

BACHELOR GULCH VILLAGE ASSOCIATION
Board of Directors Meeting
via Videoconference
June 16, 2021

A special meeting of the Bachelor Gulch Village Association (“the Association”) Board of Directors was held on June 16, 2021. In attendance via videoconference were Board members Brian Kushner, Nick Nichols, Gary Shimanowitz, Phil Metz and Nadia Guerriero. Also in attendance by videoconference were Mike Trueblood, Association Manager; Steve Nusbaum, Sr. Manager of Design Review Administration; Ryan Wolffe, Sr. Analyst for Design Review Administration; Dana Miller, Sr. Financial Analyst; Koby Kenny, Director of Public Safety; Lisa Mayers, Association Attorney; Dan Dickhart, General Manager of The Ritz-Carlton, Bachelor Gulch; and Carol Floyd, Secretary for the meeting. Design Review Board members present via videoconference were Rivers Jardis, Linda Mossman, and Mike Leeds.

The meeting was called to order at 2:33 p.m. Mike Trueblood confirmed proper meeting notice was given and a quorum of Board members was present.

Approval of Board Meeting Minutes

Brian Kushner moved to approve the March 12, 2021 Regular Board of Directors Meeting Minutes and April 1, 2021 Special Board of Director Meeting Minutes as presented. Nick Nichols seconded the motion and it was unanimously approved.

Public Input

Rivers Jardis expressed concern that the Design Review Board (“DRB”) was not engaged during the appeal process related to The Ritz-Carlton (“Ritz”) patio bar project. Mike Leeds summarized an email he sent to the Board today (June 16). He commented on the lack of communication and notification that the Association Board (“Board”) would be considering this appeal of the DRB’s denial. He talked about the DRB’s preference for representing themselves as opposed to being represented by staff. Linda Mossman spoke in support of Mike Leed’s email. Mike Trueblood said the appeals process was followed as defined in the Association’s Declaration. He acknowledged there may be an opportunity for better communication between the Association and DRB.

Design Review

Mike Trueblood referenced a letter sent from the Association to DRB explaining their decision to overturn the denial of the Ritz project. The Declaration specifies that *“Any decision by the Design Review Board or Board of Directors which results in disapproval of the project design shall specifically describe the purpose, development plan, covenant or provision of the Design Rules and Regulations with which the project does not comply and the manner of noncompliance.”* Mike said, from the DRB staff’s perspective, there was an absence of a specific item cited to support the denial. If the Board were to have upheld the denial, they would have had to come up with a specific area of the regulations that did not meet specifications. Mike noted, in addition, this project was very similar to one that was approved previously. Lisa Mayers stated the Declaration is the binding document on the residents and Association. It gives the Association the authority to create the DRB and adopt policies, rules and regulations, and guidelines. She encouraged review of additional language in Article 9 of the Declaration regarding the powers of the DRB. She further stated the Board and Design Review Administration (“DRA”) did follow prior practices. She recommended creating an outline of how the process will flow with DRB’s participation when an appeal is presented to the Board going forward. She noted there are timing issues in the Declaration as to when an appeal must be heard. Brian Kushner suggested improving communication and providing notice to DRB when there is

an item on the agenda related to an appeal. Steve Nusbaum clarified that the DRB members are notified of appeals. He said, historically, the DRB has never requested to be involved in the appeal process and have relied upon DRA staff to present DRB's opinion and decision. The DRA staff has discussed all appeals with the DRB. Rivers Jardis expressed concern about the weight given to the DRB's decisions. She quoted language in the Design Guidelines whereby the guidelines are subject to broad interpretation. Lisa Mayers referred to Section 9.9 of the Declaration which contemplates review by the Board of DRB decisions. When an appeal is presented to the Board, the Board is tasked with upholding, modifying or reversing the decision based on facts before the Board at the time of appeal.

Appointment of a vacant DRB position was discussed. Mike Trueblood explained that the open position has typically been held by the Director of Planning for Beaver Creek and Vail. Linda Mossman asked if an additional homeowner member could be added to the DRB. Lisa Mayers advised the Declaration mandates five members. Mike noted that a change in the number of board members would require the Declaration to be changed, and that a change to the Declaration would require an affirmative vote by 67% of all members of the Association. Nadia Guerriero pointed out that a five-member Board is helpful with split votes. Mike added, per the governing documents, appointments to the DRB Board are made at the discretion of the Declarant, i.e., Vail Resorts, for a one-year term. Nadia suggested the possibility of appointing an alternate. Linda Mossman commented on the importance of familiarity with all matters coming before the DRB. Lisa Mayers said the Declaration does not contemplate alternates. If the Declarant were to appoint an alternate, that person would act only in the absence of one of the other homeowner members. The Declarant and Board would decide upon the parameters an alternate would be permitted to act in. Rivers Jardis requested an alternate position be considered. Lisa stated it would be the Board's decision whether to pursue an alternate position. Nadia said the Board will have a conversation regarding this topic. Mike Trueblood recommended sending a communication subsequent to this meeting to nominate the fifth DRB member. The Board was in support of Mike's recommendation. Rivers asked if a homeowner could be considered for the current vacancy previously held by a Vail Resorts employee. Nadia noted homeowners make up a majority of the DRB and explained the Declarant would like someone with construction and design experience to represent Vail Resorts' interests on the DRB.

Public Safety

Koby Kenny gave an update on fire mitigation. Old Growth Tree Service has been working on a 100 foot wide fire break near Tall Timbers, wrapping around to the intersection of Horizon Pass and Peak View. They have cleared standing dead and downed trees, and brush. Koby asked for the Board's approval to spend an additional \$15K above the \$25K budgeted amount to finish this project.

Brian Kushner moved to approve fire mitigation spending in the Improvement Fund up to \$40K. Nick Nichols seconded the motion and it was unanimously approved.

Financials

Dana Miller reviewed the Balance Sheet as of May 31, 2021. The Association had \$9.4M in assets, comprised of cash on hand of \$8.9M (net of DRB deposits refundable) and fixed assets of \$500K (net of depreciation). \$9.5M is held in three accounts with Wells Fargo. Mike Trueblood has been working with a Wells Fargo Financial advisor to align the cash holdings with board policy and guidance. In June, \$8M in the operating checking account was moved to the Operating Reserve and investment accounts. Mike continues to work with the advisors on additional strategies they may have for the Board's consideration. Operating equity of \$3.5M is the surplus year to date. Retained earnings of \$3.1M include the 2020 surplus of a little over \$2M. Dana said the audit was finished last week and she is awaiting a first draft with audit adjustments. Historically, \$1M has been held in Retained Earnings until audited adjustments are posted and then the Board may elect to transfer to the Reserve. Mike requested that Board Treasurer Brian Kushner read the audit report and to provide comments and questions before finalizing. Capital equity is \$2.5M. On the Income Statement as of May 31, 2021, Dana reported \$6M in revenue, \$3M favorable to

budget, driven by real estate transfer assessments (“RETA”). With all of the construction activity, Design Review revenue is favorable to budget and forecasted to end the year \$150K positive. Total revenue is forecasted to end the year \$3M favorable. Most expenses are within budget. Transportation is below budget because of lower delivered service hours than plan. Legal fees are forecasted to be \$20K over budget at fiscal year-end, due to activity related to DRB and other matters. With the increase of Design Review activity, there was an increase in DRB expense. The forecasted surplus for fiscal year 2021 is \$3.6M. Mike gave an update on capital improvements. One new security vehicle has been ordered and work is being done at the Tennis Center. The increase in wildland fire mitigation will likely be allocated from Board directed capital. Landscaping and staining will be done throughout the summer. These expenditures are expected to stay within plan. Gary Shimanowitz asked Nick Nichols and Brian Kushner if, from a homeowner’s perspective, there are any desired future projects. Brian Kushner spoke about a new Black Hills rate case and the likelihood of the Association’s participation as an intervener. He relayed a suggestion from a couple of homeowners to explore the use of electric vehicles in Bachelor Gulch Public Safety. Brian said conversations have taken place with Bachelor Gulch Metro District (“BGMD”) with regard to improving wireless service at Bachelor Gulch. There may be an opportunity for the BGMD/Association joint project. BGMD has drawn up plans for how to put fiber in their conduits with the associated costs. This may be useful for American Tower or another carrier to improve wireless service. Gary suggested working with Paul Jardis to revisit the pedestrian access project on Prater Road previously proposed by BGMD.

Nadia Guerriero delegated Gary Shimanowitz to finish the meeting with her departure. She expressed gratitude for the dialogue and attendance of DRB members. Brian Kushner thanked the DRB members for their participation and open dialogue.

Other Business

Black Hills Energy Rate Case Update:

Mike Trueblood said the law firm of Ireland Stapleton has represented the Association as interveners on the Black Hills Energy (“Black Hills”) rate cases in the past. On June 1st, Black Hills filed a new rate case that seeks to raise customer rates statewide. This would be a \$14.5 revenue increase to recover the company’s infrastructure and operational investments over the last two years. They stated they have spent \$143M in capital investments during that period. This two-phase case of total revenue requirement and return on equity for the company will be considered by the Public Utilities Commission (“PUC”). There would be a 6.7% rate increase for the Bachelor Gulch area. Mike will come back to the Board with any material updates from Ireland Stapleton.

McCoy Park Construction/Trucks:

Mike Trueblood said full construction in McCoy Park will commence on July 1st after the elk closure is lifted. Mountain Operations have done a lot of staging of lift towers and parts below the elk closure area. Four to six trucks per day are anticipated to deliver materials through Bachelor Gulch through September. Gary Shimanowitz added truck traffic will be split between Bachelor Gulch and Beaver Creek noting large semis will have to use Daybreak Ridge.

Sound Ordinance:

Mike Trueblood gave an in-progress report on the sound ordinance. The acoustic sound engineer has done limited testing the first weekend in April, Friday through Sunday. There were five areas where sound readings were taken. When the chairlift was running without any music, the ambient noise level was just under 60dB. Mike noted the current understanding with the Ritz is to monitor and work toward 65dB. Once summer testing has been done, there will be full data disclosure and a recommendation for parameters.

There being no further business, Brian Kushner moved to adjourn the meeting. Nick Nichols seconded the motion and the meeting was adjourned at 4:18 p.m.

Respectfully submitted,
Carol Floyd, Secretary for the Meeting