

VAIL HOMEOWNERS ASSOCIATION

Town Rejects Calls for More Protection as Middle Creek Housing Moves Ahead

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March 17, 2021

The Town of Vail approved the Development Agreement for Lot 3, Middle Creek without any changes for the protection of the Booth Heights development plans. The Town's Lift Tax rate has not changed since 1992. Skier parking on Frontage Road only benefits one business. Recently, the Town has greenlighted two large transportation infrastructure projects and is exploring raising the level of amplified sound that can be produced in the Town core. And first steps are being taken that could lead to restrictions on private property adjacent to Gore Creek.

Town Rejects Calls for More Protection as Middle Creek Housing Moves Ahead

Despite wide community support for changes in the Lot 3 Middle Creek housing agreement, the Vail Town Council approved the development agreement without any changes (Chapin, Bruno, Coggins, Langmaid and Mason in favor; Stockmar and Foley opposed). The approval has put increased pressure on decisions to be made regarding the disposition of the Booth Heights site. In addition to the issues surrounding the Booth Heights plans and development rights, concerns were expressed about the architectural character of the proposed building. Assurances were given by Town staff that since the TOV is a co-applicant of the project, it would take steps to assure that the building would be compatible with and suit the site and its position at the entrance to the Town. The Town Council also unanimously (Coggins absent) overruled the Design Review Board which had rejected the design of the new Children's Garden Center of Learning facility, thereby, clearing the way for that project to be built.

With respect to any development at the Booth Heights site, the Council did claw back some of the Booth Heights development rights extension that had previously been granted. Ordinarily, development rights expire at the end of three years. In the case of Booth Heights that would have been on August 26, 2022. However, because Vail Resorts was supposedly negotiating in good faith to find a substitute site, those rights were extended to December 21, 2024. Now that Vail Resorts has broken off any further negotiations, that extension was revised and reduced so that the Booth Heights development rights now expire on November 20, 2023.

There was one other item of note concerning the potential for a Booth Heights development. The Town Attorney has been directed to have an independent condemnation expert advise the Town Council about the process: how a public purpose is established, what would be a typical timeline and other steps that would be involved in condemning the Booth Heights property. The VHA has been informed that has been tentatively scheduled for the April 6th Council meeting. While this does not mean that the Town will condemn the property, it is a first step in that direction.

In the meantime, a controlled burn for sheep habitat improvement on Town owned property in the Booth Heights area may take place as early as the end of March.

Is It Time to Revisit the Town's Lift Tax Rate?

The TOV collects a Ski Area Lift Ticket Admissions Tax from Vail Resorts. The tax is the fifth largest source of revenue for the town. For the four-year period from 2016 through 2019, the Town averaged slightly more than \$5 million per year. Revenues for 2020 significantly declined to \$4.1 million. Originally, the tax was 2% of ski pass sales but was increased in 1992 to 4%. According to information provided to VHA, Vail Resorts estimates how many days its different passes will be used each year and then “trues-up” during the year based on actual usage. The Town relies on VR for accurate information; it has never conducted a formal audit of lift tax collections, although it has the right to do so, and a preliminary audit could be done for less than \$1,000.

The VHA suggests that it is time to revisit the lift tax. As a first step, the VHA urges that the Town conduct a preliminary audit of the receipts from VR. Based on that information, it may be prudent to proceed to a full audit. It may also be prudent to reassess the amount of the tax and the purposes for which the tax is used by the Town.

Is It Time to Revisit Frontage Road Parking?

For many years, the [VHA has raised safety concerns about Frontage Road parking](#). Recently, Council members Foley and Langmaid raised concerns about why the Town is using its resources to facilitate parking on Frontage Road when that parking only benefits one business, Vail Resorts. According to Foley and Langmaid, other businesses in town do not get any boost from skiers being able to park on Frontage Road. If Vail Resorts is not going to cooperate with the Town on housing issues, why should the Town cooperate with Vail Resorts on parking?

Infrastructure Improvements



Construction of Vail Health South Frontage Road Improvements to proceed soon.

Vail Health Roundabout/South Frontage Road Improvements

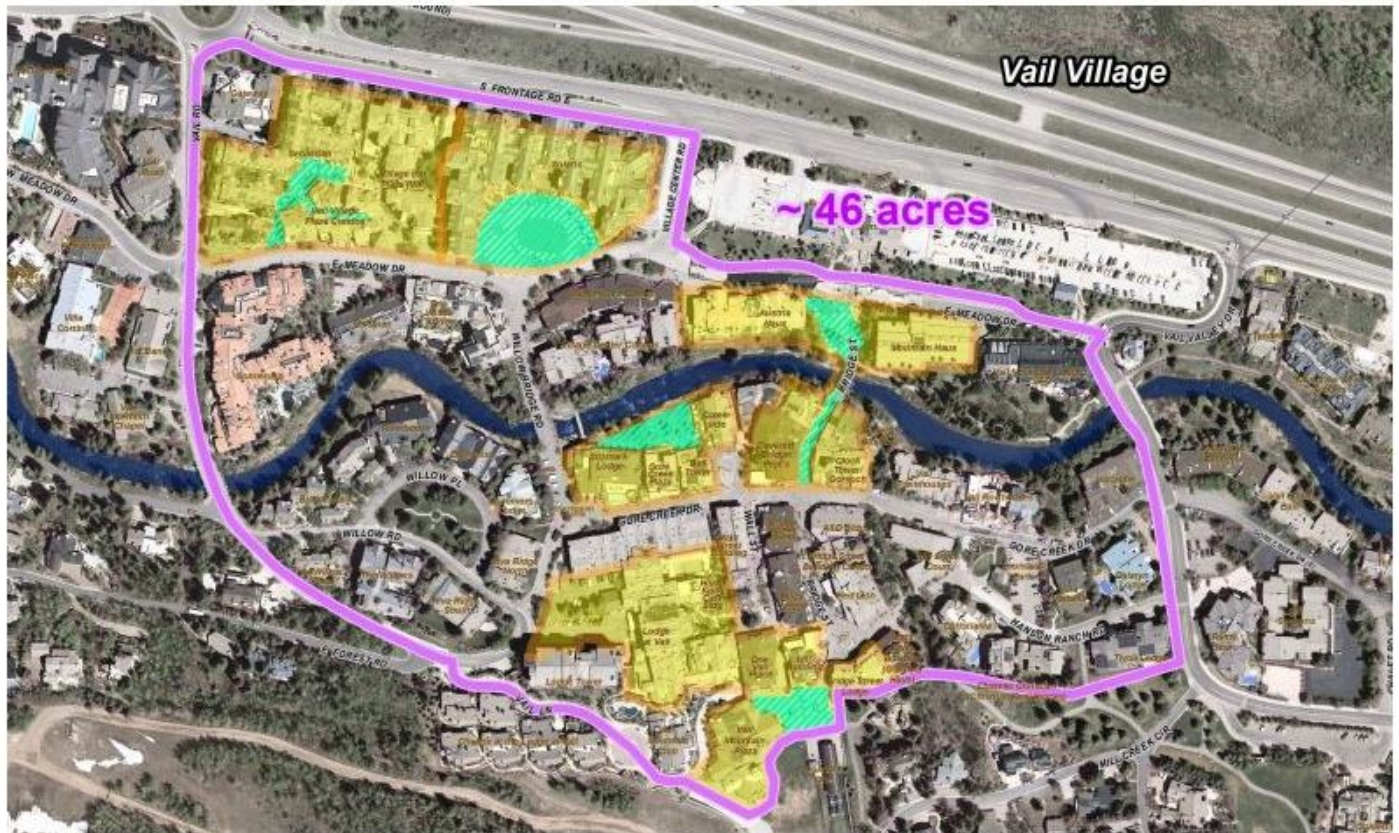
A new roundabout on South Frontage Road at the Vail Health campus and Town municipal building will be built this summer. [This is a project that VHA has advocated for.](#) In addition to a roundabout to facilitate access to the Vail Health campus, the four lane section of Frontage Road will be extended to Lionshead Parking Structure with sidewalks and landscaped medians. Importantly, the project will help reduce vehicular traffic accessing the Vail Health campus through the residential neighborhood on West Meadow Drive, and the improvements to the Frontage Road will give ready public access to emergency and general health care services.

Work is slated to begin April 12. The first phase will include the eastbound lanes, southern retaining wall, southern sidewalks and all southern business access points. The second phase, scheduled to begin in July, covers the westbound lanes, northern sidewalks and utilities. The final phase, scheduled to begin in October, will include final paving and median work. The project is scheduled to be completed by early November.

Public Works Shop Facility Expansion

Work is also scheduled to begin on improvements to the TOV Public Works Shop Facility. This will be a \$16 million major construction project. However, since all work will be contained within the facility, it should not impact travel or any other neighborhoods. The adjacent property is, nonetheless, the winter grazing ground of the bighorn sheep rams. The VHA intends to monitor the construction and finalization of the project to make sure that adequate steps are being taken to protect the sheep.

More Amplified Sound?



Potential Common Consumption Areas within the TOV proposed Vail Village Entertainment District.

The Town Council has recently authorized the investigation of changes to the Town's noise regulations that could increase the impact of music events in the Vail core by having loud, amplified music on business patios and in the Town right-of-ways well into evening hours. This appears to be driven by a desire to use music events to support a "lively, festive atmosphere" and increase business opportunities. As originally explained, it would have been only for the afternoon *Après* hours, and supposedly, it was to involve a balance between noise levels, time periods and appropriate music. However, the proposed time periods are from 2 p.m. to 8 p.m., and there is no provision for what is "appropriate music." And the proposal would involve a 23% increase in sound levels, from 65 Decibels to 80 Decibels. As history shows, once adopted, there will then be calls to increase both the Decibel level and the hours of use.

This proposal was developed by Town staff with no community involvement and, apparently, no consideration for the impact on residents within the Vail core or Lionshead. Apparently, the new ordinance will be presented during the spring season when many residents are not present. If adopted, such an ordinance could have the effect of increasing the frequency and size of crowds in both Vail and Lionshead. When increased noise levels are combined with the creation of an entertainment district, in which there will be a loosening of liquor code requirements, the potential for disruption increases several fold. It is the uniqueness of Vail's intermixing of residential and commercial uses in the town center that has led to Vail's success. Caution should be taken that partisan business interests do not dominate to the detriment of residential interests.

The VHA urges that there be collaborative involvement of resident interests in the process of preparing any ordinance changing the Town's noise levels. The VHA also urges that if there is an increase in Decibel levels

that it be only provisional for the coming summer. With a sunset limitation, the community can then evaluate whether this has been a positive development. There was already a rising chorus of complaints regarding the overcrowding of the Vail Town Center in the lead up to the imposition of pandemic related public health restraints. Increasing the level of permissible amplified sound may result in a similar round of complaints should there be a lack of consultation and interaction with residential property owners in the crafting and management necessary to administer these activities.

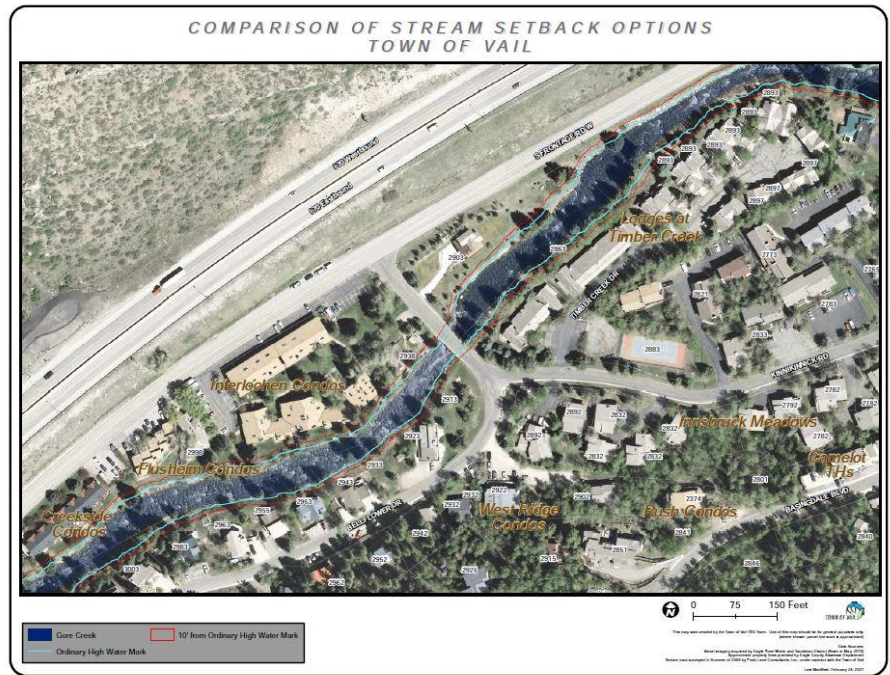
Is Private Property to be “Taken” for Gore Creek Protection?

To improve Gore Creek, the TOV is contemplating a new ordinance that would restrict owners of private property abutting Gore Creek from the use of their property. In a private Executive Session, the Town attorney has assured the Council that this will not be a “taking” of the owners’ property even though, except for a narrow path to the creek, owners would not be able to otherwise use a 20-foot strip of their land; that property would have to be returned to the wild. We only know of this “taking” advice to the Council because it is referred to in a staff memo; the actual advice has not been released and remains secret. While the Town attorney may believe he has found a legal loophole to justify this action, it seems illogical to say

that preventing a property owner from using his or her property is not a “taking.” Indeed, When the Booth Heights development was being considered, Town officials argued that the development had to be approved because otherwise there would be a “taking”, but now, it is being argued that preventing use of one’s property is not a “taking.”

The actual restricted amount of property involved may be more than just a 20 feet strip along Gore Creek since the measurement would be from the “ordinary high-water mark” which could change from time to time. For those that live in East Vail, where property lines extend to the middle of the creek, the restricted area would be even greater. Within that “buffer” zone, there could be no structures or landscaping only native vegetation.

The VHA supports the restoration of Gore Creek but is concerned about imposing a one-size-fits-all government mandate on all private property owners. It urges that representative property owners be involved in the drafting process so that this does not become another edict that threatens community tranquility and possibly leads to litigation.



TOV mapped boundaries of proposed stream setback zones in West Vail.

If these issues are of concern to 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.

Those desiring to make Paid Subscriber contributions via [PayPal](#), may do so. To apply for membership, also, to register as a subscriber or paid subscriber and make a payment with check, transfer, or credit card forward your contact information to vailhomeownersassoc@gmail.com.

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