



Bighorn Sheep herd occupies the site, as its primary winter habitat, the ownership of the plans to develop the site are in dispute.

VAIL HOMEOWNERS ASSOCIATION

January 30, 2021

IMPORTANT UPDATE NO. II

Faced with Litigation Threats From VR, the TOV Has Amended the Pre-Development Agreement with Triumph to Open Up the Possibility that Booth Heights Will Be Constructed in the Near Future.

Critical Town Council Meeting, February 2d

As VHA previously reported, Vail Resorts withdrew from negotiations over the Booth Heights property and the proposed land swap for Lot 3, Middle Creek. When the TOV continued its negotiations with Triumph and prepared a draft Pre-Development Agreement, VR threatened litigation. The Town of Vail has now revised the

Pre-Development Agreement and it will be before the Town Council for approval on **Tuesday evening, February 2nd**. The amendments are not simple adjustments; they open the door for the Booth Heights development to go ahead. If you care about the bighorn sheep and the possibility of a development on the Booth Heights site, this is a meeting you do not want to miss.

While the TOV is working to be able to continue with a housing project on Lot 3, Middle Creek, it seems clear that a land swap is no longer a possibility, at least not for now. The Pre-Development Agreement does, however continue to provide the Town with the ability to make the land swap with VR, if or when it ever decides to reengage in the process.

While the overall plan detailed in the Pre-Development Agreement is still the same, there has been a major change insofar as Booth Heights is concerned. Originally, the intent of the Pre-Development Agreement was for Triumph to transfer to the Town all of the plans and all rights and approvals for the Booth Heights development. That way, the Town would possess the approvals for Booth Heights and could then abandon them. The VHA had a concern that, even though that was the intent of the agreement, the original agreement didn't sufficiently spell out the transfer of the development and approval rights and had planned to raise that before the Town Council at the January 19 meeting.

Now, the Pre-Development Agreement has been amended in an effort to avoid VR's lawsuit threat and the changes open the door for the Booth Heights development to take place. No longer is the TOV to get the plans and development rights. They would now remain with Triumph. The Agreement states only that:

Triumph hereby agrees that it will not pursue any development that would otherwise be permitted under the development applications filed with and approved by the Town in PEC19-0018, PEC19-0019 and DRB19-0625 (the "Booth Heights Project").

In other words, the development approvals will not be owned by the TOV and will not be abandoned. They will continue to be owned by Triumph. Recall that recently the TOV extended those approvals to 2025. Sources inform the VHA that VR didn't just threaten the TOV, it also threatened Triumph. There is nothing in the Agreement that would prevent Triumph from selling the plans and approvals to VR. Rumor has it that VR has already offered Triumph a six-figure number for the plans. By selling the plans and their approvals to VR, Triumph could pocket a nice profit and also avoid contentious litigation with VR. Once VR has the plans and approvals, it can 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. As VR has stated, its intention is "to move forward with the Booth Heights project in the shortest timeframe possible."

If you think that outcome might be farfetched, then consider the very next clause in the amended agreement:

Triumph acknowledges 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.

Development of Booth Heights would be the antithesis of a "win-win" outcome. And for it to come at the hands of the Town Council would be a complete abdication of what so many have worked for over the past year. If the Town Council is sincere about protecting the sheep, and VHA believes they are, then this Agreement **SHOULD NOT BE APPROVED**. The Council should instruct staff to renegotiate and redraft the agreement so that the plans and approvals cannot be used for any development on Booth Heights and the existing approvals will be abandoned and/or forfeited.

The Council should also take it one step further and immediately instruct the Town attorney to begin condemnation proceedings on the Booth Heights property. Rumor also has it that VR was going to sell the Booth Heights property to Triumph for around \$4 million. For some inexplicable reason, the Town does not have a copy of that contract but it would seem that it would be Exhibit 1 at the condemnation trial. The TOV used condemnation to acquire Ford Park when a developer threatened to build condominiums there. And that is what the TOV should do now to acquire Booth Heights and dedicate it as open space land.

The February 2nd meeting will be a Zoom meeting. Register now on the TOV website. A copy of the amended Pre-Development Agreement is attached to the Town Council agenda. This is not going to be a long meeting so the Pre-Development Agreement should come up shortly after 6 p.m. You may also send comments to the Town Council via towncouncil@vailgov.com

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 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 such 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.

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.

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