



Tourism is returning to Vail Village - Monitor Gore Creek Drive [Live Webcam](#) for compliance with CV-19 guidelines.

VAIL HOMEOWNERS ASSOCIATION

June 12, 2020

WHERE WE ARE

We are living through chaotic times. A little over three months ago, without warning, the COVID-19 pandemic struck, forcing measures that caused a nation-wide economic collapse as business closed, and millions were thrown out of their jobs. The United States rocketed to worst in the world in reported cases and deaths, and recession, or worse, loomed. While some are now claiming that the worst is over that remains to be seen, especially if predictions of a second wave prove true. Then, as if the health and economic disasters were not bad enough, three weeks ago a horrible act of police brutality ignited national and world-wide protests (including in Vail and Eagle) that continue unabated. Where this will all lead is yet unknowable, but hopefully, it is to a better, safer and saner world.

In some respects, Vail Valley has had it better than most. From one of the nation's early epidemic "hot spots," Vail has become one of the safest places in the country. While the numbers are still awful, to date, Vail Valley has had only 631 reported cases and eight deaths from the virus, and the valley health systems seem well poised to deal with any future outbreaks with testing and treatment readily available. Economically, there is and will

continue to be much pain and hurt, but local communities and governments have come together to limit the damage. The Town of Vail has shifted to a “crisis budget”, and while it will have to draw down reserves to continue operations, its finances are strong. That is not to say that there will be a swift return to normal in the valley (or whatever the new normal might be) nor is that to say that the valley does not have formidable social justice issues, but there is reason to hope that a brighter future is ahead.

Vail is now in the process of “reopening,” although the coming summer will be like nothing ever seen before. That is where this report begins. While much of the TOV’s recent focus has been on the economic impact of the pandemic, other town business has continued, and this report also covers three matters of concern: the attempt to rezone the open space part of the Kindle property, the efforts to protect the East Vail bighorn sheep, including the status of the Booth Heights development and a new employee housing initiative which has implications for Donovan Park.

Vail’s Reopening

The TOV wants everyone to know that it is again open for business and visitors. It is, presently mid-way in the process of reopening with a number of businesses and restaurants offering limited service as people are returning to the valley. Current healthcare requirements allow public gatherings of up to 50 people and limited reopening of businesses, hotels, restaurants and bars (up to 50% of capacity), all with social distancing. Face coverings are recommended and mandatory for those 65 or older. It is anticipated that on June 22nd, public gathering will be expanded to 250 people but still with social distancing.

The TOV still plans on having a July 4th “in place” parade and fireworks, but most of the other normal summer offerings have been cancelled, including Bravo, Vail Jazz, Dance, Vilar programs, Go-Pro games and Oktoberfest. Bravo, Vail Jazz and perhaps others are scrambling to come up with some alternative programs, but huge logistical issues need to be overcome. There will be a limited Farmer’s Market, and Vail Resorts plans to reopen the mountain at the end of June, but what that will entail has yet to be announced. Of course, other outdoor recreation, such as biking, hiking, fishing and white-water rafting, are still available, albeit with social distancing.

Recent observations in Town show that people are out and about, but most are not using face coverings or maintaining social distancing. How that will play out as crowds begin to gather remains to be seen. This summer is going to be very much a work in progress, but the TOV is determined to make the most of what can be done.

Proposed VailPoint Rezoning Fails



[As VHA has previously reported](#), VailPoint sought to rezone the so-called “fenced-in” land of the “Kindel” property on Hanson Road, so it could build a large luxury lodge on the site for “high net-worth travelers.” This was sought even though the fenced-in property was under an open space protective covenant that prohibited any structure or improvements on the land, something that VailPoint sought to dismiss with a specious claim that it had been abandoned.

Equally unfounded was VailPoint's claim that its rezoning request met all of the rezoning criteria of the Town Code.

The hearing was originally scheduled for March 17th but, due to the pandemic, was postponed to June 2nd. Waiting in the wings were VailPoint's plans for the lodge which were sitting on the PEC's agenda. However, that has been brought to a halt. Because the vote to approve the rezoning was only 3 to 3 (Chapin, Bruno and Coggin in favor; Langmaid, Mason and Foley oppose; Stockmar recused himself because he had previously opposed the project while Chair of the PEC), the motion failed and the rezoning was not approved. The three Council members opposing the rezoning all cited numerous ways in which the proposal did not meet the Town's rezoning criteria.

After the meeting, Councilman Coggin explained that although he voted for rezoning the property, he believed that the protective covenants still controlled what could be built on the property. In other words, he would have granted VailPoint a "right of use" to build a lodge on the property and then voted to prevent them from doing so. One wonders how that makes any sense.

Where this might go from here is unknown, but this is probably not the end of this saga (it has been going on ever since VailPoint purchased the property in 2015). VailPoint's attorney signaled as much at the end of the hearing when she alluded to the "next time." This is, nonetheless, a major victory for open space in the TOV and the sanctity of the protective covenants. VHA will continue to monitor any future developments concerning this property and report back as needed.

The Bighorn Sheep



Kudos to the TOV, Vail Resorts and Triumph Development. Things are looking up for the bighorn sheep. Following the Booth Heights approval, the TOV approached Vail Resorts and Triumph Development with a goal of obtaining a win-win outcome that would swap the Booth Heights site for available Town owned property, so the Booth Heights site could be preserved for the sheep. Now it appears that even though this would be a complicated transaction with many moving parts, the parties are going forward and trying to put it together.

As envisioned, this would be a multi-year project. During that time, there would be no construction at the Booth Heights site; title to the Booth Heights property would remain with Vail Resorts/Triumph Development, and the already approved entitlements for that project would be extended to cover that period. At the same time, remediation and enhancement of the Bighorn sheep's foraging grounds would proceed. Concurrently, construction would start and be completed on an alternative site with the properties being swapped at or near the end of the period.

Many details remain to be settled, and the TOV is in the process of creating a Memorandum of Understanding (MOU) with VR and Triumph to set forth the understandings and expectations of the parties. Further supporting that this process is moving forward, VR has filed affidavits in the lawsuit challenging the development (see below) that it does not intend to start any construction in 2020, and Triumph has not posted the required \$100,000 mitigation deposit as required by the approval order.

The proposed alternative site for the swap is the present location of the Children's Garden of Learning facility at the main Vail roundabout. That would require moving the CGL to another site. Currently, under investigation is a proposal to construct a third story atop the Vail Gymnastic Center. Such a move has its own set of unique issues. And, of course, the cost of accomplishing all this looms large, but the good news is that the parties are moving forward in a good faith effort to make this happen.

Habitat Enhancement. Work continues on getting the clearances to restore and enhance up to 4,500 acres of the sheep's winter habitat. Since most of the work will occur on USFS land, an Environmental Assessment is required. A proposal for that work is in draft form and should be ready to present to the Town Council by the end of the month.

Fencing. This past winter, the TOV had to erect temporary fencing to keep the sheep off Frontage Road and I-70 because three sheep (one ram and two ewes) were killed in vehicle collisions. That fencing is due to come down shortly, and CDOT is now working on funding a permanent fence in that area, similar to the fencing that exists down-valley. It is unclear whether CDOT is considering fencing for both sides of the highways or only on the north side.

Clearly, something needs to be done to protect the sheep, but fencing off that area could have adverse impacts on other species. Historically, that area has been a major north-south migration corridor and remains one of only two that still exist in the TOV. Already there are yearly road-kills of multiple deer and, last year, a bear. If a permanent fence is erected on just the north side, animals migrating from the south will be trapped on the highway, and those coming from the north will seek to find ways around it. If that results in more animals on the highway, it is only a matter of time before the resulting collisions involve human consequences.

The VHA urges that this is a matter that requires study and expert advice and cautions against proceeding without that. It does no good if, in solving one problem, an equal or greater problem is created.

The Lawsuit. Following the Booth Heights approval, a group of concerned Vail citizens filed a lawsuit seeking judicial review of whether the Council's approval complied with the Vail Town Code. That suit alleges that the proposed mitigation measures to protect the Bighorn sheep from anticipated environmental impacts were inadequate and not in compliance with the town code. In response to a Plaintiffs' motion, the Court has recently ordered that "**no construction may take place during 2020 except by leave of court.**" This ruling

serves as a backdrop against any development occurring at Booth Heights while the parties complete the MOU and begin to implement the steps leading to a swap of properties.

The VHA will continue to monitor developments concerning the sheep and report as warranted.



Donovan Park Middle and Upper Bench Open Space – TOV housing developers are again pushing for housing on the Middle Bench.

A New Five-Year Strategic Action Plan For Housing That Puts Donovan Park Back In Play

In September 2017, the TOV adopted a ten-year plan to acquire 1,000 new employee housing units, i.e., 100 units per year. However, despite having spent \$8.7 million since the inception of that plan, only 207 units have been realized to date (with 9 pending). Now, in an effort to close the gap, the Vail Local Housing Authority has unveiled a new five-year Alternative Housing Sites Initiative. One of the objectives of that plan is to implement a swap for the Booth Heights project as explained above. Another part of that plan is to identify other housing sites to ensure that the Booth Heights swap does not leave the Town without the ability to achieve its 1,000-unit goal.

Additional Housing Sites. For additional sites, the plan proposes redevelopment of the west Timber Ridge Apartments (to yield up to 220 additional units), together with three new housing sites that could yield 165 to 235 additional housing units, a CDOT site in East Vail (20 to 30 units), a West Middle Creek site (125 to 175 units) and the Middle Bench of Donovan Park (20 to 30 units). That list, however, was not exclusive since it did not include the potential for additional units at the Public Works site and down-valley locations.

Donovan Park. There was no surprise that Timber Ridge, the CDOT site and West Middle Creek would be proposed, but it was a shock that the VLHA would be trying to convert the Donovan Park Middle Bench into housing since the Middle Bench was always intended to be open space; a fact that was confirmed in litigation in the late 1990s.

Donovan Park was acquired by the TOV in 1978, using Real Estate Transfer Tax (RETT) funds which could only be used to acquire open spaces and develop public recreational amenities. In keeping with that purpose, the Middle Bench was zoned as “Agriculture and Open Space.” Then in 1985, the Town adopted a Master Plan for both Ford and Donovan Parks so 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.” That plan did not provide for any

structures in the Middle Bench. So, from both a matter of zoning and Master Plan, the Middle Bench is not supposed to be used for housing, and the way it was acquired precludes any such use.

That point was reinforced in litigation in the late 1990s. In 1998, the TOV adopted the Vail Common Ground Plan which, among other things, proposed to put housing on the Middle Bench. A great deal of controversy ensued, especially in the neighborhood, resulting in litigation to stop development on any part of Donovan Park. A principle claim of the opponents was that the Park had been acquired with RETT funds and, therefore, must be maintained as open space. While the case was ultimately settled, it was because the Town relented and agreed to abandon its plan. Subsequently, the Town withdrew the Housing Plan.

Given this history, it seems strange that the VLHA would once again attempt to invade this property, especially when there is so little to be gained. According to the VLHA, only 20 to 30 units would result and that is a miniscule percent of its goal. Since any attempt to rezone the Middle Bench (a necessary first step) would be highly controversial, the VHA suggests that time and energy would be much better spent on investigating housing at the Public Works facility or at down-valley locations where many more units could be accommodated. Accordingly, the VHA urges the Town Council to direct that the Middle Bench of Donovan Park be removed from the list of alternative housing sites.

The VHA also suggests it is now time to put an end to these attempts to convert Donovan Park property to other uses. The VHA, therefore, calls on the Open Space Board of Trustees to recommend to the Town Council that the Middle Bench of Donovan Park be designated as “Designated Open Space” pursuant to section 13.11 of the Town Charter. In that way, in the absence of voter approval, the Middle Bench will be protected from all future development efforts.

This Report is typical of VHA reports that deal with a wide variety of community issues. If you value our work, we invite you to join VHA or become a subscriber to our reports. Your support will ensure that the VHA can continue to bring matters of concern to the community’s attention and, by doing so, make a difference for the good and the future of our community.

VHA welcomes your participation and support.

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

Post Office Box 238 Vail, Colorado 81658
Telephone: (970) 827-5680 E-mail: vha@vail.net Web Site: www.vailhomeowners.com