

VAIL RESORTS®

EXPERIENCE OF A LIFETIME

June 29, 2022

VIA EMAIL

Town Council
Town of Vail
75 S. Frontage Road West
Vail, CO 81657
towncouncil@vailgov.com

Re: Appeals of May 18, 2022 DRB Approval (DRB 19-0652.001)
Hearing Set: July 5, 2022 at 6:00 p.m.

Dear Council Members:

I write regarding the four citizen appeals of the May 18, 2022 Design Review Board (“DRB”) approval of the Change to Approved Plans submitted by OZ Architecture for the Lot 1 East Vail Housing project (DRB 19-0652.001) (the “Application”).

Procedural History

As you are aware, the history of the East Vail Housing project includes the following actions by the Town:

- Sept. 25, 2017 – PEC Approval of Subdivision Plat
- Aug. 26, 2019 – PEC Approval of Development Plan Application and Conditional Use Permit for Dwelling Units
- Oct. 15, 2019 – Town Council Affirms PEC Approval of Development Plan Application
- March 4, 2020 – DRB Approval of Application for Booth Heights Neighborhood
- Oct. 19, 2020 – Eagle County District Court Affirms the Town of Vail Town Council’s Approval of Development Plan Application

Vail Resorts remains steadfastly committed to the planned and approved affordable housing project on this site. Vail Resorts, through OZ Architecture, submitted the Application to the DRB on April 11, 2022. The Application, which is attached to this letter, sought to make limited changes to the plans approved by the DRB on March 4, 2020 (the “Prior Approved Plans”).

Town staff recommended approval of the Application to the DRB, and the DRB held two hearings on the Application on May 4, 2022 and May 18, 2022 (the “DRB Approval”).

Following that approval, and according to Town staff, certain members of the community submitted appeals of the DRB Approval to the Town. The Town has since concluded that four of those appeals have standing (the “Appeals”).

*390 Interlocken Crescent
Broomfield, CO 80021*

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Vail Resorts and OZ Architecture only became aware of the upcoming hearing on July 5, 2022 due to the announcement on the Town of Vail website on June 21, 2022 and submit with this letter the Application and other materials that may be referred to at that upcoming hearing. Due to the volume of materials, we are separately submitting them via Dropbox and will provide a thumb drive at the July 5th hearing. We are also including links to the videos of the DRB hearings but can submit the videos separately upon request:

- <https://www.highfivemedia.org/show/drb-meeting-050422>
- <https://www.highfivemedia.org/show/drb-meeting-051822>

Procedural Issues

A few procedural issues have arisen related to the hearing. First, neither Vail Resorts nor OZ Architecture received copies of the citizen appeals until June 24th, and Vail Resorts only received confirmation of which four citizens were determined to have standing on June 27th. This means that the property owner and applicant were unable to review the appeal documents until two days ago and have therefore not had a realistic or meaningful opportunity to respond to the Appeals. OZ Architecture and Vail Resorts have pulled together materials here to respond to those Appeals, but reserve the right to present additional materials at the hearing. And while OZ Architecture and Vail Resorts are disadvantaged by this situation they do intend to appear and testify at the hearing on July 5th without waiving their objections to the Town's lack of notice of the Appeals.

Further, to clarify, the scope of the upcoming hearing must be limited to the minor *changes* to the Prior Approved Plans, which changes were reviewed and approved by the DRB on May 18, 2022. Because the appeal deadlines for the Prior Approved Plans have long since expired, the Town Council does not have authority to consider or review them.

On June 8, 2022, Jonathan Spence, Planning Manager for the Community Development Department, informed Vail Resorts that the Town had received Notices of Appeal for the DRB Approval and, as a result, the Town would impose a stay on all permit activity. Mr. Spence took the position that this included a separate request to complete soils testing on the East Vail site. The soils testing application is not a design-related request and is not in furtherance of the DRB Approval. Vail Town Code § 12-3-3(C)(4). Vail Resorts disagrees that the soils testing application should be stayed and informed the Town of this disagreement on June 10th. The Town and its legal counsel have taken the position that the stay is on all "other proceedings related to the project," a position that is not supported by the Town Code. Vail Resorts preserves its objections to the stay.

Finally, as of the date of this letter, we have not been informed about the procedure the Town Council intends to follow at the upcoming July 5th hearing. We ask that Vail Resorts be given both an opportunity to respond to the appellants as well as public comments presented at that hearing and be able to answer questions raised by members of the public.

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Broomfield, CO 80021*

The Appeals

Based on the limited timeframe provided to review the Appeals, Vail Resorts has some preliminary responses to the Appeals here. Vail Resorts will continue to gather information and intends to thoroughly address all relevant issues included within the Appeals at the upcoming hearing. Each of the Appeals raised several issues, but it is not clear on which issues the Town determined the appellant had standing. Vail Resorts requests that the Town clarify which issues will be heard on July 5th.

1. Wood Cedar Siding

The Prior Approved Plans included wood cedar siding. Vail Resorts did not request any changes to the previously approved siding material in the Application. When the siding was discussed by the DRB this year, Vail Resorts offered to make a change to a Cementous siding and remains willing to use either product. The DRB did not require a change.

2. Landscape in the CDOT Right-of-Way

A condition of approval for the Prior Approved Plans was that additional landscape be added to the CDOT right-of-way. The condition was discussed during the 2022 DRB hearings, but the Application did not seek to change this condition. The condition was again incorporated into the DRB Approval, but Vail Resorts remains willing to either comply with the condition of approval or exclude the landscaping from the CDOT right-of-way.

3. Lighting

It is Vail Resorts' understanding that the lighting must comply with Dark Sky Requirements, not Green Globes, and the intent of the Application is to have Dark Sky compliant lighting on the exterior of the building. Exterior light levels are per code as submitted, which is for the safety of residents.

The Application did not make any changes to the amount of lighting or the number of windows or openings in the Prior Approved Plans.

4. Parking Spaces

The number of parking spaces remains the same as in the Prior Approved Plans. The only change requested in the Application was to add code-compliant Accessible stalls to the parking lot. A parking study was requested and approved in the 2019 process and the findings were incorporated into the Prior Approved Plans.

5. EV Charging Stations

EV charging stations were not provided in the Prior Approved Plans. The current Vail Town Code, at the time of submission of the Application, did not require EV charging stations for this development. During the DRB hearing on May 4, 2022, the DRB requested that EV charging stations be added and, as a result, the plans were updated to include conduit to 6 parking stalls, making these EV-Ready. These 6 stalls are 10.7% of the stalls provided for this building and include 2 ADA stalls. This update was submitted as a revision to the Application, as requested, and was discussed in the May 18, 2022 DRB hearing and approved.

6. Motor Vehicles and Traffic; South-Facing Parking Lots and Buildings; Rainwater and Snowmelt; Natural Alpine Environment

The Application did not include any changes to the Prior Approved Plans that affect (1) the amount of motor vehicles or traffic; (2) the south-facing parking lots and buildings; (3) the absorption of rainwater and snowmelt; or (4) the Natural Alpine Environment. These aspects of the project were already approved in 2019 and 2020, so they were not considered or evaluated by the DRB below and are not part of the DRB Approval that is being appealed.

7. Bighorn Sheep

Issues related to wildlife mitigation are outside the scope and authority of the DRB, which is responsible for evaluating the design of new development and reviewing plans for compliance with the Town of Vail design guidelines. The environmental review and mitigation planning for the East Vail Housing project site has been extensive, and similar to the multitude of other uses the Town permits in the bighorn sheep's range, this project can safely coexist with the herd.

Sincerely,

/r/ Nicole Bleriot

Nicole Bleriot
Sr. Director of Real Estate
Vail Resorts Management Company
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Folders of Documents Submitted Via Dropbox
2022-04-11 East Vail Housing – DRB Changes to Approved Plans
2022-04-22 East Vail Housing – DRB UPDATED EXHIBITS
2022-05-04 East Vail Housing – DRB Change to Approved Plans_Re-Submittal
2022-05-16 DRB Record Drawings
2022-05-17 Lot 1 further OZ response
2022-05-18 East Vail Housing – Change to Approved Plans_Final Submittal
DRB Agendas
DRB Conditions of Approval
Emails
TOV Provided Documents
Vail Bus Shelter



June 29, 2022

Town of Vail
Dept. of Community Development
75 South Frontage Road
Vail, CO 81657
970-479-2128

RE: Lot 1 East Vail Housing – Design Review Board Appeal

Dear Town of Vail:

We just received, from Vail Resorts, the Appeals Forms, Letters and notice that the Lot 1 East Vail project (AKA Booth Heights) will be before Town Council on July 5th in a DRB Appeal hearing. Because we did not receive any notice from the Town and do not have any clear understanding of what part of the provided appeal letters describe recognized objections to the May 18, 2022 DRB approval of updates to the previously approved plans. Below, please see our reply to all comments in the appeal letters.

1. Wood cedar siding:

The 2019 approved plans had wood cedar siding. No changes were requested to the previously approved material in the recent application. That said, the DRB did debate if real wood siding should be used on this building or if we should change to a Cementous siding. In both DRB meetings we answered that we would consider non-combustible siding. We are fine with either product.

2. Landscape in the CDOT Right-of-Way:

The 2019 approved plans had a condition of approval that additional landscape be added to the CDOT right-of-way. This condition was discussed in the recent DRB meetings because that change has not yet been incorporated into the documents or design. The DRB asked for a condition of approval that the design team request the landscape from CDOT and work with Town Planners to add this in the future to comply with the original condition from the 2019 process. If the DRB or the Town of Vail does not now want that landscape in the ROW, we are happy to discuss this with the Town Planning Dept. further and would request the condition be updated to reflect the change in direction if it is now not desirable to landscape this area.

3. Green Globes Compliant Lighting and 'light pollution':

It is our understanding that lighting must comply with Dark Sky Requirements, not Green Globes. It is the intent of the application to have dark sky compliant lighting on the exterior of the building. Exterior light levels are per code as submitted. This is for safety of residents. This comment also refers to 'light pollution' and 100+ openings. The updates requested by the DRB application in 2022 did not include additional lighting or additional windows/openings, and thus the approved 2019 application is not changed by the current plans



4. 56 Parking Spaces:

The number of parking spaces remain the same as in the 2019 approved plans. The change requested to parking in the recent update was to add code compliant Accessible stalls to the parking lot. It is our understanding that a parking study was requested and approved in the 2019 process and that this was incorporated in the current plans.

5. EV Charging Stations:

EV charging stations were not provided in the approved application from 2019. The current code, when the updates to the plans were submitted, did not require EV stations for this development. During the DRB hearing on May 4, 2022 the Board requested that EV stations be added. The plans were updated to include conduit to 6 parking stalls, making these EV-Ready. These 6 stalls are 10.7% of the stalls provide for this building and include 2 ADA stalls. This update was submitted as a revision to the application, as requested, and discussed in the May 18, 2022 hearing and approved.

6. Motor Vehicle and Traffic Pollution:

No changes have been proposed from the 2019 approved plans so this was not considered in this DRB submission. Vail Town Council heard this and studied it when the original application was submitted and approved. This was not part of the updates we put before the DRB, so we do not feel this needs additional discussion.

7. South-Facing Parking Lots and Buildings Disrupt Neighborhood's Natural Climate:

No changes have been proposed from the 2019 approved plans so this was not considered in this DRB submission. Vail Town Council heard this and studied it when the original application was submitted and approved. This was not part of the updates we put before the DRB, so we do not feel this needs additional discussion.

8. Rainwater and Snowmelt will not absorb into the Soil and will Create Drought and Fire Conditions:

No changes have been proposed from the 2019 approved plans so this was not considered in this DRB submission. Vail Town Council heard this and studied it when the original application was submitted and approved. This was not part of the updates we put before the DRB, so we do not feel this needs additional discussion.

9. Parking Lots and Buildings will Cause Rainwater & Snowmelt to Become Polluted:

No changes have been proposed from the 2019 approved plans so this was not considered in this DRB submission. Vail Town Council heard this and studied it when the original application was submitted and approved. This was not part of the updates we put before the DRB, so we do not feel this needs additional discussion.

10. The Development will Encroach on the Bighorn Sheep Habitat:

Our understanding is that issues related to wildlife mitigation are outside the scope and authority of the DRB, which is responsible for evaluating the design of new development and reviewing plans for compliance with the Town of Vail design guidelines. The environmental review and mitigation planning for the East Vail Housing project site has been extensive, and similar to the multitude of other uses the Town permits in the bighorn sheep's range, this project can safely coexist with the herd.

11. Jeopardize the Natural Alpine Environment of East Vail:

No changes have been proposed from the 2019 approved plans so this was not considered in this DRB submission. Vail Town Council heard this and studied it when the original application



was submitted and approved. This was not part of the updates we put before the DRB, so we do not feel this needs additional discussion.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Stone". The signature is written in a cursive style and is placed on a light-colored rectangular background.

Rebecca Stone, AIA, LEED BD+C
Principal
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