

VAIL HOMEOWNERS ASSOCIATION



Site of the proposed East Vail housing project.

The “New” East Vail Housing Deal.

Call to Action

March 13, 2019

On Tuesday, March 19th, the TOV Council is scheduled to vote on a new proposal for the East Vail housing project. According to a TOV memorandum, the Town has secretly negotiated a deal whereby it will buy the East Vail property and, thus, become the owner of the project; the actual project will, however, remain basically as previously proposed: [a mega-sized project of 135 units in mostly five-story buildings](#). This “new deal” will be on the Council agenda for approval on March 19th.

This vote will, also, decide the fate of the East Vail bighorn sheep herd since, for the reasons discussed below, displacing the herd from the project site will most probably result in their extinction.

If these are matters that concern you, the VHA urges your attendance at the meeting. Public comment will be allowed, and the VHA, also, urges that you make your views known.

How We Got Here. In the early days of Vail, Vail Associates apparently acquired approximately 22 acres of land on the north side of Highway 6 near what is now the East Vail I-70 interchange. Vail Associates and its successor, Vail Resorts, lost track of the property, and it lay dormant until 2016 when VR rediscovered it. At the time, the property was zoned for single family or duplex uses although most of it was undevelopable due to its steepness and the existence of an old landslide covering most of the property.

When VR rediscovered that it owned the property, it sought to rezone 5.4 acres as employee housing, and, as an enticement, it offered the remaining undevelopable portion (17.9 acres) as designated open space. Once rezoned, VR contracted to sell the property to Triumph Developers, who announced plans for a mega-sized project and entered into secret negotiations with the Vail Local Housing Authority (VLHA) to secure deed restriction funding to build the project.

The Secret Negotiations. Based on documentation reviewed by VHA, it appeared that Triumph was seeking \$5 million in funding from the VLHA, but the exact “ask” was unknown since the negotiations were being held in executive session, i.e., in secret. But, there was a significant problem. [As reported by VHA](#), housing funding was limited because the VLHA had drained the housing funds, and only \$2.5 million was available for 2019.

For the past several months, the Vail community has been awaiting the outcome of those financial negotiations and Triumph Development’s proposal for the development of the East Vail housing project. Unknown to the public, however, rather than negotiating funding for the project, the VLHA was working on a different “deal,” one that would not be limited by its financial resources. What was actually happening was only disclosed on March 5th; the TOV and Triumph were secretly negotiating a deal to sidestep the limited housing funding by having the Town buy the East Vail housing land. This appears to be just more of doing the public’s business in secret and, when a decision has been made, bringing the matter into the open for a quick, preordained vote.

The “New Deal”. As presented, the TOV has agreed to buy the entire East Vail property from Triumph. The deal includes both the 5.4 acre housing parcel and the 17.9 acre Designated Open Space parcel. The purchase price is \$4 million, and that money will be used by Triumph to build the project. Where the \$4 million is coming from has not yet been disclosed—more on that below.

The housing parcel will then be leased back to Triumph for 10 years in a sweetheart deal in which Triumph pays only \$15,000 per year (\$150,000 over the life of the lease) and gets to keep all income from the project.

Apparently, Triumph is also making a tidy profit on this deal although the numbers have not been disclosed (nor do we know what Triumph is paying VR in the first instance as that Purchase and Sale agreement has, also, not seen the light of day). But, we know there is a substantial profit because the TOV is required to help Triumph avoid taxes on the sale of the property. Apparently, neither the VLHA, town staff nor most of the Council saw anything wrong with this sleight of hand.

At the end of 10 years, Triumph will buy the housing parcel back for \$2.5 million. In addition, Triumph will not have to pay the construction and material use tax, and it can delay paying all review and permit fees until the project has been completed. And, the TOV will be on the hook for propping up the project with necessary traffic infrastructure improvements, transportation upgrades and wildlife habitat mitigation which will cost millions more.

These kind of cozy, behind-the-scenes deals are how the rich get richer, all the while leaving it to the “little people” to pay the bills.

Selling the Deal. As though it suspected that some fundamental fairness questions would be asked, the Town is touting this as a great deal because it will preserve the open space parcel, but that is just “window-dressing.” The realities are that this deal was not necessary to prevent development of the open space parcel. It had already been zoned Open Space; it could not in any event be developed because of the steepness of the property, and it was probably, also, undevelopable because it is the site of an old landslide. In other words, it has little value, was already protected open space and, certainly, is not something that the TOV should be expending its treasury to “protect”.

The deal is, also, touted as providing a “multi-year source of funds for Wildlife Habitat Enhancements & Education,” but the amount involved is laughable. Triumph is only obligated to contribute \$5,000 a year for 10 years, an amount that in the scheme of things amounts to “chump change” that will not begin to fund habitat mitigation for the bighorn sheep. But, these charades are only part of the problems with this deal.

Turning the Approval Process Upside Down. When this property was up for rezoning to employee housing in the summer of 2017, many concerns were expressed concerning the suitability of such a project on the site. Those concerns, largely, centered on environmental and density issues. When the property was rezoned, the Town Council promised that those concerns would be addressed when there was an actual application for development.

The process for employee housing developments requires Planning & Environmental Commission review which includes an environmental impact assessment, and, in certain cases, the Town Council may have the ultimate approval authority. But, for this project, the Council is seeking to step in before any PEC involvement to approve a purchase and financing deal. That turns the approval process on its head by sending a clear message to the PEC that regardless of any other consideration or the results of the environmental impact study, the Council has already determined that the project should be approved. And, that could moot the promise to address environmental, density and other issues.

And, that is before getting to the huge conflict of interest that is involved in this project. [Earlier VHA questioned](#) whether the conflict of interest that could arise from just providing major deed restricted funding bode well for a decision that was in the best interest of the entire community. The conflict of interest posed by becoming the owner of the project is of an entirely different magnitude. If this deal is approved, the TOV will be applying to the PEC which it appointed to approve the project, and, if that decision gets kicked upstairs to the Council, it will sit in judgment on its own project. It makes one wonder whether there really will be any effective approval process for this project. That may only come about through a public referendum on the project.

Where is the Money? And, then there is the question of where is the \$4 million to be found. It won't be in the employee housing budget. It is only \$2.5 million, and only \$750,000 of the purchase price is proposed to come from that source. And, the deal proposal fails to identify where the remaining \$3.25 million is to be found.

This puts a new perspective on the VLHA plans to seek a tax increase for employee housing. [As VHA reported,](#) the VLHA has hired “campaign consultants” to begin the process of proposing new taxes for employee housing. It doesn't take much thought to connect the dots.

And What About the Sheep? New information was revealed at the recent TOV Community Wildlife Forum (attended by only 2 Council members) which makes it clear that this project will result in the extinction of the East Vail bighorn sheep herd. [As VHA already reported](#), there have been dramatic declines from the historic sheep population.

At the forum, wildlife experts made clear that while the sheep's winter range is theoretically much larger, the effective range is only about 277 acres, and that range sits astride the project site. The impact of this project will not, however, be limited to just the clear cutting of and building on the 5.4 project acres. Based on established impact distances, the impact of this project will extend outward up to 500 yards (5 football fields) in all directions. That means the sheep will be driven out of not just the project site but up to 80 acres which amounts to 30 percent of their critical winter foraging grounds. This is before any impacts from dogs or other pets, or hiking or other recreational activities by the 400+ residents of the project. Once that habitat is gone, it is gone forever.

At the other end of the winter range, the TOV is preparing a massive expansion of its bus maintenance facilities with more employee housing there. The sheep will, thus, be squeezed at both ends of their winter range. This is not something this herd can survive.

Nor is mitigation going to help. First, there is no money, and the meager \$5,000 per year that Triumph has agreed to contribute is nothing more than tokenism. Second, there is no mitigation plan. Third, the "small batch" burns planned for this spring will probably do more harm than good. Fourth, the "snap chat" study the TOV is relying on, which was conducted by Triumph's biologist in a mild winter and with no baseline, is completely unreliable. And, finally, the idea of "moving" the sheep to a different area is pure folly. The only way mitigation could make any sense is if it were based on real scientific long-term peer reviewed studies: it was conducted and evaluated **before** any construction was approved, and it was on-going for at least the life of the project. And, there is no plan to do any of that.

Protection of wildlife, especially this iconic herd, is a core community value. It is the Town Council's responsibility to ensure that the proposed development does not negatively impact the bighorn sheep. Vail should not end up having to post a plaque in East Vail stating: "The loss of wildlife in this area was brought to you by the Town of Vail. Voting in favor were Council members: _____."

Fait Accompli? This deal may already be a *fait accompli* even though there are many reasons why it should not be approved. It has been reported to VHA that the Town Council has already voted to approve the deal on a 5 to 2 vote (Kim Langmaid and Jen Mason dissenting). Nonetheless, the matter will appear for "approval" on the Council agenda on March 19th. And, a staff memo on the deal is due to be released on March 15th although, given the glowing staff memo that has already been released from the VLHA, it is hard to see how there will be any critical analysis.

This is a time when the community needs to speak up. Mark your calendars. March 19th.

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