



VAIL HOMEOWNERS ASSOCIATION

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June 9, 2021

Summer has arrived. The past year has been one of the most challenging periods we have ever faced. But now, the valley is once again green, and we can get on with moving forward and returning to a sense of “normal.” This issue covers a number of items from the Moffet lawsuit to mail-in balloting. The Moffet lawsuit raises some important takeaways. Vail may be heading for another eyesore building at the entrance to Town, The West Vail Master Plan raises some concerns. And Vail is to get a new Marriott Residence Inn and mail-in balloting.

The Implications of the Moffet Lawsuit

The Moffet Lawsuit. The Moffet Lawsuit. As most now know, in February the TOV filed suit against former Council member, Greg Moffet, for unpaid sums that Moffet allegedly owes to the Town. The lawsuit was quietly filed and only recently became known to the public. Why that occurred is not known.

According to the Town's claims in the lawsuit, the sums are due by reason of a contract that Moffet's company, Tiga Advertising, had to place advertisements on town buses and parking facilities. The relationship dates back to at least 1994, but the lawsuit is focused on the most recent term of that relationship which began in May 2014. The contract executed then was for five years, but it was extended by mutual agreement until October 2020. Under the contract, Moffet was supposed to pay the Town at least \$72,000 per year or, if more, 55% of the firm's gross revenue. During the period of the 2014 contract, Moffet was a member of the Town Council. In 2020, the Town cancelled the agreement. According to the Town, Moffet owes at least \$125,000.

A Can of Worms. At first blush, it seemed that this was a straight forward lawsuit for monies due. But then, Moffet filed a counterclaim against both the Town and all seven members of the Town Council in which he claimed that (1) the contract had been modified because for "a number of years" the Town allowed him to pay the sums due in arrears the following year, (2) the lawsuit was politically motivated and in retaliation because he voted to allow the Booth Heights development in East Vail and (3) the Town acted illegally in bringing the lawsuit because the decision to bring the lawsuit was made in Executive Session without giving the required notice. The last claim was brought pursuant to a law that would allow treble damages and attorneys' fees.

Beyond the bare allegations of his counterclaim, in an interview with VHA, Moffet admitted that Tiga Advertising owes the Town money but said that he personally doesn't owe the Town "a nickel." He is upset that he has been sued personally, stating that he is being singled out and treated like no one else. He said the amount of the Town's claim is wrong. What is due is only about half of what the Town claims, but because of his counterclaims, he contends that the Town may end up owing him money when it is all over. He said the contract (referring to an earlier iteration of the contract) was verbally modified by the Town Manager and Finance Director during the Great Recession to allow for payment in arrears and that procedure has been followed since then. He also admitted that the contract is a conflict of interest but claimed that the Town Council voted in 1999 to waive the conflict as a "minor incidental transaction." Finally, he claimed that the contract never influenced how he voted.

Review of the 2014 contract shows that the monies that are due were supposed to be paid quarterly. There is no reference to any allowance for payments in arrears. Tiga was also supposed to furnish the TOV quarterly statement of earnings. While the contract could be modified, it had to be by a supplementary letter agreed to by both parties. VHA believes that no supplementary letters were ever executed. According to the Town's records, Tiga has been in default on payments to the Town dating back to 2017 with the cumulative amounts increasing each year since then. Apparently the Town made no efforts to collect those amounts before the present lawsuit.

The VHA makes no judgment of the merits of the various claims. That will be for others to decide and determine who has to pay who what. There are, however, several takeaways from this lawsuit that have implications for how the Town conducts its business and governs.

Takeaway No. 1. This lawsuit confirms that there is a serious, long-term blind spot within the TOV on conflicts of interest and ethical violations. The Town Charter and the Town Code prohibit elected officials from having contracts with the Town. Section 3.7 of the Town Charter expressly provides, "No member of the council, during his/her term of office, ... shall have any direct or indirect financial interest in any contract with the town." To the same effect is section 1-5-7 of the Town Code.

It's hard to understand how a contract involving thousands of dollars is "minor" or "incidental." In all the years since the mid-2000s, no one in the Town ever once raised the slightest question either the existence of about the Moffet contract or the ever increasing amounts due under the contract. This is just another instance of a serious

conflict of interest that has occurred in recent years. All the laws in the world are meaningless if they are not followed and enforced.

Conflicts of interest, and even just the appearance of a conflict, undermines the integrity of government. It may be that Moffett's contract never influenced his vote, but conflicts beget more conflicts. It is not a big step from the Moffet situation to one where a person serves on a Town board and sees no conflict in voting on a matter involving their employer. While the current provisions in the Town Charter and Code should have avoided the Moffet situation, there is a need for a comprehensive code of conduct and conflict of interest law. This is a position that the [VHA has long advocated](#). While it seemed that the Town was moving in that direction when it had a conflict of interest presentation on September 8, 2020, since then there has been silence. The time to act is long overdue.

Takeaway No. 2. Moffet claims that the lawsuit was motivated by a political divide and brought as retaliation because of his vote on Booth Heights. VHA has no knowledge of any such "divide." The current Council has repeatedly said that it is unanimous in the desire to find a solution that will result in Booth Heights never being constructed. But if what Moffet claims is true, and not just an unfounded conspiracy, it means that those who are on Moffet's side of the divide are disingenuous and misleading the public. It also means that there could be individuals who are secretly biding their time and maybe already acting behind the scenes to have Booth Heights built. If Moffet is referring to members of the Council that would be an enormous breach of trust. If he is referring to Town employees, such individuals should be found and advised in no uncertain terms that such actions are improper and will not be tolerated by Town management.

As far as Moffet's other claim, that the lawsuit was brought as retaliation, that will only be determined after there has been a full airing of all the facts. It is not, however, a farfetched idea. In the past, the Town has used the threat of litigation to try and silence its critics. It is ironic now that Moffet makes this claim since he was on the Council when a previous thinly veiled threat was made to silence comments about the Town's procedures.. Lawsuits, or even their threat, should never be used as a weapon, and Town leadership should never tolerate such action. That it has happened before gives weight to Moffet's claim.

Takeaway No. 3. Moffet also claims that the decision to sue him was made in executive session without proper notice being given to the public that the decision was going to be made. The VHA has no specific knowledge about what happened insofar as the Moffet lawsuit is concerned nor does Moffet. That remains to be determined. However, Moffet's claims have a ring of familiarity. [The VHA has long been concerned about the overuse of executive sessions](#). It seems that decisions are being made in executive session out of public view, and that begs the question, just who is policing those meetings to make sure only true executive matters are being discussed. As a matter of policy, the Town should be erring on the side of having less executive sessions and terminating executive sessions at the earliest possible moment. Just the opposite seems to be occurring. To put it in the most basic terms, the over use of executive sessions is a failure of leadership.



Is the Town Heading for Another Eyesore Building?

The Residences at Main Vail, the name of the new housing development at the former Children’s Garden of Learning Center at the main Vail roundabout, is rushing through the approval process. Already the PEC authorized a substantial downsizing in parking spaces from 256 to 80. The project is currently before the Design Review Board.

When the project was originally proposed, it appeared as a “big box,” low-cost apartment building. The VHA was assured that was only a schematical design and that the TOV, who is a part owner, would ensure that the resulting building was architecturally compatible with TOV standards and its prominent place at the entrance to Vail. That commitment was put to the test at a recent DRB review of the concept. The DRB appears to be doing its best to require a proper building but, unfortunately, it can only do so much.



Current configuration for the Residences at Main Vail.

Triumph Development is using the Solar

Vail project as a comparable design to justify its proposal. That does not bode well for the final outcome since the Solar Vail design was rejected by the DRB, but the Town Council authorized it to be built anyway. If Solar Vail is to be the standard, Vail is going to end up with another ugly, big box apartment building at its entrance.

While Triumph has made a number of changes from the original design to improve the aesthetics of the building, it is still a large, unattractive apartment building that would stand out as a sore thumb at the Town’s entrance. At the recent DRB meeting, the DRB made it clear that there needed to be major changes in the building’s design before the DRB would approve the design.

It was unclear whether Triumph will make

Solar Vail.

those changes or anything close to them or whether it will simply follow the Solar Vail playbook and go around the DRB.

This is not the time to let short sighted goals and artificial deadlines dictate the outcome. From the beginning, the normal design process for this building has been turned upside down, with the VLHA (Vail Local Housing Authority) dictating the desired outcome. Yes, the goal was to be able to make a swap with Vail Resorts but that has long since been off the table. This building is going to be there for decades to come, signaling to all Vail’s standards as a community. There is time to get this right. It no longer has to be rushed through. Vail needs to take the long view. Take a step back and create a building that all will be proud of for the generations to come. And if this ends up in front of the Town Council, this is not a time to impose a three-minute rule to stifle criticism.

The last thing Vail needs is another building that the DRB has rejected. Stay tuned.



West Vail Master Plan

The process of creating a West Vail Master Plan continues to move ahead. The main area of focus is the commercial area north of I-70. The total plan area, however, includes Donovan Park. The VHA has three areas of concern.

Donovan Park. The current version of the plan proposes to change the use of the Upper Bench of Donovan Park. Currently, it is zoned Agriculture and Open Space. It is, therefore, eligible for Designated Open Space status under the Town Charter. However, the plan refers to the Upper Bench as “Outdoor Recreation.” There is currently no such zoning, but if the Upper Bench zoning was changed, it would make it ineligible for DOS status. There is already a master plan for Donovan Park. The VHA suggests that Donovan Park should be excluded from the West Vail Master Plan.

This has long been a matter of controversy. [At one point the Open Space Trustees had scheduled a meeting to consider recommending DOS status, only to abruptly cancel the meeting the day before it was set to happen.](#)

At the n,
West Vail Master Plan area
there has been silence.

The Town should stop playing around with either the Upper or Middle Benches of Donovan Park. These lands were purchased with RETT funds to be parks. Various interests keep periodically eyeing these properties for other uses. The Town should step up and protect these properties once and for all.

Infrastructure for Increased Densities. The current version of the plan also envisions increased densities in West Vail, but the plan does not have any provisions for an infrastructure to support that increase in population. Everything from transportation to recreation needs to be addressed. It will all come at a cost. It is no answer to

say that people should live within a five-minute walk of a bus stop. Additional people will mean more cars no matter where they live: increased traffic and need for parking. Additional people will also need the entire range of personal services and recreation opportunities. None of that has been addressed. The plan should not be considered complete until the needed infrastructure and a means to pay for it have been addressed. That was done in the Lionshead Master Plan, and it should be done for the West Vail Master Plan.

Reducing standards is dangerous. The plan also envisions reducing the development review requirements for West Vail housing. It is unclear whether this is just for workforce housing or would apply to all housing, but either way, this would be a dangerous turn for the Town. The Town already rejected the DRB recommendations for the Solar Vail project. In the rush to get more housing, it may also be on the verge of doing the same thing for the Triumph development, Residences at Main Vail. For 60 years, Vail has mostly maintained a design standard of excellence. Those standards should not be reduced, or Vail could become just another mountain town on I-70.



New West Vail Marriott Residence Inn.

West Vail Marriott Residence Inn

A new Marriott Residence Inn is going to be constructed on the old Roost Lodge site. The new proposal is for 146 lodge units. Although smaller overall, this latest iteration is very similar in appearance to earlier proposals for the site. While it is smaller in scale than the previously approved design, it will still be approximately 50 feet tall and will occupy, basically, all of the buildable property at the site. Approximately half the building is four-stories; the other half is three-stories. While the previous plan had 96 deed-restricted employee housing units, this plan only contains the bare minimum of 9 dormitory type employee units contained in 5 bedrooms.

Town Switches to Mail-In Ballots

Kudos to the Town Council and the Town Clerk for switching to a mail-in ballot. All the data shows this will result in greater voter turnout which is a very good thing. [For a long time, the VHA has called for this, and we applaud all involved.](#)

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, 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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