

# VAIL HOMEOWNERS ASSOCIATION

## The New Town Government New Jeopardy for the Bighorn Sheep? An Agenda for Going Forward Mail Balloting And Getting Involved

December 2, 2019

STATE OF COLORADO)  
COUNTY OF EAGLE ) ss.  
TOWN OF VAIL )

JUDGES CERTIFICATE OF VOTES CAST

BELOW IS THE PRELIMINARY ABSTRACT OF VOTES CAST  
REGULAR MUNICIPAL ELECTION  
HELD NOVEMBER 5, 2019  
FOR PRECINCT No. 1

At an Election held in Precinct No. 1, Town o Vail, Eagle County, State of Colorado, on November 5, 2019, at the Regular Municipal Election held in the Town of Vail, Colorado, the following persons received the number of votes annexed to their respective names for th office of Town Council, to wit:

\*The three candidates receiving the highest number of votes are elected to four-year terms and the fourth candidate receiving the next highest votes is elected to a two-year term.

Pete Siebert Jr	Four Hundred Ninety-Six	496
Barry Davis	Three Hundred Seventy-Four	374
Brian Stockmar	Five Hundred Forty-Five	545
Kim Langmaid	Seven Hundred Twenty-Nine	729
Jen Mason	Six Hundred Seventy-Eight	678
Kevin R. Foley	Seven Hundred Sixty	760
Karen M. Perez	Two Hundred Seventeen	217

### I. The Election Results and the New Town Government.

Kevin Foley, Kim Langmaid, Jen Mason and Brian Stockmar were the winners in the recent Town Council election. Foley, Langmaid and Mason received four-year terms; Stockmar was elected to a two-year term. They join incumbents Dave Chapin, Jenn Bruno and Travis Coggin to serve as the new Town Council until November 2021. Following the election, the Council

unanimously elected Dave Chapin as mayor and Kim Langmaid as mayor pro tem. The VHA offers congratulations to all and looks forward to working with them.

In addition to a new Council, the election saw unusually strong public advocacy for the environment and the East Vail bighorn sheep, and it resulted in strong majorities in favor of the winning candidates. Many believe that the election was a mandate for a refocusing of Town priorities. In that connection, the VHA believes that there are some immediate steps that should be taken to move forward, but first, there is the matter of the bighorn sheep.

## II. New Dangers for the Bighorn Sheep?



**The Bighorn sheep recently gathered on Frontage Road**

The public is already rightfully alarmed about the future of Vail's beleaguered bighorn sheep. Now a proposal from the Town of Vail to expand the Public Works bus maintenance facility may create new dangers for the sheep. That is because the facility sits in the middle of the bighorn rams' winter habitat, and, as of yet, the Town has not proposed any precautions for the sheep or anything to mitigate the impact of that expansion.

The Town's proposals were first presented at a PEC meeting on November 25<sup>th</sup>. Although the proposals were only made public a few days before, the VHA raised a number of concerns about the project which informed some of the discussions at that meeting. No approvals were sought then, and commissioners raised a number of their own concerns, most of which centered on the bighorn sheep. The proposals have now been continued to December 9<sup>th</sup>.

**What's at stake.** Phase I of the project, which is what the Town is now proposing, involves expansion of the facility footprint by cutting into the slope along the north side of the property, the construction of a large retaining wall to hold back the slope and allow that expansion, the construction of a large rock fall berm above the retaining wall and a large new shop building (300% larger than the current building). Future phases of the redevelopment call for a large hillside solar farm, more administrative buildings and potentially 100+ additional housing units. Additionally, it has been reported that the purpose of the facility will be expanded to include

other Town services, such as certain aspects of the police and fire departments and provisions for the Vail Rec District.

As everyone now knows, the areas surrounding the Public Works site are the winter foraging range for the rams of the East Vail herd. The rams have been using that area for many years, probably going back before the founding of Vail. The health and ultimate survival of the East Vail herd is directly dependent on the health and wellbeing of those rams.

**Loss of Bighorn rams habitat.** Unquestionably, there is going to be loss of ram habitat from this project—from the Phase I changes but also, probably, from future follow-on development--it's just not yet clear exactly how much habitat will be lost. From what we now know, there could be direct losses of somewhere between 1 to 6 acres of prime foraging land and even more significant losses in the “zone of influence” that would result from increases in human activity at the site. If this development is allowed without large-scale mitigation, it will result in the doomsday “double squeeze” scenario (from the west by the Public Works project and from the east by Booth Heights) that the CPW said could result in the extermination of the sheep.

**Has there been proper planning?** While there are site plans, no information has been provided about the uses of the site. Presently, it is a public works site, but it seems that some want to make it also a housing site and general services site. We don't know, for example, how many people will ultimately be working at the site, what other Town functions are planned for the site, how many people will be living at the site or, as a result, how much additional traffic will occur at the site. These are all matters that will effect the impact on the sheep. They are also matters that should be the basis of conditions of approval for the project. If these subjects have been planned out, the information should be disclosed. If they have not, then this project should be postponed until such time that proper planning has been completed. This should not be a matter of a blank check approval whereby the Town can load this site without limit. To be clear, the VHA does not oppose redevelopment of the bus maintenance facility; it only opposes piecemeal, haphazard development that does not provide safeguards and mitigation for the sheep.

**The so-called mitigation plan is no plan.** The Town's plans do not contain any area specific mitigation measures because, according to the Town's biologist, the losses of habitat at the Public Works site will be “offset” by the yet to be determined work at the Booth Heights area. That statement reveals a fundamental failure to understand the sheep. The Public Works area is ram habitat; it is the ewes and lambs that use the Booth Heights area. Rams stay apart from the ewes for all of the winter. They only come together during fall mating. Therefore, whatever is ultimately done at the Booth Heights area will have no benefit for the rams and will not offset the loss of habitat due to the Public Works expansion.

In addition, as of yet, there is no general mitigation or management plan for the sheep (more on that below). Allowing development to commence at this facility, without a valid plan in place, would be just more kicking the can down the road.

**The Town is not preparing an Environmental Impact Study.** The Town has also not provided an Environmental Impact Statement even though one was promised. If this were a

private developer, the absence of an EIS would be a huge red flag; it should be no different just because it is the Town of Vail who is the developer.

In lieu of a proper EIS, the Town has filed only an Environmental Impact Report. A EIR is not as rigorous as an EIS. Unlike an EIS, an EIR does not attempt to identify the negative impacts of developments and provide specific steps to eliminate or mitigate them. It seems that, at least in part, the absence of an EIS is blamed on the absence of any studies of the ram population (even though the TOV has been planning this project for years) and the conclusion that, therefore, specific steps cannot be recommended. The report, thus, only lists some things the TOV “could” do if it wanted to take some steps to protect the sheep.

**What should be done.** The rams use of the surrounding property has been known for years. If, in fact, that use has not been scientifically documented, that should not be an excuse to do nothing. The stakes are too high for the sheep to do nothing. Rather, the project should either be denied until the necessary studies can be done, or alternatively, it should be assumed that the rams are present in the area and specific steps should then be proposed to protect the sheep. Those steps should include:

1. A ban on the most obtrusive construction at the site (site clearing, excavation, use of heavy equipment, installation of utilities) from November 15 – June 1. In terms of the retaining wall and the first building, that would mean that no construction should start before June 1, 2020.
2. Appropriate and effective fencing and sound and visual screening should be required:
  - a. Fencing: During construction, impacts from construction related disturbance should be reduced by providing impervious construction fencing around the entire project. Wildlife fencing should be incorporated into the design of the top of the retaining wall to prevent sheep from inadvertently falling into the site and, as soon as possible, that fencing should be tied into permanent eight foot tall cyclone fencing which should surround the rest of the facility to prevent access to the bighorn sheep foraging areas.
  - b. Screening: To reduce human sound and visual impacts from activity at the facility, there should be permanent landscape screening surrounding the entire site on the outside of the permanent fence, including along the top of the retaining wall, and it should be planted as soon as possible.
3. The Management Plan that is being developed for the Booth Heights area should be extended to include the area surrounding the Public Works facility. That should include foraging enhancement consisting of removal of any jackstraw logs, trimming of shrubs and undergrowth, thinning of woodland areas to provide more open space for sheep foraging, seeding and fertilization, and herbicide treatment of noxious grass and weeds.

4. The scope of the Council Task Force (see below) should include the area surrounding the Public Works facility.
5. There should be permanent closures of ram foraging areas with appropriate monitoring and enforcement. There should be zero tolerance for violations by construction personnel, Town employees and their family members and/or guests with immediate termination for any violations.
6. There should be a ban on all dogs at the Public Works facility by any construction personnel, workers or residents and family members and/or guests. Only properly certified service animals should be allowed.
7. There should be a GPS collar movement study of the entire herd to provide base-line data about the sheep's movement and use of the area to better inform future mitigation efforts. The movements of the sheep should be tracked over at least a two-year period, and the resulting data should be periodically posted to a publicly accessible website.

**Mitigation needs to be done now, not later.** Some in the Town have argued that there is no need to do any mitigation now; it can come later when other phases of the development are proposed. But now, at the beginning of construction, is exactly when the mitigation should take place. The Town should not be allowed to piecemeal the project and ignore the scope and impact of the entire project or its harm to wildlife. The protection of the ram population is too critical.

**No need to rush.** There is no need to rush consideration of Phase I since construction cannot start until spring 2020 at the earliest and, if the sheep are taken into account, should not start until June 2020. Rather than a rush to judgment, it would be much better to get this right. After all, if the sheep are pushed to extinction, there is no chance for a do-over.

**The Town Council needs to act.** The recent election was driven by unusually strong advocacy for the environment and the East Vail bighorn sheep, and it resulted in strong majorities in favor of the new members of the Town Council. Many believe that was a mandate for a refocusing of Town priorities. The Town Council should make it clear to the Public Works department, and all other staff, that no development of this facility, not even Phase I, will be allowed until there has been a full EIS that addresses the total impact of the expansion and proposes specific mitigation actions to avoid all negative impacts from the development. The time to act is now, before construction begins and negative impacts occur.

**If the plight of the bighorn sheep is something that concerns you,  
mark your calendar for **DECEMBER 9<sup>th</sup>**,  
and make plans to attend the PEC meeting and make your voice heard.**

### **III. An Agenda for Going Forward.**

Beyond the immediate danger to the sheep from the Public Works redevelopment, many believe that Town priorities are out of balance. The recent election has been seen as a mandate to renew the Town's commitment to preservation of the environment, especially to the protection of the bighorn sheep. And since the election, public support for the sheep has remained strong. In keeping with that sentiment, VHA urges that the Council should take action on at least the following items:

- 1. Acquisition of the Booth Heights property for designated permanent open space.** The prior Council's approval of the Booth Heights project is not the end of any other considerations for the Booth Heights property. A lawsuit has now been filed in Eagle County District Court challenging that decision. How that turns out will not be known for months, but in the meantime, there is still a strong public desire for the Town to acquire the Booth Heights property and convert it into permanently designated open space. The VHA, therefore, urges that the Council pursue all avenues for the purchase of the property. That should include any potential for a private/public partnership and, if necessary, condemnation. This would put into action the official mission of the Town to "preserve our surrounding natural environment." And, once acquired, the property should be protected with "Designated Open Space" status so that it will be preserved in its natural condition.
- 2. Adoption of a management plan to protect the Bighorn sheep.** If anything was learned in the past few months, it is that the East Vail bighorn sheep are in great danger. The herd has not recovered from the devastating 2007/08 winter and the impacts of progressive habitat loss. Although the herd now appears to be in good health, the small size of the herd means it is close to a tipping point where it might not be able to regenerate itself. Therefore, a sound management plan to protect and grow the herd is needed, and habitat protection and enhancement must be at the center of that plan.

During the Booth Heights debates, it was thought that there were two areas of winter range: the East Vail site below the cliff bands where the ewes and lambs spend the winter and the area adjacent to the Public Works facility where the rams reside. We were told by Vail Resorts' biologist that during the rest of the year the sheep went elsewhere where they would not be disturbed by human interference. It is now clear that this is another assertion about which he was wrong (like the claim the sheep would forage at night). We now know that the sheep have been present and documented on the East Vail site for every month of the past year. The site is, therefore, not just winter range but rather the year-round home range of the sheep and that also probably means the Public Works site too is year-round home range. The major seasonal difference then is not different ranges but more a matter of snow accumulations forcing the sheep down into the bottom of their home range.

Both those areas would be squeezed by any further development: on the East Vail site by the planned Booth Heights project and at the Public Works site by the planned

expansion of the bus maintenance facility. That makes it imperative that there be a comprehensive management plan for the sheep's protection, and the Council should make it clear that the protection of the sheep and the development and implementation of such a plan for their protection are matters of the highest priority.

The Town is currently working on trying to develop such a plan. Already the Town has done some clearing and seeding with positive results. And next month the Town anticipates installing remote transmission game trail cameras to provide more information on the sheep's movement. The Town is also considering signage to restrict access to the area and prevent dogs from scaring the sheep. These are important first steps but much more needs to be done.

**The specifics of a plan.** Developing a plan will not be simple; there is no “one-size-fits-all” solution. Some areas need burns to clear out vegetation and reinvigorate the soil. Other areas will require mechanical clearing and pruning. Noxious weeds need to be eradicated and jackstraw logs cleared out. There will be areas that need to be seeded and fertilized. All of this requires careful planning and coordination so that work can proceed in an effective way, and time is short since the work needs to commence as soon as this winter is over.

**A task force is needed.** Sources inform VHA that a potential stumbling block to developing a proper plan appears to be the USFS. The VHA, therefore, urges the creation of a Council Task Force charged with the development of the plan and that the Task Force be authorized to take all necessary steps to get a plan in place. The Task Force should be directed to immediately undertake meetings with CPW and the USFS for that purpose. And the Task Force should also be directed to provide monthly progress reports to the Council and the public. There is no time to waste if mitigation work is to commence in the spring--which should be the goal.

In the meantime, the sheep should be closely monitored over the coming winter. If there appears to be any problem—like, for example, there is not enough food for the sheep—the Town should take immediate steps to remedy the situation. For example, the Town may need to provide supplemental food for them or to implement protective ways to keep the sheep off the adjoining highways.

3. **Adoption of a conflict of interest law.** The Booth Heights project was approved by a single vote of a Vail Resorts' employee who had at least the appearance of a conflict of interest and, according to many, an actual conflict of interest. That should not happen in a town that has open, fair and unbiased processes. The VHA, therefore, urges that a first order of business should be the adoption of a strong conflict of interest law that applies to all Town Boards and Commissions as well as the Town Council. A good model to consider would be the Avon conflict of interest provision. Never again should projects be considered by conflicted individuals.
4. **Protection of the environment.** While much of the debate over the Booth Heights project focused on the bighorn sheep, it foreshadowed the broader issue of protection

of the natural environment. Vail's natural environment is a crown jewel of the community, but many believe that protection of the environment has slipped from a Town priority. Public commentary as well as the recent election results make clear that the public has not wavered or withdrawn from that founding principle. The Council should make clear that it is an unwavering principle that the natural environment will be preserved and protected and that every action of or permission sought from the Town will take that into consideration.

5. **A Plan for Vail's Next 25 Years.** Vail's first 50 years was an unparalleled record of achievement and success as it became an international resort of the first order. But the town is now built out and cracks have appeared in the façade. In the recent Ski Magazine survey of ski resorts, Vail managed only an eleventh place ranking, and its status as the first Sustainable Mountain Resort in the U.S. may have been put in jeopardy by the Booth Heights action. Beyond that, congestion, parking and public safety issues, and housing and transportation needs are affecting the quality of life. VHA suggests that it is time to plan for Vail's next 25 years and to do so in a way that will ensure the sustainability of the community in all aspects of its activities, including the quality of life of its citizens, the health of its economy and the balance between the built and natural environments.

Sustainability requires recognizing limits and adopting policies that work within those limits, the opposite of growth for growth's sake. It envisions a balance between tourism and the community, between economic development and preservation of community assets and values, and between our beauty and culture and demands for more uses of it. For a resort community, it means managing tourism so that the community and its environment can be enjoyed by both visitors and residents alike. And it means carrying those values into the future so that generations to come have the same opportunities.

To that end, VHA urges the Council to convene a "Visioning Process" to plan for Vail's next 25 years. As a first step, there should be a critical examination of Vail's "carrying capacity." Vail will never be a typical urban community, nor would most want that to be the case. Vail's charm lies in the fact that it is a mountain retreat nestled in a beautiful valley. As such, there is a finite limit to Vail's capacities. Infrastructure and facilities can expand those capacities, but Vail should not seek simply to get "bigger" as part of a sustainability strategy, or at least, that is a question that should be answered at the outset. After all, a goal of "bigger" ultimately is never sustainable.

Those determinations should then inform policies that will maintain Vail's community, culture and environment into the foreseeable future. There should be objective criteria and benchmarks to control congestion, provide for parking in ways that do not endanger public safety, and create workforce housing and transportation opportunities to maintain a healthy economy. Already action is underway to clean up Gore Creek and restore it to Gold Metal status and to plan for a central Civic Area. Action could be taken to create a public/private online reservation system for private



parking lots. ECO transportation could be enhanced. Included should be an examination of ways to bring the community back together. During the Booth Heights debate, some in Vail's government resorted to intimidation to try to quell critics. That should have no place in a community that values public input and involvement.

#### **IV. Mail Balloting.**

Public participation is the foundation of self-government, and the VHA has long urged that the Town elections be by mail ballot. [The recent election shows once again what is already known from empirical data, that mail balloting would improve voter engagement in the Town elections.](#) Even though this election attracted much attention, the winning candidates were elected by just 18%, 17%, 15% and 13%, respectively, of the registered voters; overall only 25.5% of registered voters cast ballots. That can be compared to the 2012 Town elections when mail balloting was used and voter participation was more than twice as much. In addition, Eagle County conducts its election by mail ballot and the percentage of voters routinely participating in its elections is much higher. The Council should take action to change Town of Vail balloting to mail ballots.

#### **V. Become Involved.**

The Booth Heights debate demonstrated the importance of membership on the Town's commissions and boards. Participating as commissioners or board members is enlightening and gives insight into what keeps Vail ticking. It is also a great opportunity to help shape the Town's future. Not only do those bodies make important, sometimes unreviewable, decisions on matters of great interest but membership on those bodies can also be important stepping stones to the Town Council. Every year there are usually multiple opportunities to join those boards and commissions. The VHA urges all members of the Vail community to consider joining in the Vail governmental process. That way, you can be sure that your voice will be heard.

If these are matters that concern you, we [invite you to join VHA](#). Together we can make our voices heard and make a difference for good and the future of our community.

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