



Illustrated in lemon yellow are portions of Tract E and Lot D-1 covenant protected publicly accessible open space that were recently acquired by VailPoint, owner of the adjacent Kindel lot, through a claim of adverse possession and are proposed to be rezoned from Agriculture/Open Space to Public Accommodation. Rust colored area was being considered to be sold to VailPoint by Vail Resorts, but the TOV rejected the proposal in 2017.

VAIL HOMEOWNERS ASSOCIATION

VHA Report #2 – Proposed Rezoning of Publicly Accessible Covenant Protected Open Space Land.

August 17, 2018

To: Town of Vail
Mayor and Town Council
From: Vail Homeowners Association
Board of Directors
Date: August 17, 2018
RE: Rezoning of portions of Tract E and Lot D-1 Covenant Protected Publicly Accessible Open Space Lands

On August 2, 2018, the Vail Homeowners urged rejection of the VailPoint rezoning application, both as a matter of principle and legality. At that time, the VHA noted the historical foundation of the open space nature of the land involved. We write now to more fully state the importance of open space land to both the founders of Vail and to its current citizens and guests.

The original plan for Vail was conceived in the earliest days of the community before there was any municipal government. The founders of Vail (i.e., the founding directors of Vail Associates (VRI)) had assembled

holdings on the valley floor and divided those holdings into subdivision plats that defined the development pattern for much of the land that stretched from Sandstone Creek on the west to the I-70 Interchange in East Vail. Those subdivisions were approved by Eagle County and formed the basis for what later would become Vail.

There are more than a dozen large VRI created subdivisions in all, each with a set of protective covenants that define the location of each lot and use of each parcel of land. Until the early-1970's, the covenants controlled the uses, appearance and location of buildings. Importantly, they defined the purpose and location of land that was to be left as undeveloped open space. Thus, open space land was a key element of the foundation of Vail.



The Kindel fence a barrier to Vail's covenant protect publicly accessible open space.

Importantly, the land in question in this rezoning application was covered by one of those protective covenants that required it to be maintained in its natural state, so that from the first days of Vail Tract E and Lot D-1, it was to be forever open space land for all the public to enjoy.

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 which served to maintain the natural character of the land.

Of course, many years ago an illegal fence and landscaping was placed on this land in violation of the protective covenant and zoning, but that does not change the fact that open space land is a key foundational basis of the TOV. Nor does it have any legal significance insofar as the protective covenant and current zoning is concerned. Two wrongs do not make a right, and in any event, protective covenants cannot be zoned away.

Twice before, Town Councils have stood up to abide by the protective covenants on this land. First, in the early days of Vail when the then owner, Ted Kindle, sought to do exactly what VailPoint now seeks—a rezoning of the fenced in portion to a Public Accommodations use, and again last year when VailPoint sought to buy the land and convert the zoning. Both times, the Council said NO. The TOV has also been steadfast in protecting protective covenants on the land it owns, adopting a “zero tolerance” position for any encroachments.

In its rezoning application, VailPoint claims that the requested rezoning is consistent with the goals of the Vail Master Plan, but that is not so. The Master Plan explicitly seeks to preserve open space, and the land in question, despite the illegal encroachments of a fence and landscaping, 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.

As we noted in our August 2nd letter, the Council should not be misled by claims that the protective covenants would still be honored even if the land was rezoned. Rezoning would change the uses of the land in violation of the protective covenant. According to its prospectus, VailPoint intends to use the rezoned land to achieve building and setbacks that would not be authorized if the land remained Agricultural and Open Space. That is using the land for an improper purpose. In addition, it defies belief that VailPoint will allow public access to this land as the covenant requires, which means that the public should at all times have unhampered access up to virtually the proposed building. Any exclusion of the public from any part of Tract E or Lot D-1 would violate the covenant.

Nor is the apparent fact that the existing home site is a non-conforming size any justification for invading open space. VailPoint knew or should have known of the non-conforming size, and it purchased the property anyway.

For all these reasons, we urge the Council to reject this rezoning request. VailPoint should be required to use the normal zoning code procedures to expand its building, not a covenant violating rezoning. Attempting to abort the protective covenants through zoning would be disruptive and, potentially, harmful to existing property owners and, potentially, could trigger court action. Such an action could throw the local real estate market into turmoil. The gain achieved would pale in comparison to the loss to the town, its citizens and its visitor guests. As well, the debate would consume the attention of the community, blocking progress on other essential issues of common interest to local residents and part-time owners.

Thank you for your consideration.

Sincerely,

Gail Ellis, President
Vail Homeowners Association

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