

**Minutes of the
Bachelor Gulch Village Association
Board of Directors Meeting held
March 13, 2020**

A meeting of the Bachelor Gulch Village Association (the "Association") Board of Directors was held on March 13, 2020. In attendance were Mike Trueblood, Association Manager, Steve Nusbaum, Manager of Design Review Administration and Carol Floyd, Secretary for the Meeting. In attendance by phone were Board members Nadia Guerriero, George Bigley, Gary Shimanowitz, Brian Kushner, and Nick Nichols. Also in attendance by phone were Lisa Mayer, Attorney for the Association, Dan Dickhart, General Manager of The Ritz-Carlton, Bachelor Gulch, Bonnie Guss, Steven Sinacore, Bob Baron, Dennis Heipt, and Bonnie Kivel, property owners. Nadia Guerriero called the meeting to order at 1:03 p.m., and it was noted that proper meeting notice was given and a quorum was present.

Approval of Previous Board Meeting Minutes

Brian Kushner moved to approve the September 11, 2019 Board of Director Meeting Minutes and December 26, 2019 Annual Board Meeting Minutes as presented. George Bigley seconded the motion and it was unanimously approved.

Review of the Annual Meeting Minutes

Nadia Guerriero offered the opportunity to provide comments or corrections to the Annual Meeting minutes and there were none.

Public Comment

Mike Trueblood opened the meeting to receive public comment. Bonnie Guss asked Mike to summarize what has been done in regard to noise levels at The Ritz-Carlton ("Ritz"). Mike replied the Association has been reviewing the State Statute and other information. They have tested sound in the Village and across various locations 25 feet off of the property line. Additional data Steve Sinacore commissioned will be taken into consideration. Mike stated the Board does not have a recommended update to the regulation at this time. They will convene in an Executive Session following this meeting to consider all information and input from today's meeting with the intent of moving toward resolution. Steve Sinacore maintained this is a debate of 5 decibels ("dBA") for residential vs. commercial property and 2 to 3 dBA for ambient noise, and pertains to enforcement. Bonnie Guss spoke about how use of the Ritz' outside deck has changed over the 15 years she has lived in Bachelor Gulch. Initially it was used during certain hours for dining and a fire pit. It has evolved into two bars, additional dining seating, and daily outdoor music. She said the music has been a disruption to her in her home in the winter and summer seasons. Ms. Guss referenced the State law, County ordinance, and the Association's Covenant, Conditions and Restrictions in regard to maximum noise levels. Mr. Sinacore commented that this is a matter of how to enforce the State Statute vs. how it is defined. Lisa Mayers clarified the Association Board's role is enforcement of the Declaration. If the property owners choose to enforce the State Statute, they have a right to go to court to bring a direct action. The Board will determine appropriate enforcement mechanisms under the Declaration. Dan Dickhart described some controls he has implemented in respect for the community since joining the Ritz in early December. He reduced the noise level from 85 dB to 80, and then again to 75 dBA. When he did a sound reading with no people or music, the level was 60 dBA. Measuring 25 feet from the property line with people and music, the reading held between 63 and 72 dBA. Other measures taken were to consult with a sound tech to allow outdoor entertainers the ability to plug into the in-house auxiliary with volume controls and redirection of outdoor speakers. Ms. Guss remarked about the number of hours and days per week music is played, and the type of music, creating a greater burden on the community this year than in the past. She stated, according to the sound engineer, the chairlift raises the ambient noise by 2 dBA. Mr. Dickhart said he is going to continue with the control systems in place, and look for improvements with the recent changes made this week. Mr. Dickhart added he has canceled the DJ for the next two Friday nights and music entertainment is scheduled to end the last Saturday of March. His intention is to limit the number of DJs next year. Dennis Heipt commented the music could be heard the entire distance on his hike to Zach's Cabin last Saturday night. He added he has received many complaints from homeowners in his association and expressed disappointment in the Association's enforcement of 'unreasonably loud noise' in accordance with the State Statute's definition. Bob Baron, full-time resident and Board member of Bear Paw Lodge, said he has noticed the volume increase over time and has received complaints. Bonnie Kivel, President of the Bachelor Gulch Residents Association, stated she has received complaints as well as many calls in favor of the music. Nadia Guerriero thanked everyone for their input and respectfully

asked to move forward with the meeting to allow time for an Executive Session to discuss the aforementioned concerns and requests.

During the meeting, Dan Dickhart requested via text to Mike T if it would be possible to add a comment regarding feedback two of the residents provided, since the meeting had been moved to the next topic on the agenda. Dan's comment was: Bob and Dutch said at the meeting on February 7 that they hate the music played by the DJ.

Black Hills Energy Update

Mike Trueblood reported the Administrative Law Judge ("ALJ") issued their decision and recommendation to the Public Utilities Commission ("PUC") last week. The PUC has not issued a final ruling. Jim Tarpey, legal counsel representing the Association in this case, asked Mike to notify the Board that the ALJ did not recommend consolidating the service areas at this time. The ALJ was critical of the manner in which Black Hills submitted and adjusted their case and did recommend the \$4M rate increase Black Hills requested be decreased. Mr. Tarpey's perspective is the interveners were supportive and effective in minimizing the rate increases. Mike will follow up with communication to the Board when the PUC issues their final ruling.

Design Review Board

Steve Nusbaum gave an update regarding two pending matters associated with Lot 92 in Bachelor Gulch. A home site amendment was denied November of 2018 for a pool addition and has been tabled since that time. The Design Review Board ("DRB") took action to deny the appeal yesterday. There is an option to appeal to the Association within 10 days should they choose to do so. Steve spoke about the settlement agreement related to a tree removal violation that occurred approximately 15 months ago. \$300K in fines have been paid. Other conditions of the settlement agreement to plant additional trees in specific areas have not been completed. The DRB authorized Lisa Mayers to take additional actions to gain compliance with the settlement agreement. They are awaiting a response from the arborist detailing the facts before moving forward with legal action.

Mike Trueblood referenced a memo prepared by Lisa Mayers in regard to escheated funds and the imposition of fines, interest, fees and costs to Design Review deposits. Mike summarized the status of \$100K in deposits made to DRB from two projects completed several years ago. This matter surfaced during the 2018 financial audit. Research was done to identify the entities and circumstances involved. The conclusion was that no certificate of completion was issued, and there was no obligation to return any portion of the compliance deposit based upon fines, interest, DRB time and expenses, and attorney fees. The Unclaimed Property Act would not apply to the funds and the Association may apply the fees and close its files on these matters. Lisa Mayers added that Steve Nusbaum has reviewed the historical files closely, and together they have analyzed status of the outstanding fines, interest applied to those fines, and costs and expenses the Association has incurred in addressing the issues. Those fines and amounts would exceed any amounts being held by the DRB, and would be in payment to the DRB and to the Association. There would not be an unclaimed property claim because the parties making those deposits would have forfeited those funds because of the fines and outstanding amounts. Steve Nusbaum clarified a Certificate of Occupancy is issued by Eagle County and is not reliant upon a DRB Certificate of Compliance. He added, according to the files, the violations were related to construction infractions and minor cosmetic issues. It was noted the entities appear to have been dissolved. Lisa Mayers stated they have checked with the Secretary of State, registered agents, and for mailing addresses, and found no parties to return monies to. Brian Kushner suggested Steve Nusbaum reach out to the Ritz and Timbers to see if they have record of a Certificate of Compliance and Steve agreed to do so.

Public Safety

Brian Kushner asked if any of the incidents under Complaint/Disturbance on the Public Safety Activity Report were related to Ritz noise. Mike Trueblood will verify. Brian questioned the 50% increase in Emergency Medical Services. Mike confirmed that category tracks off-mountain incidents. Brian asked if there is a Public Safety policy in place in the event someone is concerned they have Coronavirus. Nadia Guerriero answered Public Safety would recommend they call their doctor. Public Safety will not provide medical assistance in this type of emergency.

Financial Update

Mike Trueblood reviewed the Operating Income Statement as of January 31, 2020. Revenue is tracking close to budget with civic assessments within \$1K of budget and real estate transfer assessments ("RETA") slightly exceeding budget. The favorable variance in Common Area Expense for trash is a result of timing of an invoice that was paid in a

subsequent month. Legal expense is trending unfavorable year to date due to the noise regulation and other matters, and the forecast for this expense may need to be increased.

Other Business

RETA Exemption Legal Fees: Mike Trueblood followed up on a prior question pertaining to the impact of exemptions to real estate transfers. Mike noted the Association does not currently pass on the charges. There were seven transactions in FY19 for a total of \$1,190 in legal fees and four transactions year to date in FY20 for a total of \$935. Mike suggested the Association continue to cover these costs unless they rise to a materially higher level. The Board was in agreement.

BGMD Sidewalk Project: Mike relayed Paul Jardis' regrets for missing today's meeting. He shared an overview and drawings from Bachelor Gulch Metro District ("BGMD") of a planned sidewalk on the uphill side of Prater Road designed to enhance pedestrian safety. BGMD is going to proceed with the project and expects completion in early summer. BGMD has asked the Association to consider contributing \$75K toward the \$300K project. Mike said he would not recommend making the contribution in the current fiscal year, since the Association has already increased capital spending for the 2020 budget by approximately \$45,000 to replace the roof at the Tennis Center, but could be considered for the FY21 budget. BGMD has indicated if the Association were to contribute in a future budget year, it would be appreciated and accepted. Brian Kushner asked if that area is within Bachelor Gulch. Mike explained BGMD has an easement on that section of road. Brian questioned if the Association is allowed to allocate funds outside of their mandate. Lisa Mayers advised, per language in the Declaration, if such improvement would benefit the community and membership, it would be within the Association's authority to expend funds. Nick Nichols expressed uncertainty about the degree of usage by Bachelor Gulch residents. Gary Shimanowitz commented that it is a bicycle rec path used to access Daybreak Ridge. Nick Nichols proposed tabling the discussion until more is known about the Association's financial outlook. Nadia Guerriero suggested further discussion at the next meeting when Paul Jardis is in attendance. Nick and Brian requested clarification as to whether bicycles will be allowed on the sidewalk.

Electronic Directories: Mike Trueblood presented the idea of transitioning to an electronic directory and talked about the benefits. Once the data is entered it would be easy to update and there would be access control. It would be less expensive than paper directories and more current. Mike noted there would be enhancements needed to the Bachelor Gulch website to facilitate an online directory. He asked the Board if they would like him to pursue a proposal. The Board was in favor.

George Bigley moved to enter an Executive Session at 2:27 p.m., and the motion was seconded by Nick Nichols.

Motion was made by Nick Nichols to end the Executive Session. Brian Kushner seconded the motion and the Executive Session ended at 3:07 p.m.

There being no further business, Brian Kushner moved to adjourn the meeting. George Bigley seconded the motion and the meeting was adjourned at 3:07 p.m.

Respectfully submitted,

Carol Floyd
Secretary for the Meeting