* which delays transfer of title until the completion of both the Timber Ridge redevelopment (with 100 additional units) and the TOV’s acquisition of a net 400 additional new housing units, ¶ 4(d) which provides for a transfer of title never taking place, even if the Middle Creek development is completed, and for Vail Resorts to ultimately also develop Booth Heights, ¶ 3(c)(v) which provides that one of the desired outcomes for Vail Resorts is the use of Booth Heights to advance the VLHA goal of achieving 1000 housing units by 2027 and ¶ 5(c) *Step Three* which provides that, as part of the land swap, the TOV will seek rezoning to increase the amount of Housing (H) District property. As already noted, the Middle Bench of Donovan Park is on the AHSI list for rezoning.

**Cart Before the Horse.** This scheme reveals a lack of trust in the normal processes of government. There is no reason that the VLHA could not have already proceeded with the AHSI plans on its own, separate and apart from the Booth Heights/Middle Creek swap, except that housing advocates do not trust the process. As a result, the community is now confronted with an MOU that seeks to force rezoning and development approval by holding up title transfer and threatening the development of Booth Heights and the Donovan Park Middle Bench even if Middle Creek is built and occupied.

**Inclusion of Middle Bench Particularly Egregious.** The inclusion of the Donovan Park Middle Bench in the AHSI plan is particularly egregious given its history. That land was purchased by the TOV in 1978 to be held as open space. The funds came from RETT funds that were

dedicated to the acquisition of open space land. In keeping with that purpose, the land was zoned “Agriculture and Open Space.” Further reinforcing the intent that this property was to be open space in perpetuity is the Town 1985 Master Plan for Ford and Donovan Parks. As stated in that Plan, its purpose was to see to it that those places “will be protected from development and will serve to maintain the quality of life for residents and visitors to the Vail area.”

This is not the first time that an attempt has been made to convert this property to housing. In the late 1990s, there was a proposal to put employee housing on the Middle Bench. Town residents rose up and litigation ensued. That litigation was finally resolved when the Town relented and agreed to abandon its plan. There was even a plan to put a cemetery on the Middle Bench, but again, Town residents rose up to stop it.

The VLHA, however, decided to ignore this history and, once again, proceed with trying to put employee housing on the Middle Bench. It is for that very reason that the VHA has requested that the Open Space Trustees and Town Council designate the Upper and Middle Benches of Donovan Park as “Designated Open Space.”

**There is No Need to have Another Controversial Dispute.** Rather than another controversial dispute, the VHA urges that the Town work with the community to achieve its goals. The VHA believes there is broad agreement on the need for more affordable housing and that there would be support for a comprehensive plan to achieve that goal, including the redevelopment of Timber Ridge. The VHA also believes that such a plan could be achieved without placing the sheep or the Middle Bench of Donovan Park in jeopardy.

There is no reason why the Town could not adopt an Affordable Housing Master Plan that would provide for the rezoning and/or development of affordable employee housing at the specific properties that have already been identified: Timber Ridge, West Middle Creek, the CDOT East Vail site, and the Public Works Maintenance facility. Specific goals for each site have already been identified which could be incorporated in the Master Plan. Such a Master Plan would be an official commitment to those projects which could then be executed at times most advantageous to the Town’s needs and capabilities. For example, if demand for housing plummets in the wake of the virus pandemic, Timber Ridge could be postponed until housing demand returns which would allow more time to pay down existing debt. Such a Master Plan could have already been proposed, and there is no reason it could not now be adopted. And such a plan would eliminate the need to postpone title transfer of the Booth Heights property or continue to seek to use the Middle Bench of Donovan Park as a possible housing site.

If housing advocates still didn’t trust the process, even with the adoption of an Affordable Housing Master Plan, they could urge the Town to immediately proceed with rezoning of the West Middle Creek site. The VHA believes that there would be community support for that rezoning which would demonstrate assurance that the plan would be executed as presented, another step that would alleviate the need for delaying the Booth Heights title transfer.

**Changes Needed.** To make the MOU the “win-win” proposition that was originally proposed and to eliminate another potentially huge controversy, the VHA urges that following changes be made:

1. **There should be no delay in the transfer of title.** The Booth Heights title should transfer no later than when a C/O issues for the Middle Creek development. Anything less is a recipe for disaster. Paragraphs 4(k)(ii) & (iii) [should be “iii” and “iv” as there are two “ii”] and ¶ 5(g) *Step Seven*, concerning the delay in the transfer of title should be deleted and replaced with a provision that title shall transfer no later than on the issuance of the Certificate of Occupancy for the Middle Creek development.
2. **The MOU should NOT be used to create a separate housing plan.** The MOU should address only the swap of Middle Creek for Booth Heights. The AHSI should not be incorporated into the MOU. The title to the MOU should be changed to just “Memorandum of Understanding,” and the reference to the AHSI in the second *Whereas* clause should be eliminated. In addition, ¶ 3(c)(v) which provides that one of the desired outcomes of the MOU is the use of Booth Heights to advance the VLHA goal of achieving 1000 housing units by 2027 should be deleted. To be clear, the VHA does not object to the provision giving Triumph Development a right of first refusal on the redevelopment of Timber Ridge; it just believes that the provisions for that redevelopment should be in a separate plan.
3. **There should be no provision to allow Booth Heights to be developed if Middle Creek is built.** Paragraph 4(d), which provides that even if the Middle Creek development is completed Vail Resorts could ultimately also develop Booth Heights, should be deleted.
4. **The MOU should not be used to lay the groundwork for rezoning of other properties.** Paragraph 5(c) *Step Three*, which provides that as part of the land swap process, the TOV will seek rezoning to increase the amount of Housing (H) District property, should be deleted. The TOV is free to seek rezoning of any property it owns but that should not be tied into the MOU or be the subject of any contention that the rezoning was pre-approved by the approval of the MOU.
5. **Extension of development rights should only be until the completion of the Middle Creek development.** Paragraph 3(c)(ii) should be amended to provide that the extension of development and vested rights is solely for the purpose of facilitating the land swap and shall not extend beyond the completion of the Middle Creek development.
6. **Booth Heights should be declared to be “Designated Open Space.”** The MOU should also provide in ¶ 3(a)(ii) that once the TOV acquires title to the Booth Heights property it will immediately take the necessary steps to have it designated as “Designated Open Space”

land pursuant to § 13-11 of the Town Charter. By so designating the property that will, absent a vote of the Town citizens, take it off the table for future development schemes.

7. **The Middle Bench of Donovan Park should not be developed.** In addition to clearing up the provisions of the MOU, the Town Council should also make clear that the Upper and Middle Benches of Donovan Park should not be rezoned or otherwise developed in any way. Those properties should also be designated as “Designated Open Space.”
8. **The Town should pursue other means for a Housing Plan.** The Town should proceed with the development of an Affordable Housing Master Plan to designate the steps going forward to achieving the 2027 Housing Plan.

**Not Deal Breakers.** None of the above changes to the MOU or the protection of Donovan Park would be deal breakers since none affect the rights of Vail Resorts or Triumph Development. All only affect the plans of the VLHA which would remain free to pursue its goals as it sees fit and proper.

**These Will Be Difficult Meetings.** These issues are extensive and complicated and cannot be covered in any meaningful way in only a few minutes. It is hoped that the Mayor will exercise discretion in applying the three-minute rule to allow the community to fully discuss the issues. Every citizen has the right to be heard, so the VHA urges that you get prepared to make your points. You will be able to appear and personally address the Council (there will probably be a sign-in procedure for that purpose).

**What You Need to Do.** All need to be involved. Everyone should review the draft MOU. It is an attachment to item 6.2 on the TOV July 7<sup>th</sup> agenda, found at: <https://vail.novusagenda.com/agendapublic/MeetingView.aspx?MeetingID=1129&MinutesMeetingID=1&doctype=Agenda>.

If you don't want to speak or cannot make the meeting, you can send written comments in advance of the meetings to the Town Council and the Town Manager at: [towncouncil@vailgov.com](mailto:towncouncil@vailgov.com) and [srobson@vailgov.com](mailto:srobson@vailgov.com). Even if you plan to attend, you may still want to submit written comments. For all who can do so, please mark your calendars for 6 p.m. on **July 21** and **August 4** and plan to be present to make sure that the MOU that is approved by the Council truly reflects the purpose of this proposal and does not contain any unnecessary provisions or other agendas that could have disastrous consequences down the road.

VHA welcomes your participation and support.  
For membership information, please send an email to [vailhomeownersassoc@gmail.com](mailto:vailhomeownersassoc@gmail.com) and for [subscriber contributions](#).

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