



Booth Heights – Near East Vail Interchange



Middle Creek, Lot 3 – Near the Main Vail Interchange.

# VAIL HOMEOWNERS ASSOCIATION

## Report on February 2d Vail Town Council Meeting

### Town Council Secretly Decides It Will Not Condemn the Booth Heights Property

### Town Council Approves Pre-Development Agreement Despite Citizens Objections: Promises to Include Citizens Concerns in Final Agreement

**February 5, 2021**

At the Town Council meeting this past Tuesday, there was strong citizen input for (1) condemnation of the Booth Heights property and (2) substantial changes in the Town/Triumph Pre-Development Agreement to make the provisions concerning the Booth Heights development iron-clad, so that the plans and approvals previously given could not be used for any future purpose.

**The Problems With the Draft Agreement.** As VHA previously reported, the draft of Pre-Development Agreement opened the door for the Booth Heights development to go ahead. There was nothing in the draft agreement that would prevent Triumph from selling or transferring the plans and approvals to VR or a third party under VR's control. If VR could gain control of the plans and approvals, it could then get a new developer and proceed with the project. If that were to happen, VR could roll construction equipment on the site this spring. That is exactly what VR intends, i.e., "to move forward with the Booth Heights project in the shortest time frame possible." If that were to happen, what was supposed to be a "win-win" outcome, would become a "lose-lose" result.

Of concern to VHA was the absence of any provisions in the agreement (1) that Triumph warranted that it was the sole owner and possessor of the plans and all approvals, (2) that Triumph would not sell or transfer the plans to any other party, (3) that, upon execution of the Final Agreement, Triumph would release and forfeit all

development approvals, and (4) that those provisions were part of the essential consideration for the agreement, so that any breach would void the entire agreement. VHA also was concerned that the hold harmless clause was not broad enough and it urged that the Town Council should begin condemnation of the Booth Heights property since VR has made it clear that it is no longer (and may never had been) willing to forego development of the Booth Heights parcel.

Also of concern to VHA was paragraph 4 (b) of the draft agreement which stated that:

if the Town is presented with applications to proceed with the Booth Heights Project, and such applications comply with all applicable Town regulations and the approved development plans for the Booth Heights Project, the Town will not be in a position to deny such applications, regardless of who asserts an ownership interest in such approved development plans.

That provision seemed to presage a Booth Heights development. It was unnecessary and perhaps even wrong. VHA wanted that provision stricken.

**The Town Council Meeting.** The meeting last Tuesday began with a public comment period, during which a number of citizens urged the initiation of condemnation proceedings for Booth Heights. Following a couple of consent items, the meeting then came to the Pre-Development Agreement.

**The Council Had Already Decided There Would Be No Condemnation.** Before any public comment, the Mayor announced that the Town Council had already decided that it would not condemn the Booth Heights property. Council member Stockmar then explained that it was not a unanimous decision; that he and one other member had not agreed to that decision.

This decision was made in some previous Executive Session, prior to the evening meeting. This seems to be part of an increasing tendency in the TOV for the use of Executive sessions and that is alarming as more decisions are being made out of public view and without public input. That process may be a violation of the TOV Code and Colorado law. There is a difference between receiving strategic or confidential advice and action by the Council. Action by the Council, i.e., motions and decisions, should be part of the public record. Even advice to the Council should, to the greatest extent possible, be provided in public so that the public can understand the advice, question the reasoning underlying the advice and point out any flaws in the advice. It would also seem that on a matter as consequential as condemnation, the Council should also solicit the advice of experts on the subject before making any decision. Apparently, that was not done in this case

But beyond the process questions that are raised by this action, why the Town Council would take a condemnation solution off the table was not explained and seems bizarre in light of the fact that was the way the Town had acquired Ford Park. That appeared to put the Town at an immediate disadvantage in finding a solution to the Booth Heights problem. How that is in the Town's best interest defies understanding.

With only three minutes to speak and with a number of objections to the Pre-Development Agreement, there was no opportunity to question the decision to forego condemnation. So, the public was left with an unexplained secret decision and with no opportunity to object or point out any flaws in the reasons behind the decision.

**Citizen Objections.** During the public comment on the Pre-Development Agreement, a number of citizens objected to the draft agreement. Many others had already filed objections in advance of the meeting. The objections all centered on the provisions concerning Booth Heights and, in one way or another, made points similar or identical to VHA's concerns. Steve Virostek, Triumph's CEO, also spoke and said he had no

intention to sell the plans: “Those drawings stay with me.” Assuming that was a truthful statement, it was not understandable why Triumph would not agree to change the agreement to incorporate the citizen suggestions.

**The Council Action.** Following public comment, the Council then had a lengthy discussion followed by a vote to approve the Pre-Development Agreement without any changes (6-1, with Stockmar voting no). The principal argument in favor of approving the agreement without any changes was that this was just a first step—just a “framework”—and that all of the citizen concerns could be put off and addressed in the Final Development Agreement. It was reminiscent of the zoning meeting on Booth Heights when the Council said not to worry and promised that it would address all of the environmental and sheep concerns when a project came forward, which never happened because the PEC approved the project on a 4-3 vote with a Vail employee casting the deciding vote and the Council then declining to take the matter up.

Some on the Council suggested that Triumph should donate the drawings to a charitable group, but that makes no sense unless Triumph would also give the organization the same kind of iron-clad indemnity and hold harmless guarantee that the Town of Vail should be, but so far is not, demanding. Seeming lost in the discussion was the Town’s avowed purpose of the Middle Creek project being an alternative, not an addition, to the Booth Heights project.

**More Unanswered Questions.** Since the public comment period had already been closed when Council members claimed that the agreement was just a first step, the public did not get an opportunity to question what was the purpose of a Pre-Development agreement if everything could be put off to the Final agreement, and nothing in the Pre-Development Agreement would prevent the citizen’s concerns from being address later. Three Council members, Langemaide, Foley and Mason, did, however, make it clear, that if the citizens’ concerns were not included in the Final Agreement they would not approve it.

**What’s Next.** According to the Town’s timeline, a Final Agreement is due to be completed by March 5. There are two Council meetings before March 5: on February 16<sup>th</sup> and March 2<sup>nd</sup>. Presumably, at one of those meetings, the Final Agreement will be presented for approval. Mark those dates on your calendar and watch for a notice when the next step is to take place. VHA will be watching for the Final Agreement and will report as to whether and to what extent the agreement incorporates the citizens’ concerns as expressed at the meeting.

**Vail Resorts’ Role.** VR has, of course, pulled out of trying to reach an agreement over Booth Heights. Instead, it sent threatening letters to both the Town and Triumph. Those threats and the posturing in its letters about the Booth Heights project are completely at odds with VR’s avowed Code of Ethics and Business Conduct. In introducing its most recent update to that Code, Rob Katz, VR’s Chairman and CEO, stated:

I believe that we all understand what it means to carry out our business and conduct ourselves ethically. Simply put, ethics is doing the right thing even if nobody is watching. This Code of Ethics and Business Conduct provides guidance to help us live by our values and responsibly serve our five key stakeholders - our employees, our guests, our communities, our environment and our shareholders. *In essence, this Code gives us guidance to operate with integrity and to do the right thing, knowing that it leads to the right outcome.*

The Code then provides that one of VR’s key values is its collective commitment to “Do good, preserve our natural environment and contribute to the success of the community.” Further, it requires “Fair dealing with others:

We learned about playing fair on the playground, and even now it’s important that we “play fair” with our guests, suppliers, vendors, competitors, and other employees. Officially, this means not taking unfair

advantage of anyone through manipulation, concealment, abuse of confidential information, falsification, misrepresentation of material facts, or any other intentional unfair behavior.”

In its “Epic Promise – Commitment to Zero” progress report on the 2019-2020 season, VR stated that “The environment is our business, and we have a special obligation to protect it” and that VR’s focus is on “preserving the incredible outdoor places where we live, work, and play.” In other words, VR claims that it will be a socially responsible citizen of Vail and the other communities where it does business. If those are not just hollow words, it’s now time to live up to those commitments. Doing so would bring much praise for VR as the proposed land swap of Lot 3 for the Booth Heights property would protect the environment and the endangered bighorn sheep. And in the process, VR would obtain employee housing at a much more advantageous location and very valuable housing credits. Why VR has rejected that proposal is a mystery.

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The VHA has been fighting to protect the bighorn sheep for years. If this is an issue that concerns you, we invite you to join as a member of VHA or become a subscriber to our reports. Our most valuable tool in influencing decision makers is through the proactive engagement of our informed readers. Your support will ensure that the VHA can continue to bring important matters to the community’s attention and, by doing so, make a difference for the good and the future of our community. It is you, our members and subscribers, who sustain our efforts with financial and vocal support.

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