

VAIL HOMEOWNERS ASSOCIATION



East Vail Big Horn Sheep Herd receive temporary reprieve by a 4-3 vote of the Vail Town Council.

Saving the Sheep—For Now Open Land Challenges The Push for Unlimited Densities in Lionshead March 23, 2019

This continues to be a busy session for TOV issues. In the past few weeks, three issues have been on the front burner and each could have profound effects for the future of Vail. They involve the environment, wildlife, use of open land and population densities.

Saving the Sheep—For Now

The East Vail Bighorn Sheep Herd is Safe—For Now!!!! At a meeting with an historic community turnout **Tuesday** night, the Vail Town Council tabled any further consideration of a TOV financing term sheet for the East Vail housing project (In favor of tabling: Mayor Dave Chapin, Kevin Foley, Kim Langmaid and Jen

Mason; opposed: Jenn Bruno, Travis Coggin and Greg Moffet), despite the fact that Vail Resorts tried to pack the meeting to ensure passage of the proposal.

Even though no actual plan had yet been formally presented, the term sheet detailed a lucrative multi-million dollar package to underwrite 135 rental units in the heart of the critical winter range of the sheep. This was proposed even though “the means and sources for [the money] are yet to be determined.” Even more concerning was the fact that as proposed, the project would have probably been an extinction event for the herd.

Righting the Process. [As VHA had stated](#), approving a financing plan before any formal project proposal had been presented would have turned the normal approval process on its head. Now, the financing plan has been tabled until after there has been a formal application and the normal Planning & Environmental Commission consideration has taken place which pursuant to the motion must expressly include approval of an Environmental Impact Statement and a formal mitigation plan for the sheep. Kudos to the Mayor and Council members: Foley, Langmaid and Mason.

Looking Ahead. Following the meeting, Triumph representatives said they intended to proceed with their project, so the bighorn sheep remain in jeopardy. Any further reduction in their critical winter range—which is already down to only 277 acres—could be catastrophic. And, that range remains in urgent need of serious mitigation. If Triumph goes forward, it will have to produce a mitigation plan for the sheep and an Environmental Impact Statement. Given the already demonstrated faults of the Triumph biologist—claiming that the sheep were nocturnal animals and that “small batch” burns would be helpful—it remains to be seen what will be forth coming. In the meantime, VHA will continue to monitor events and report developments as they occur.

Open Land Challenges



Proposed Avanti Lodge on the site of the former Kindel House on Hanson Ranch Road in the heart of Vail.

Deja Vu—Again! Once again a developer is seeking to rezone Open Space land that was dedicated to the public. This time it is VailPoint LLC who is back for a third try to rezone open space land for its own private developmental purposes and profit. To recap, three years ago VailPoint purchased the Kindel property on Hanson Ranch Road. That property was surrounded by a fence that had been illegally erected on open space land. The area in yellow below is the involved fenced-in portion of land.



Tract E shaded in green with incursion into covenant protected open lands area in yellow.

Since acquiring the Kindel property, VailPoint has been trying to take public land to expand its property, specifically the fenced-in open space, so it can develop an ultra-luxury, 5-star private lodge to be known as the Avanti Lodge. How much larger the project will be than the Kindel house is not disclosed, although it is clear that this will be a substantially larger structure. VHA has no objection to improving the old Kindel house or developing a private lodge; it only objects to doing so with covenant-protected open space land. This is not a position that is directed solely against VailPoint or this development; since its inception, VHA has opposed all attempts to invade and profit from open space public land.

Open Space Means No Development. Open space land was a key element of the original plan for Vail. [As VHA reported the last time](#), VailPoint tried to rezone the open space fenced-in land. Before there was a Town of Vail, the founders of Vail created a series of subdivisions with protective covenants to control the development of the ski area, specifically, setting aside tracts of land that were to be maintained in its natural state as undeveloped open space. Included in that open space were portions of Tract E & Lot D-1 which include the fenced-in land which VailPoint now wants to rezone into developable land. The protective covenant expressly provided that this land:

shall be used ...at all times as a vacant and undisturbed open area in its natural condition.

Beginning in 1966, with the formation of the Town of Vail, new zoning codes were enacted to implement an orderly development of the Town. Again, importantly, Tract E and Lot D-1 were zoned Agricultural and Open Space (A/OS) which essentially precluded any development and maintained the parcels as open space. This was not, as claimed by VailPoint, some “relic of Eagle County zoning” but rather a key part of the foundational documents of the TOV. Of course, Vailpoint knew all this when it purchased the Kindel property.

Earlier Efforts to Rezone the Property Rejected. In the early days of Vail, Ted Kindel, the original owner of the property, sought to do exactly what VailPoint now seeks--purchase the encroached upon open space lands and have the TOV rezone them to a Public Accommodations use. The Town Council said NO and, to remove any incentive to obtain a financial gain via an encroachment, took the position that should a claim of adverse possession prevail in the courts it would not sanction a rezoning of covenant protected open space lands to a developmental use zoning category.

When VailPoint bought the Kindel property, it first sought to buy all the open space land between the Kindel property and the pedestrian walkway and bike path to the south with the intent of incorporating that land into its proposed development. That required TOV approval, and, on review, the Town Council rejected the purchase. That action was in keeping with the TOV’s “zero tolerance” policy toward property owners who encroach upon covenant protected publicly accessible open space lands.

Having been turned down on purchasing all the open space land on the south side of the Kindel property, VailPoint instituted a friendly adverse possession lawsuit to acquire the fenced-in portion of open space land. Once it had secured title to that land, it then filed an application to rezone the fenced-in portion to a Public Accommodation use. That brought immediate opposition from the neighborhood and VHA, and VailPoint withdrew its application. Now, VailPoint is back again.

In the meantime, VailPoint applied to the PEC to combine its original property with the fenced-in property so that it now owns one “lot.” That, however, in no way changed the zoning on the fenced-in open space portion of the land. It is and remains open space land to this day.

Rezoning Open Space Land is Wrong. [As VHA reported at the time](#) of VailPoint’s earlier rezoning request, rezoning this land would be wrong both as a matter of principle and legality. It would be wrong as a matter of principle because the land has, historically, always been open space public land, and twice before the same kind of rezoning request had been rejected. It would be wrong legally because protective covenants run with the land and cannot be zoned away.

Rezoning is Inconsistent with Vail’s Master Plan. In its rezoning application, VailPoint claims that the requested rezoning is consistent with the goals of the Vail Master Plan, but that is, also, not so. The Master Plan explicitly seeks to preserve open space, and the land in question, despite the illegal encroachments of a fence, is covenant-protected open space. To rezone it for a public accommodation use will directly infringe on both the goals of the Master Plan and the covenant.

Site plan showing the proposed building footprint and surrounding landscape features. The plan includes a paved plaza, a paved area with a small blue pond and a wooden deck, and a paved area with a small blue pond and a wooden deck. The plan also shows existing structures, including a building to the west and a building to the east. A red line outlines the proposed building footprint. The plan includes a north arrow and a scale bar (1 inch = 10 feet).

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from what is now open space land. But, VailPoint has admitted that it does not really need to rezone or use the open space land to proceed with its plans for a luxury lodge.

For all these reasons, VHA urges that the application to rezone the Open Space land should be rejected. VailPoint can build on the Kindel land, not on land that was dedicated and preserved for the public's use.

Elimination of Lionshead Density Limits



Treetops Condominium, proposer of new Lionshead zoning.

A request to amend the major Lionshead zoning classification to eliminate any density limit was approved by the Town Council on March 5th on first reading by a 5-2 vote. (In favor: Mayor Dave Chapin, Jenn Bruno, Travis Coggin, Jen Mason and Greg Moffet; opposed: Kevin Foley and Kim Langmaid). It will now be scheduled for a second and final reading in April. That means it is well on its way to adoption.

[As VHA previously reported,](#) Treetops Condominium plans to redevelop its facilities, and to “fund” the redevelopment, it wants to add 45 additional units (it presently has 28 units plus a manager's unit). Under current zoning, it could add only 9 units. Rather than simply seeking to increase the size of its project, Treetops wants to amend an entire zoning classification to eliminate any density limit. In other words, if the amendment is adopted, density in Lionshead, i.e., the number of units and people which can be crammed into a project, would be unlimited.

While the amendment will only affect Lionshead, it could be a harbinger of things to come for the rest of the town core since Treetops argument is that to redevelop it needed “help” and the “only realistic tool” was adding more units. It takes little imagination to hear this same argument repeated again and again. This will have a profound effect on Lionshead zoning and perhaps beyond.

Is This Good Zoning? The purpose of zoning is to promote and maintain the character and quality of the community, in Vail's case a world-class resort with appropriate amenities and accommodations. The Treetops proposal would do just the opposite; it would result in more people being crammed into smaller units. As

explained by Treetops, “the more dwelling units that go into the [project] means the smaller they will be and the more likely they will be rented.” This kind of profit-at-any-cost approach is inconsistent with one of the major purposes of Vail’s zoning—“to prevent excessive population densities.”

Eliminating density limitations to encourage redevelopment is, also, a self-defeating rationale that could be applied to any other aspect of zoning. If all that is important is encouraging redevelopment, GRFA or building height, etc., could, also, be eliminated. If there is any need for increased density, it should only be undertaken after sound analysis and then only to the extent that it will be consistent with the goal of maintaining a world-class resort. That is what was done in the 1990’s when density was increased by 33%. That same kind of approach should be taken now, not simply abandoning any limit on how small units might be.

The Impacts on Vail. Ignored in the Treetops proposal is the consequence of those increases: that more workers will be needed to service the additional visitors, adding to the need for more housing, transportation, etc. Also, brushed over are the increases in traffic that will inevitably result.

VHA submits this zoning change is not in Vail’s best interest, and it should be rejected. If this is a matter that concerns you, the VHA urges your attention and attendance at the next Town Council meeting to consider this issue. Only you can make your views known.

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