

# VAIL HOMEOWNERS ASSOCIATION



Bridge Street Crawl, July 4<sup>th</sup> – Social distancing difficult, masks are not.

## **PREVENTING THE SPREAD OF COVID-19 IN VAIL**

### **VHA REQUESTS “DESIGNATED OPEN SPACE” STATUS FOR DONOVAN PARK**

### **THE BOOTH HEIGHTS MEMORANDUM OF UNDERSTANDING FOR SHEEP PROTECTION**

**JULY 6, 2020**

This report covers three matters of vital concern. The first is the latest developments concerning the COVID-19 pandemic and whether more needs to be done to protect the health and economic vitality of the Vail valley. The other two--protection of the Donovan Middle Bench from development and the steps being proposed to protect the Booth Heights sheep habitat—involve aspects of the community’s open lands and environmental protection policies.



**Masks do no good, if they are not worn in public, better to wear than carry.**

## **The COVID-19 Pandemic--Is More Necessary?**

From the start of the coronavirus pandemic, the VHA has recognized that it's impacts could be a defining issue for the health and economy of the Vail valley. For that reason, the VHA has advocated the wearing of masks from the outset. Fortunately, while Vail initially was a national "hot spot," an area-wide shut down appeared to contain the virus by April but now there is cause for new alarm. With the virus now out of control in large parts of the country and the beginnings of a surge in the valley, Vail is in danger of sliding back in the fight against the virus. The actions taken (or disregarded) over the next month could well determine the course for Vail for a long time to come. Paramount among those actions is the requirement for face coverings.



**The Latest Public Health Order.** While Eagle County has been under a public health order from the outset of the pandemic, many including the [VHA have criticized that order for not requiring face coverings](#). Now Eagle County has acted; unfortunately, only going part-way on face coverings. A new Eagle County Public Health Order was issued last Thursday. Although the new order mandates face coverings in all indoor public places, it only requires face coverings in outdoor public spaces in “densely populated” places or where one cannot “consistently maintain 6 feet” distance. Those 65 or older are told they “should” take extra precautions, which includes wearing a face covering “where appropriate,” avoiding “large numbers of people” and keeping “prolonged interaction with the general public to a minimum.” Most surprising, without any explanation or rationale, the new order also authorizes bars to open or remain open; a position that is contrary to the state-wide order which closed all bars and the actions now increasingly being taken around the country.

Without any definition of “densely populated” places or what “consistently maintain” means, insofar as outdoor places are concerned, the order is at best ambiguous and subject to individual “interpretation.” While the order is enforceable through citations and fines, its ambiguity with regard to outdoor places probably means that it is effectively unenforceable for those settings. Beyond that, the provisions for those 65 or older are still only recommendations.



**Gaggles of young adults cruise the streets undeterred by health warning.**



While many applauded the new order, events of last weekend show that those congratulations may be premature. Fourth of July crowds, which clearly were dense, mostly ignored both social distancing and the use of face coverings. While the TOV had put out some signage, the terminology was not mandatory and neither the Vail police, guest hosts or anyone else sought to enforce or even encourage compliance.

Many may not have seen what happened in Vail on the Fourth of July because of not wanting to run the risk of exposure but here are a few more examples:



**Crowds entering Vail Village via West Meadow Dr. Masks being carried, but not worn. Social distancing not practiced.**





**Some restaurants may not be adhering to social distancing compliance standards.**



**Info volunteers need to be instructed about where visitors can obtain masks and gloves.**

It is hard to believe that infections will not follow; that has been the consistent pattern in other parts of the country. And, of course, the resulting case counts will not include the many asymptomatic cases that are now known to exist following exposure.

**Why This Matters.** Some will say that criticizing the use of masks in outdoor settings is nitpicking but time is running out to gain control over the pandemic. In the two weeks since VHA's last report, cases have surged across the country with a majority of states (now thirty-seven) reporting growing numbers of cases, many of which are daily records as are the daily U.S. totals. The virus is now raging precipitously out of control in Florida, Texas, Arizona, Georgia and parts of California and it is on the verge of breaking out in other states. Governors in Florida, Texas, Arizona and California have now belatedly walked back reopening's—last Thursday Texas mandated masks and restricted gatherings to 10 or less people-- and many other states have paused reopening plans and closed bars.

No other country has seen as much illness and death as the U.S. Health and Human Services Secretary, Alex Azar, has warned that the “window is closing” for getting COVID-19 under control and Dr. Anthony Fauci, the nation's top infectious disease expert, said crowds without masks are a “recipe for disaster.” As one noted politician said, “Everyone should just wear a damn mask.”

Unfortunately, wearing of masks has been turned into a political wedge point, even though there is now consensus among health authorities that masks will prevent the spread of the virus. And leaving it to personal interpretation as to when a mask is required outdoors is tantamount to voluntary compliance as the first line of defense against another outbreak even though it has become painfully obvious, from reports across the country, that where crowds gather that is not working.

The reluctance of Eagle County to fully require face coverings in all outdoor public places may be due in part to the fact that there has so far been only a slight increase in Eagle County cases and the local health system is in good shape to respond with testing and treatment. But local authorities should take no comfort from the fact that the virus is not out of control here when it is out of control in large parts of the country and the virus has no boundaries. Visitors and second homeowners are beginning to return to the valley in significant numbers and we have just experienced large crowds over the Fourth of July. The current numbers are also no reason to relax because there is up to a several week lag in the reporting of infections following exposure. In other words, the latest Eagle County report is reflecting exposures that occurred in mid-June. We won't see infections from the Fourth of July crowds until mid-July or later and deaths from those exposures will take even longer to be seen. All of this should be troubling to say the least.

**Why Are We Waiting?** This is no longer a matter of “Wait and See.” We don't want to get in a situation where Vail has to walk back its reopening or revert to a “Stay at Home” status to contain the virus. That would be a tragedy not just for those who were infected but for entire Vail economy and community.

Vail visitors are increasing, many from places like Texas, Florida and California where outbreaks are already out of control. Even if from other areas, with well over half the states experiencing rising cases, the odds are that the virus is being brought into Vail by a significant number of visitors. And all this is taking place before ever getting to the predicted “second wave” due to hit in the fall, which makes it even more imperative that a

resurgence this summer be prevented. The time to act is now or Vail will find itself chasing containment like other areas that waited too long before acting.

This not a matter of personal freedom as some have claimed but rather a matter of sound judgment and policy based on medicine and science. While one might be free to make decisions about matters that affect just them, one no should have the right to act in a way that endangers the rest of the community. But that is what is happening.

**Vail Needs to Act Now.** The TOV is unique in the Vail valley. It alone has large pedestrian and shopping areas where crowds gather. To prevent the spread of the virus, extras precautions are necessary that may not be applicable throughout the rest of the valley. The VHA therefore urges that the Vail Town Council immediately enact a requirement that face coverings must be worn in all public places within the Town, both inside all public businesses and in all outdoor public places. We should not end up like Texas where masks were only mandated when the virus horse was out of the barn and raging out of control.

If you are concerned about the actions being taken to contain the virus, we ask that make your views known to the Town Council and the Town Manager at: [towncouncil@vailgov.com](mailto:towncouncil@vailgov.com) and [srobson@vailgov.com](mailto:srobson@vailgov.com). Together we can make Vail a better and safer place for all.

## **VHA Requests “Designated Open Space” Status for Donovan Park**



**Donavan Park Middle and Upper Benches Open Space—Will this be protected from development?**

On June 30<sup>th</sup> the VHA formally requested that the Upper and Middle Benches of Donovan Park be designated as “Designated Open Space.” “Designated Open Space” is a special classification of property within the Town that is designed to protect open space land from development. Once so designated, it requires the ballot-box approval of Town citizens to use the land for some other purpose, thus ensuring its status as open space.

The Upper and Lower Benches of Donovan Park were acquired in the 1970s to be open space; indeed, that land was purchased with RETT funds which can only be used to acquire open space land and provide recreational amenities. Unfortunately, over the years there have been various proposals to convert the Middle Bench portion of this land to other uses, one even fostering a contentious, expensive legal battle. Recently the VLHA has again targeted the Middle Bench with a [plan to convert it to employee housing](#). That resulted in VHA’s request that the land be designated as “Designated Open Space” so it will be effectively forever protected from development.



To become so designated, the Open Space Trustees must recommend the designation to the Town Council and it must then be approved by the Council (a super majority vote is required).

Here is the VHA request:

Dear Trustees:

We write to request that the you, as the Open Space Board of Trustees, recommend to the Vail Town Council that the Upper and Middle Bench of Donovan Park be designated as “Designated Open Space” pursuant to the Vail Town Charter, section 13-11. This land meets the criteria for this designation as it is (1) owned by the Town of Vail, (2) is zoned as Agriculture Open Space and (3) is a Town Park.

Although the property is commonly known and referred to as the Upper and Middle Benches of Donovan Park, the actual legal description is as stated on the attached survey. And, although the common usage refers to two different parcels, the Town acquired this property as a single parcel of land, which is designated as “Parcel 2” on the survey.

When the land was purchased by the Town in 1978, it was for the purpose of being held forever in perpetuity as a natural open space area. In keeping with that plan, Real Estate Transfer Tax (RETT) funds were used to acquire the property. As you probably know, RETT funds can only be used to acquire open spaces or to develop public recreational amenities. Also, in keeping with that plan, the land was zoned as “Agriculture and Open Space” and that zoning has persisted up to this day.

Further reinforcing the intent that this property 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.” Thus, that plan did not provide for any structures in the Middle or Upper Bench areas.

Unfortunately, there was an attempt in the late 1990s to convert the Middle Bench to employee housing. Town residents rose up and litigation ensued. That litigation was finally resolved when the Town relented and agreed to abandon its plan. Subsequently, the Town withdrew the Housing Plan. Now, once again there is a proposal to use the Middle Bench portion of this land for housing.

Rather than another protracted contentious dispute which will undermine community cohesiveness’s, the VHA believes that it is now time to put an end to attempts to convert any parts of the Upper or Middle Benches of Donovan Park for any usages, even housing. Taking the Upper and Middle Benches of Donovan Park permanently off the table will not alter the course of affordable housing in Vail; the VLHA only projected 20 to 30 sites for that location which wouldn’t even be a drop in the bucket of its goal. Therefore, we ask that the Open Space Board of Trustees recommend to the Town Council that the Upper and Middle Benches of Donovan Park be designated as “Designated Open Space” pursuant to section 13.11 of the Town Charter.

We also request that you advise when the Trustees will meet to consider this request.

Thank you for your consideration of this request.

Very truly yours,

Gail G. Ellis  
President

James F. Lamont  
Executive Director



The VHA will now follow this process and report back as matters proceed.

## The Booth Heights MOU

As [VHA previously reported](#), the next step in the efforts to preserve the Booth Heights property as Big Horn sheep habitat is to be a Memorandum of Understanding between the Town, Vail Resorts and Triumph Development concerning the plans going forward. [A draft of that MOU has now been prepared](#) and will be presented to the Town Council tomorrow evening. Public Hearings on the MOU are scheduled for July 21<sup>st</sup> and August 4<sup>th</sup>.



As presented, the MOU follows the outline of the process as generally understood up till now. In exchange for the Booth Heights property, the TOV will provide an alternative housing site at Lot 3 of the Middle Creek property where Triumph can construct an equal number of housing units (144 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 also. 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.

There are however some troubling aspects of the MOU which seem unnecessary and appear to be part of another agenda. Perhaps these were just oversights in the drafting process but, whether intended or not, they should be changed to adhere to the true purpose and intent of this proposal.

First, under the current wording of the MOU, the TOV will not receive title to the Booth Heights property when the Middle Creek housing is completed. Instead, under ¶¶ 4(k)(ii) & (iii) and ¶ 5(g) *Step Seven*, transfer of title is delayed until the completion of both the Timber Ridge redevelopment (which will not start until the Middle Creek development has been completed and is not scheduled to be finished until October 2024) and the TOV's acquisition of a net 400 additional new housing units (the new Middle Creek project and Timber Ridge are only projected to yield an additional 244 units). Under those provisions, title transfer could be delayed until well into 2024 or even many years later. This is not necessary to the Booth Heights swap but seems to have been included to help the VLHA achieve its goal of 1000 units by 2027. Allowing Vail Resorts to retain title for years after completion of Middle Creek development could be used to force agreement to unwarranted and unmeritorious actions of the VLHA. That would be improper coercion and this provision should be changed to provide that title will transfer on or before the completion of the Middle Creek development. While the VLHA supports additional affordable housing, such developments should rise or fall on their merits, not because meritorious opposition has been suppressed due to the withholding of the title necessary for the protection of sheep.

Second, seemingly tied into a delayed title transfer, ¶ 4(d) provides for a transfer never taking place, even if the Middle Creek development is completed, and for Vail Resorts to ultimately also develop Booth Heights. This would be contrary to the entire purpose of this plan. Just as ¶¶ 4(k)(ii) & (iii) and ¶ 5(g) *Step Seven* should be changed to provide that title will transfer on or before completion of the Middle Creek development, so also this provision should be eliminated.

Third, ¶ 3(c)(v) 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. If what is meant is that by the means of the swap of Booth Heights for a development on Lot 3 of Middle Creek that goal is achieved, then this provision needs to be rewritten to make that clear. If anything else is meant that would in any way contemplate that, even with the swap, the Booth Heights property could still be developed, then that is inimical to the purpose of this proposal and it should be deleted. That provision should also be deleted if it was intended to mean that title to the Booth Heights property could be withheld to force agreement to other plans of VLHA to achieve its goal.

Fourth, another unnecessary provision that would only benefit VLHA, is ¶ 5(c) *Step Three* which provides that, as part of this land swap process, the TOV will seek rezoning to increase the amount of Housing (H) District property. Again, this has nothing to do with the Booth Heights swap and could be used to coerce agreement in the rezoning process by conditioning protections for the sheep on rezoning of targeted properties. That could well be the purpose of this provision since the second *Whereas* clause states that the MOU is intended to “implement the Alternative Housing Sites Initiative.” That Initiative, which has not had any public vetting or Council approval, proposes the rezoning of certain properties, including the Middle Bench of Donavon Park. If used in that manner, this would amount to an improper attempt to coerce the conversion of open space lands (See above topic). Since this provision is solely for the benefit of the VLHA, Vail Resorts and Triumph would presumably have no interest in this matter and the Council could readily dispense with this provision. As discussed above, the Council should also approve the designation of the Upper and Middle Benches of Donavon Park as “Designated Open Space” property to prevent this effort and potential reoccurrences in the future.

Fifth, since extension of the development and vested rights for the Booth Heights property is to allow for the development of the Middle Creek site, ¶ 3(c)(ii) should be amended to provide that the extension is solely for that purpose and shall not extend beyond the completion of the Middle Creek development.

Sixth, VHA suggests that 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.

The VHA suggests that you should take some time and review the draft MOU and form your own opinions [and to view the Council proceedings tonight, July 7<sup>th</sup>, on Channel 5, public access television](#) on cable or the internet. It is an attachment to item 6.2 on the TOV agenda, which can be found at: <https://vail.novusagenda.com/agendapublic/MeetingView.aspx?MeetingID=1129&MinutesMeetingID=-1&doctype=Agenda>. Then mark your calendars for 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 unintended or unnecessary provisions that could have consequences down the road. In the meantime, the VHA will continue to monitor this entire process.



## **VHA Annual Meeting**

Mark your calendars. The VHA will hold its Annual Meeting on August 5<sup>th</sup> at the Grand View room atop the Lionshead parking structure. The Town Manager, Scott Robson, will be the featured speaker, and he can be expected to have much to talk about. Because of social distancing requirements, only a handful of people can be accommodated in that room, so ZOOM conferring will be available as the means for most to attend. Meeting notices will go out this month with directions on how to join the meeting.

VHA welcomes your participation and support.

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

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