

**Park River West Condominium Association
Special Board of Directors Meeting
Monday, October 4, 2021 – Via Zoom Conference**

A meeting of the Board of Directors of the PARK RIVER WEST CONDOMINIUM ASSOCIATION, INC. (the "Association") was held on Monday, October 4, 2021, at 4:00 p.m. MDT via ZOOM online/video meeting application. President Stew Squires (618) presided. Association Secretary John Mize (615) prepared these Minutes.

1. **Call to Order / Roll Call.** The Meeting was called to order at 4:00 p.m. by President Stew Squires (618). The following Directors of the corporation were present via ZOOM: Stew Squires (618); Fritz Sampson (633), Vice President; Helen Evans (619), Treasurer; Secretary; John Mize (615); Sandra Ireland (670), Rick Stephens (603), and Steve Tice (655). Greg Shipman (625) was not available.
2. **Conflict of Interest Disclosures.** Pursuant to the PRW Conflict of Interest Policy, Stew Squires (618) inquired if any of the directors have a conflict of interest needing disclosure before the meeting. Steve Tice (655) disclosed a conflict concerning the consideration of the Trailblazer broadband services due to his wife being employed by that entity. It was agreed that Steve could participate in the discussion of that issue but recuse himself from voting on any action taken.
3. **Trailblazer Access Agreement.** The sole purpose of the meeting was to consider the Estes Park Power and Communications MDT Right of Entry Agreement and objections with it.
 - a. **Historical Review.** The board has spent a considerable amount of volunteer time on this issue for the last two months. For clarity in these minutes, Park River West is referred to as ("PRW"), Park River West Homeowner's Association as ("PRW HO") and Estes Park Power & Communications as ("Trailblazer").

On or about July 21, 2021, Stew Squires received a 13-page proposed Estes Park Power & Communications MDU Right of Entry Agreement which included proposed easements, maps, and related documents. Because of the length and complexity of the agreement, Stew requested Fritz Sampson and John Mize, both attorneys on the board, review it and offer comments, which they did.

Independently, they both found numerous problems with the proposed agreement, including but not limited to:

- (1) the agreement appears to have been prepared for an apartment owner who has exclusive control over the property;
- (2) in many ways the agreement appears to make PRW HO association an agent for Trailblazer broadband, which we are not;
- (3) Trailblazer is by statute a public utility and no other public utilities serving PRW have requested a similar access agreement from PRW, including Estes Park Power & Communications who provides electric service to PRW;
- (4) our authority as a board is to provide an easement over limited common areas to Trailblazer, not to license it;

(5) the agreement asked us to authorize Trailblazer to enter individual units, which we do not have authority to do, and this should only be granted by our unit owners, who are the actual customers of Trailblazer;

(6) the agreement should require Trailblazer, like all other utilities having easements, to not interfere with, disrupt, or damage the property of PRW or any other utility or services vendor lawfully using easements within or over the PRW property and should be responsible for any damages caused by such interferences, disruption, or damage;

(7) the proposed agreement said we own the inside wiring to the units which we do not;

(8) it is not the responsibility of PRW to market these services since we have multiple vendors providing service within the complex and we should not favor one over the other;

(9) it is not the responsibility of PRW to keep the Signal Distribution System and any other components required for distribution of the Trailblazer broadband services secure and prevent any unauthorized access to or tampering with such equipment, as requested in the agreement; and

(10) we are not about to assume any responsibility for paying damages if the service is discontinued at PRW since Trailblazer is the one collecting fees for the services provided to individual owners, not us.

In early September, Fritz Sampson met with Fred Joseph, the President of Rock River Condos. He learned that Rock River had signed an access agreement, but that it was simpler. On September 6, PRW obtained a copy of that 2 ½ page agreement and compared it to the 13-page agreement sent to PRW. The neighboring condo association was not being asked by Trailblazer to provide easements or any burdensome financial obligations.

On September 9 Fritz and Steve Tice met with Kim Smith at the Trailblazer office to try to figure out what the problems truly are. Trailblazer presented their proposed build out map. It was not complete. Fritz and Steve compared the Declaration Map with dedicated utility easements already in place to the prospective build out. When they were done, they went to Van Horn Engineering and got the Association Map showing all the easements and electrical lines. A walk through was scheduled for 2 pm on September 13 with Joe Lockhart, the Line Superintendent and construction supervisor.

Many of these concerns were shared with Trailblazer and all of them with PRW Board prior to its regular meeting on September 13, 2021.

On Monday, September 13, 2021, Fritz Sampson, John Mize, Rick Stephens, Greg Shipman, and Steve Tice walked the property with Joe Lockhart, the Line Superintendent for Estes Park Power and Communication, to determine exactly where lines for the Trailblazer broadband would lie, the scope of easements needed, and the access to units to provide service. It was reported that this effort was very productive and positive.

The result is that it was identified that the easement required will basically be around the outer perimeter of the property, along the Park River Street and in between units

on the east and central part of the development, with access to individual units flowing from the main lines lying on the easements. It appeared to the board members participating that a simple access agreement from the main lines to the point of entry into the units would be sufficient. Joe Lockhart agreed to furnish us with a color-coded plat of the agreement showing where the lines will be located, which he did.

In the interim, PRW once again looked at the copy of the Access Agreement between Trailblazer and River Rock Townhomes, the development immediately to the east of PRW, which was much less objectionable and addressed most of the concerns identified. From there, PRW prepared a revised Access Agreement, mirroring the River Rock Agreement, and a proposed easement addressing the locations of the easements as outlined by Joe Lockhart during the walk around and on the drawing he provided. These documents were then submitted to our independent attorney, Robert Foster, for review, modification, and approval. Following this review and approval, the documents were submitted to Trailblazer during the week of September 21, 2021.

On September 30, 2021, the PRW Board received an email from Linda Swoboda of Broadband rejecting the documents submitted to it by PRW and demanding that we sign revised draft of the Estes Park Power & Communications MDU Right of Entry Agreement by October 14, 2021, or Trailblazer would delay construction within PRW for two years.

The last Estes Park Power & Communications MDU Right of Entry Agreement is very similar to the original one submitted to Stew Squires in July and does not address most of the concerns identified as listed above. Following receipt of the Swoboda email, it was decided to have a Special Board Meeting to discuss this issue and to schedule a Special Homeowner's Meeting so that all homeowners would have an opportunity to consider this.

- b. **Discussion.** Stew Squires began the discussion that he had discussed the question of coverage for the damages to which PRW is exposed by the proposed Broadband agreement with the association insurance representative. He reported that we would not have coverage for damages to utility property and that our insurer takes the position that the person or entity causing the damage would be held responsible for it. This will make it more important to be assured that any vendors or contractors providing services at PRW have insurance coverage.

It was pointed out that at 3:45 p.m. MDT today, Kim Smith of Broadband sent an email wanting to meet with the PRW Board. Due to the late hour of this request, it was not feasible today. It was agreed that PRW would attempt to schedule a meeting with Reuben Bergsten, the Estes Park Power & Communications Director of Utilities, the city attorney, and anyone else that Broadband wants to attend. Fritz Sampson is going to schedule it and as many board members as are available at the time will try to participate by Zoom, their schedules permitting. The outcome of the meeting will be reported to the full board.

It appears we are at loggerheads with Trailblazer. It was discussed that if we do not sign the last Agreement proposed by Broadband on September 30, 2021, which is materially identical to what it initially proposed, at a minimum, a significant delay in obtaining Trailblazer services to PRW could occur, as threatened by Linda Swoboda of Broadband in her email. The board discussed that some owners have been looking forward to obtaining Trailblazer services and will be disappointed with this outcome. On the other hand, it is the responsibility of the board to act in the best interests of all homeowners

