

**RESOLUTION NO. 42
SERIES 2019**

**A RESOLUTION OF THE VAIL TOWN COUNCIL ADOPTING
AMENDED RULES OF PROCEDURE FOR THE OCTOBER 15, 2019
APPEAL HEARING**

WHEREAS, the Town received 7 separate appeals of a decision of the Planning and Environmental Commission (the "PEC"), all of which are scheduled to be heard by the Town Council at a single hearing on October 15, 2019;

WHEREAS, pursuant to Vail Town Code § 12-3-3(F), the Town Council is authorized to adopt rules of procedure for appeal hearings;

WHEREAS, on October 1, 2019, the Town Council adopted the Rules of Procedure for the October 15, 2019 Appeal Hearing Before the Vail Town Council of the August 6, 2019 Planning and Environmental Decision Regarding the Booth Heights Development;

WHEREAS, the Town Council now wishes to afford each appellant a limited opportunity to present rebuttal evidence, if desired; and

WHEREAS, the Town Council finds it in the best interest of the public health, safety and welfare, and in the furtherance of the due process rights of all parties involved, to adopt the attached amended rules.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF VAIL:**

Section 1. The Town Council hereby adopts the Amended Rules of Procedure for the Appeal Hearing Before the Vail Town Council of the August 26, 2019 Planning and Environmental Commission Decision Regarding the Booth Heights Development, as attached hereto.

INTRODUCED, READ, APPROVED AND ADOPTED THIS 15TH DAY OF OCTOBER, 2019.

Dave Chapin, Mayor

ATTEST:

Tammy Nagel, Town Clerk

**RULES OF PROCEDURE
FOR THE APPEAL HEARING BEFORE THE VAIL TOWN COUNCIL
OF THE AUGUST 26, 2019
PLANNING AND ENVIRONMENTAL COMMISSION DECISION
REGARDING THE BOOTH HEIGHTS DEVELOPMENT**

1. Purpose. These Rules of Procedure ("Rules") are adopted pursuant to Vail Town Code § 12-3-3(F) to establish the procedures for a hearing to consider appeals of the decision by the Planning and Environmental Commission (the "PEC") on August 26, 2019 approving the Booth Heights Development Plan (the "Decision"). These Rules are limited to this hearing and any continuances thereof, and shall not apply to any other hearings before the Town Council. These Rules are intended to establish reasonable procedures to protect applicable due process rights and to ensure that the hearing proceeds in a fair and expeditious manner.
2. Background. As of September 16, 2019, the Town received 22 potential appeals of the Decision. Appeals of PEC decisions are governed by Vail Town Code § 12-3-3(C). The Community Development Director reviewed all 22 potential appeals to determine whether each purported appellant had standing. On September 23, 2019, pursuant to Vail Town Code § 12-3-3(C)(2), the Community Development Director determined that 7 of the appellants had standing to file appeals (each an "Appellant" and collectively the "Appellants"), and set a hearing before the Town Council on October 15, 2019. The Town then notified all Appellants of the date of the hearing, as well as the development plan applicant, Triumph Development ("Applicant"). The Town also published notice of the hearing as required by Vail Town Code § 12-3-6.
3. Burden of Proof. All 7 appeals challenge the Decision as a whole, alleging that the Decision should be overturned for various reasons. As such, the Town Council will hear all 7 appeals at the same time. It is Appellants' burden of proof, as a whole, to establish that the Decision was made in error.
4. Pre-Hearing Submittals. In compliance with Vail Town Code § 12-3-3(C)(3), the PEC, through the office of the Community Development Director, will forward to the Town Council prior to the date of the hearing a summary of all records concerning the Decision. Additionally, Appellants and Applicant shall be allowed to submit to the office of the Community Development Director written materials prior to the hearing for Town Council's review. All written submittals must be relevant, legible, clearly labeled, signed and dated. .
5. Appearance and Representation. All Appellants must appear in person at the hearing to present evidence unless represented by a duly authorized representative. If any Appellant fails to appear in person at the hearing and is not so represented, that Appellant's appeal shall be deemed dismissed. No telephonic participation shall be allowed.
6. Testimony. All Appellants giving testimony to the Town Council shall be deemed to have given such testimony under oath. Each Appellant shall state their name and

address for the record prior to presenting any testimony. Inflammatory, irrelevant, repetitive and incompetent testimony and hearsay will not be permitted.

7. Orderly Conduct. All persons appearing at the hearing shall act in an orderly and courteous manner.

8. Order of Proceedings.

a. The Mayor shall open the hearing, and Town staff shall present the procedural history, including dates of the PEC hearings and the Decision. The Town Council may ask questions of Town staff during this presentation.

b. Each Appellant shall be allotted a total of 10 minutes to present evidence, witness testimony, statements and arguments in support of the appeals, provided that pooling of time shall be permitted between Appellants who are present or represented at the hearing. No cross examination of witnesses shall be allowed.

c. Applicant shall then present any evidence, witness testimony, statements and arguments in support of the Decision. Applicant's presentation shall be limited to 70 minutes.

d. Following Applicant's presentation, if any, each Appellant shall have up to 3 minutes to respond only to issues raised by Applicant, provided that pooling of time shall be permitted between Appellants who are present or represented at the hearing.

e. Town staff may then respond to or supplement the evidence and testimony presented by Appellants and Applicant.

f. Following the Town staff presentation, the Town Council shall allow limited public comment. Each public comment shall be limited to 3 minutes, provided that pooling of time shall be permitted and repetitive and irrelevant comments may be disallowed. Public comment shall be on a first-come, first-served basis, based on a sign-in sheet at the hearing.

g. The Town Council shall have the right at any time to temporarily recess to review any written evidence provided by any person if such review cannot occur while the hearing proceeds.

9. Continuance. Once the hearing has commenced, the Town Council may continue the hearing to a date certain upon its own motion, for good cause including without limitation the need for additional time for presentation or consideration of evidence or the need for additional information. Re-notification to adjacent property owners and interested parties shall not be required for any continued hearing. At the continued hearing, no additional time shall be allotted for public comment. Notwithstanding the foregoing, the hearing shall be concluded and a final decision rendered prior to the new Town Council members being sworn in to office.

10. Decision. At the conclusion of all of the testimony, the Town Council may deliberate. Following deliberation, the Town Council shall make a decision on all of the appeals at once by a voice vote, and a simple majority shall be required to uphold or reverse the PEC decision.