



Booth Heights – Near East Vail Interchange



Middle Creek, Lot 3 – Near the Main Vail Interchange

VAIL HOMEOWNERS ASSOCIATION

IMPORTANT UPDATE:

Booth Heights and the Middle Creek, Lot 3 Housing Project Vail Resorts To Build At Booth Heights and Threatens Legal Action

January 26, 2021

At the January 19th Town Council meeting, the Pre-Development Agreement for Booth Heights and the Lot 3 Middle Creek Housing project was abruptly pulled off the agenda. That was because VR sent a last-minute letter objecting to the Agreement. This Special Update examines the implications of that letter, the Town's response and what this means for the future of the Booth Heights property.

Up until recently, the public had been led to believe that VR was working with the Town to achieve a “win-win” outcome for Booth Heights and that it had only “paused” its participation because of having to deal with the COVID 19 pandemic. That “win-win” outcome was a land swap in which VR and the TOV would exchange Lot 3 for the Booth Heights property. For a year, the Town has been diligently working toward that result, clearing title to Lot 3 and preparing to move the Children's Garden Center of Learning to a new location. In that connection, the TOV has entered into agreements, authorized the hiring of consultants and contractors and generally made preparations to be able to make the land swap.

When it was believed that VR had “paused” its participation, the TOV proceeded with negotiations with Triumph Development to keep the project moving forward. That resulted in the Pre-Development Agreement that was on the Town Council agenda last week. Importantly, the agreement maintained the ability of the Town to make the land swap with VR whenever it was ready to reengage in the process.

Now this most recent move of VR raises the question of whether VR ever intended to do any swap and whether it was acting in good faith when it indicated to the TOV that it was willing to do so. Here is the VR letter.



January 18, 2020

Via U.S Mail and Email

Scott Robson (SRobson@vailgov.com)
Town Manager, Town of Vail
75 S. Frontage Road
Vail, CO 81657

Dear Scott:

I write regarding the terms of the Town of Vail's proposed Pre-Development Agreement with Triumph Development West, LLC, (the "Agreement"), which Vail Resorts first learned of on January 5, 2021 when the Town presented the Agreement to the public in a Town Council meeting.

As an initial matter, Vail Resorts supports the Town's effort, reflected in the Agreement, to develop new deed-restricted housing on the Middle Creek and Timber Ridge parcels. However, we were deeply concerned and unsettled to see the following provisions included in the Town's arrangement with Triumph, the full terms of which were released on Friday:

4. Booth Heights. a. Triumph warrants to the Town that it is the sole owner of all civil drawings and architectural drawings included in the development applications filed with the Town for the Booth Heights project in PEC19-0018, PEC19-0019 and DRB19-0652 and identified in Exhibit C, attached hereto and incorporated herein by this reference (the "Plans"). In addition, Triumph agrees to convey to the Town whatever rights Triumph may have, without representation or warranty, in other materials, reports, and studies delivered to the Town for the Booth Heights project in PEC19-0018, PEC 19-0019 and DRB19-0652 and identified in Exhibit C (the "Related Materials"). b. As partial consideration for this Agreement, Triumph hereby transfers to the Town all of Triumph's ownership rights in the Plans and the Related Materials.

Further, we note that the Town's proposed Resolution No. 3, also released Friday and listed on the agenda for adoption at the January 19, 2021 Town Council meeting, states as one of the foundational elements of the Town's deal with Triumph that "*Triumph Development will forego all development opportunities on the Booth Heights Parcel, and in doing so, will grant the Town exclusive ownership rights the Approved Development Plan for Booth Heights.*"

Simply put- these provisions have no place in an agreement between the Town and Triumph for the development of the Middle Creek and Timber Ridge parcels. Leaving aside the nature and ownership of any intellectual property rights in the Plans and Related Materials (which are not in fact as the Town has described in this draft provision), neither the Agreement nor the Town's January 5 presentation gives any explanation as to why the Town is seeking to acquire the Plans and Related Materials for a deed-restricted housing development on land that it does not own. Nor is there any conceivable good faith reason the Town would have for doing so.

We are aware that Triumph is seeking to recoup its portion of the planning costs associated with the Booth Heights project, and while Vail Resorts has no obligation (contractual or otherwise) to reimburse

Triumph, we have previously made an offer to Triumph to that effect, in order to best enable Vail Resorts and a subsequent developer to move forward with the Booth Heights project in the shortest timeframe possible. As such, there is no need for the Town to explicitly or implicitly compensate Triumph for its Booth Heights planning costs in the Agreement, nor would any public good be served by the Town doing so. Therefore, the only logical reading of the Agreement and the Resolution is that the Town has coordinated with Triumph to acquire the Plans and Related Materials as part of a concerted effort to delay or obstruct Vail Resorts' development of the project on the Booth Heights parcel, a development that was approved by the Town Council on October 15, 2019. Such an effort would be wholly inappropriate.

In stark contrast to the Town, Vail Resorts has every interest in the Plans and Related Materials. Vail Resorts has been (and remains) the sole owner of the property on which the Booth Heights project will be located. Vail Resorts invested multiple years and significant internal and external resources working with Triumph on the project, providing input into the Plans and Related Materials and guidance throughout the entitlement process, and then successfully defending a lawsuit in the Eagle County District Court (in which the Town's approval of the project was upheld).

As you know, the need for affordable housing in Vail continues to be substantial. In fact, the COVID pandemic has significantly increased the demand for residential real estate, in turn further pressuring the supply of affordable housing. As such, it is critically important that we expeditiously pursue all available opportunities to bring new deed-restricted housing to the community. Vail Resorts has patiently engaged in discussions with the Town over the course of the past year related to the Town's stated objective of acquiring the Booth Heights parcel. And, as I communicated to you on November 23, in the spirit of partnership, Vail Resorts was willing to agree to delay commencement of construction on the Booth Heights project until June of 2022 to allow the Town additional time to pursue that objective. You declined, and instead appear to have pursued an alternate path designed in large part to frustrate the previously approved development on our parcel.

More so now than ever before, Vail Resorts is committed to moving forward as soon as possible with the Booth Heights project. We are in the process of seeking a new development partner, and fully expect to proceed without interference, overt or otherwise, from any third party (most importantly, the Town). We expect the Town to remove any requirements relative to the Booth Heights site or project from the Agreement, the proposed Resolution, and any discussions with Triumph, and to refrain from any further efforts to disrupt, delay, or block the project.

If, however, the Town proceeds as currently proposed, Vail Resorts would view that action as a very significant breach of the good faith relationship between the Town and Vail Resorts and of our shared objective of creating affordable housing in the Valley. Such action would also violate Vail Resorts' vested property rights in the Booth Heights site, in which case Vail Resorts would pursue all legal remedies against the Town and Triumph. Given the long history between the Town and Vail Resorts, and in the interest of maintaining a relationship of trust and partnership in the future, we sincerely hope this effort by the Town was the result of a misunderstanding and will be corrected immediately.

Sincerely,



Kyle Griffith
Vice President, Mountain Planning

According to VR, it intends "to move forward with the Booth Heights project in the shortest timeframe possible." Apparently, contrary to what VR said only a month ago, the pandemic is no longer an obstacle since, according to its letter, VR now "is committed to moving forward as soon as possible with the Booth Heights project." Moreover, VR claims that any further steps by the TOV would be "a very significant breach of the good faith relationship between the Town and Vail Resorts." And VR concludes by threatening legal action against the Town and Triumph. So much for any "win-win" situation.

The Town has replied to VR. Here is its response.



75 South Frontage Road West
Vail, Colorado 81657
vailgov.com

Town Manager's Office
970.479.2106
970.479.2157 fax

January 18, 2021

Mr. Kyle Griffith
Vail Corporation
390 Interlocken Crescent
Broomfield, Colorado 80021

Dear Kyle,

I think it's important to first be clear that the Town considers Vail Resorts our most critical and foundational community partner and look forward to partnering on key initiatives in the coming years. I believe the Vail Valley truly expects and deserves our collaboration. Our Town Council and staff have demonstrated that a significant opportunity exists for our two organizations to collaborate and deliver on our shared goals which include responsible environmental stewardship and protection of wildlife habitat, along with the creation of quality deed-restricted housing for those who work in Eagle County, something critical to being a premier international mountain resort community.

The Town of Vail is in receipt of your January 18th letter related to Vail Corporation's concern about the potential transfer by Triumph Development, to the Town or any other party, the Plans and Related Materials for the Booth Heights development in East Vail. Your letter on the draft Pre-Development Agreement letter has been shared with the Vail Town Council.

In regards to the potential transfer by Triumph Development of the Plans and Related Materials for the Booth Heights development, the Town is not in a position to make a legal determination as to what intellectual rights each party may claim, and urge Vail Resorts and Triumph Development to come to agreement on that matter. While I understand Vail Resorts feels they have ownership rights to intellectual property associated with the Booth Heights plans, the matter seems further complicated by Vail Resorts current offer to purchase the rights to the Booth Heights plans from Triumph Development. Regardless, Triumph Development clearly finds value in the plans they paid to prepare and thus they have been included as an element within the non-binding Pre-Development Agreement that Town Council was to consider this evening, January 18. I'd like to be clear that the Town of Vail is not impinging on Vail Resorts property rights associated with the Booth Heights property and has no intent to cause Vail Resorts to sustain damages. Rather, the Town of Vail has been actively working to create opportunity for Vail Resorts over the past 13-months since Mayor Chapin reached out to Vail Resorts CEO Rob Katz requesting to engage on the concept of an, "alternative housing sites initiative". That initiative was, and still is based on the basic premise:

- An offer by the Town to exchange titles between the Booth Heights parcel owned by Vail Resorts and the Middle Creek, Lot 3 parcel owned by the Town of Vail for the sole purpose of developing a minimum of 144 beds in a deed-restricted development on Middle Creek, Lot 3. This would meet or exceed the number of deed-restricted housing units that Vail Resorts had planned for at Booth Heights, and do so at Middle Creek, Lot 3 which is arguably the premier remaining housing site in our community and within a short walking distance to Vail

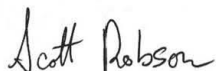
Village for our workforces. As further offered, any EHU credits associated with development on Middle Creek, Lot 3 would be granted.

To that end, over the past 13-months the Town of Vail has taken actions, several of which were at the request of Vail Resorts, to further the housing sites initiative. The following tangible actions were taken toward that goal:

- Completed a broad range of legal and land-use planning steps to subdivide Middle Creek, Lot 3 to ensure it can be developed for deed restricted housing.
- Amended the lease agreement with Middle Creek Village to allow for greater master lease opportunities for employers in Vail, such as Vail Resorts.
- Given that the Children's Garden of Learning (CGL) facility currently exists on Middle Creek, Lot 3, the Town worked with CGL staff and Board of Directors to adopt a Memorandum of Understanding for the Town to design, develop and fund a temporary new location for CGL and collaborate with them to find a new permanent facility in Vail.
- We have invested considerably in the study of multiple sites for CGL's temporary location in partnership with the Children's Garden of Learning and ultimately have determined a town-owned site in Lionshead is the most pragmatic.
- Contracted with Triumph Development for due diligence to determine feasibility of deed-restricted housing on Middle Creek, Lot 3.
- Made formal request to the US Forest Service to initiate an Environmental Assessment of a Fuels Reduction project on 4,500 acres in East Vail adjacent to Booth Heights which serves as critical habitat for Big Horn sheep. Town of Vail has committed to significant funding of the required assessment.
- Extended the term of the development rights on the Booth Heights Parcel to December 1, 2024.

As I've expressed before, there is frustration that Vail Resorts has not yet substantively or consistently engaged or taken steps towards this initiative over the past 13-months given that this clearly could be a win-win scenario for all, most importantly the Vail community. It is particularly concerning that at the request of Vail Resorts, the Town prepared an alternate housing sites proposal for consideration, but Vail Resorts has yet to formally acknowledge that proposal other than to suggest a delay of 12-months. That being said, we also understand that reacting to the impacts of the Covid-19 crisis and focusing on resort operations has needed to be prioritized by your teams. We ask that Vail Resorts quickly begin committing the time and resources to re-engage in discussions with the Town of Vail and Triumph Development to collaboratively develop housing opportunities at Middle Creek and a future redevelopment of the Timber Ridge Apartments. Secondly, we ask that your team consider once again the Town's offer to fairly compensate Vail Resorts for title to the Booth Heights property so the Town and US Forest Service can make significant strides in protecting the resident herd of Big Horn sheep that make Booth Heights their seasonal home. We think this initiative can be straight forward and mutually beneficial in meeting shared goals and I look forward to discussing further at your convenience.

Sincerely,



Scott Robson, Town Manager
Town of Vail

With respect to good faith, it appears that the TOV has been acting in good faith in an effort to both protect the environment and bighorn sheep, while at the same time providing affordable housing alternatives. If, as the letter implies, VR always intended to develop the Booth Heights property, then its good faith in the negotiations with the TOV is called into question. VR also claims that it “has every interest in the Plans and Related Materials” but acknowledged that it tried to buy them from Triumph. If it were true that VR had “every interest” in the plans, it would not need to buy them.

VR’s response also raises the larger question of corporate responsibility and to what degree is VR willing to be a responsible corporate citizen. There is overwhelming community support for protecting the natural environment and, in particular, the bighorn sheep. That includes maintaining the Booth Heights property as open space. While there is also community support for providing affordable housing, the two are not mutually exclusive, especially when the TOV has taken concrete steps to create a pathway to meet housing goals that does not require a housing project at Booth Heights.

In earlier times, VR’s predecessor attuned its corporate policies to reflect community values even when those values might have been inconsistent with the bottom line. That is what a good partner does. What has now been put into question by VR’s letter is whether community values any longer matter to VR.

In light of VR’s response, the VHA now urges that it is time for the TOV to begin preparations to condemn the Booth Heights property. It seems that is the only way community values concerning the property can be realized.

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It is you, our members and subscribers, [who](#) sustain our efforts with financial and vocal support.

For further membership or subscriber information, please send an email to vailhomeownersassoc@gmail.com and specify if your interest is as a member or subscriber.

Post Office Box 238 Vail, Colorado 81658
Telephone: (970) 827-5680 Email: vha@vail.net Website: www.vailhomeowners.com

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