

Yoakum Run Homeowners' Association

Annual Members' Meeting
Timberline Mountain Lodge
10:00 - 12:30 AM, 20 July 2024

Robert Foster, President, called the Annual Meeting to order at 10:15 AM.

Determination of Quorum: A quorum existed at commencement of the Meeting with 31 of 50 total Units participating in person, electronically or by proxy. Meeting participants were as follows:

Officer and Director Unit Owners present: Robert Foster (RF), President and Director; Diane Kaufman (DK), Vice President and Director; Greenleaf "Chris" Smith (GS), Secretary and Director; Tom Price (TP), At-Large and Director; Carl Faller (CF) was unable to attend.

Other Unit Owners Present: Barb Foster, Susan Smith, Mary Finnegan, John Sencindiver, Nancy Ayers, Clifford Essig, Teresa Essig, Holly Plunkett, Mary McGowan, Susan Rubenstein, Bob Rubenstein, R Lee Borrer Jr, Susan Butler, Carey Butler, Kirt Hardy, Karin Hardy, Dori Rutherford, Brian Glaub, Laura Glaub, Neal Defazio, Jacki Defazio, Rick Igal, Robbie Kaufman (NB: the "sign in" sheet may not have reached everyone — if you were at the meeting and not included in this list — please let us know.)

Unit Owners Participating Electronically: Fred & Stefanie Langsam. (NB: There was not a list of Unit Owners who participated by Zoom available. If you participated in the meeting by Zoom and are not included in this list, please let us know.)

Unit Owners Represented by Proxy: GS presented 2 written proxies appointing him to act at the meeting on behalf of 2 Unit Owners.

Nancy Ayers presented 14 written proxies appointing her to act at the meeting on behalf of the 14 Unit Owners.

CF presented two written proxies appointing him to act at the meeting on behalf of 2 Unit Owners; however, CF was unable to attend the Meeting and was unable to act on behalf of the 2 Unit Owners

All proxy designations were delivered to the President, inspected and held for the Secretary to enter into the corporation's records.

Introduction of Board and Members: RF extended a warm welcome to all members present. RF noted that it was a Members' Meeting and not a meeting of the board. RF issued a special welcome to new members of the Association. He noted that the Meeting had a special guest, Steven Prunty, who had significant WV Subject Matter experience on subdivision law. Rather than have TP speak first, RF asked Mr. Prunty to brief the members on the revised and amended Protective Covenants and Restrictions and ByLaws and entertain Unit Owners' questions concerning these documents.

President's Remarks: Prior to turning the meeting over to Mr. Prunty, RF reiterated several issues of community concern, as follows:

First, the dark skies initiative in the valley requested that homes have outside lights that point downward, and, later in the evening, that lights be shut off at night. That way, the magnificent night sky in the valley and the stars can be seen.

Second, the Association has engaged Dave Mollenax to clean up winter limb fall which he does three times; week prior to Memorial Day, week prior to July 4th and week prior to Labor Day. Members should place limbs at curbside two to three weeks prior to the scheduled pick-up week(s).

Third, members who use municipal Trash pickup should work with their cleaning services to ensure that the red trash cans do not remain curbside for extended periods of time.

Fourth, RF reminded all that members with dogs should keep their pets on leash when walking about the neighborhood.

RF advised that the Mountain Owl Convenience Store, Timberline Road, was open.

RF noted that the ARC had received four applications for external changes to homes in YRHOA. All were approved. RF reiterated that the ARC must approve any external modifications to a home to include painting or staining a different color. Painting or staining the same color does not require ARC approval. As well, ARC needed to approve building a shed, gazebo or other external building on the lot. The new structure should conform to the siding and structure of the main house. Furthermore, paving a driveway required approval, but sealing or resealing the driveway did not. The requirements for ARC submissions are listed on the YRHOA website. The website can be accessed at — www.yoakumrun.com. For the restricted pages of the website, the Password is: **yrhoa2011**. Should a member have a question about whether to submit an ARC application, please contact the ARC Chairman, Bob Foster, for resolution.

Adoption of the Agenda: The agenda was reviewed and adopted without change.

Minutes of July 2023 Annual Members Meeting: Motion was made to not review the minutes of the 2023 annual meeting in favor of Mr. Prunty discussing the revised and amended PC&Rs and ByLaws. The motion was passed unanimously.

Finances:

At the end of the meeting, GS briefed a summary review of the financial status of the HOA.

Old Business:

After BF's introductory remarks, he introduced Steven Prunty, who has worked with the Board to revise and amend the Protective Covenants and Restrictions (PC&Rs or Declaration) and the ByLaws.

Mr. Prunty began by outlining the origins of Yoakum Run as one of the Allegheny Properties developments. In 1981, Allegheny divided the area currently comprising the Yoakum Run Community into 50 lots and certain roads subject to a master deed known as a Declaration. Mr. Prunty's opinion is that Allegheny's primary objective was to sell the lots, which included each lot owner's responsibility for common property such as roads, culverts, road maintenance and insurance. The 1981 Declaration required membership in an association and for certain association expenses to be charged to all Lots. Subsequently, in June 1986, Allegheny established the Yoakum Run Homeowners' Association (YRHOA) and wrote the ByLaws. These documents reflected WV common law that every lot had an easement to use the streets, and with that easement came a share of direct responsibility for maintaining the owner's interest in

the street. Mr. Prunty explained that modern expectations are for the association to be the only party responsible for the streets and insurance. Thus, one of his objectives was that all street related liabilities be transferred from Lots to the Association via Declaration amendment. He also explained that these governing documents required Allegheny's approval for most material changes to Lots but there had never been a transfer of approval authority from Allegheny to the Association of Lot Owners so that was a second objective. Mr. Prunty's third objective was to address conflicting and inconsistent terminology in the documents that, for example, utilized the terms Lots, parcels, tracts and property by a variety of names, none of which were defined and often were used in conflicting manners. Mr. Prunty then explained that another objective is to resolve substantive and procedural concerns arising from the existing documents such as Allegheny's PC&Rs requiring that no tree be felled without Allegheny's approval except those trees required to build a dwelling (multiple terms were used for dwellings and lots and the ownership thereof). Those concerns, again, are problematic because all Owners of all lots are Allegheny's successors in ownership of the land comprising Yoakum Run, and Allegheny went out of business after it sold all the Lots without naming a successor authority. The Yoakum Run Homeowners' Association (YRHOA) was founded in 1986 and from that date to the present, has democratically operated as the entity comprised of all Owners of all Lots under the aegis of the PC&Rs and Bylaws as promulgated by Allegheny. A primary objective for the proposed revision was to make the documents reflect Association in place of Allegheny (because they were made by Allegheny when it owned all the Lots and the Association has succeeded Allegheny since its membership is all the persons who today own Allegheny's original Lots. (NB: To demonstrate the foregoing, a grayed out copy of the PC&Rs was circulated to members together with red-lined ByLaws so that Lot Owners could compare documents and understand the discussion points.) There was extended discussion that the PC&Rs did not apply to Lots owned by Allegheny but everyone who purchased a lot from Allegheny needed Allegheny's permission to make changes to the Lot Allegheny no longer owned. Thus, with the developer (Allegheny) no longer involved, an objective is for all the PC&Rs to apply equally to all Lots without regard to ownership and to make it clear that Allegheny no longer owned the lots. (i.e. - Allegheny is no longer involved, and the objective is for all the PC&Rs to apply equally to all Lots without regard to ownership, to make it clear that Allegheny no longer has absolute control over land that it sold, and to generally substitute the Association for Allegheny as a means for the current and future owners of the Lots to administer the land they now own by simple majority). It was emphasized in that context that the PC&Rs are amendable by a requisite majority of Lots, the Lots elect the Board, and a safeguard in the system is that a simple majority of the Lots can remove board members if that majority does not like the actions of members of the Board.

An additional goal of the document revisions was to address that, as originally promulgated, the PC&Rs charged Lot Owners with maintenance and insurance of the common easements, e.g. common areas or strips of land outside of Lots that are the locations of roads, culverts, and similar improvements, and make decisions on a democratic basis. The documents also contemplated an association wherein each Lot Owner had an equal vote and share of the costs in the association, but original PC&Rs failed to clearly state that the association assumed the duties, liabilities and control of the common areas to shield the Lots from direct liability. One of the primary goals of the revisions is that these duties and responsibilities were transferred to the Association and charged the Association with the responsibility for maintenance and insurance, in order to protect Lot Owners. Hence, with their original share of costs and control via annual assessment and Association voting rights, the Association would as a matter of public record assume the responsibility for maintenance and insurance, leaving the Unit Owners with their original share of costs and control via annual assessment and Association voting rights.

Because all Lots are equal without regard to size, use or improvements, it is a democratic way to ensure the rights of all Lot Owners.

Mr. Prunty also explained the drafting objectives of the new documents in the context that the easement/cost/liability concerns existed under West Virginia's common law from as early as 1924, but in July of 1986, the legislature adopted a new statute regarding subdivisions to address the same and require an Association (HOA) as a democratic means for all Lot Owners to collectively act. Because Yoakum Run pre-dated the act, only certain portions of the 1986 statute apply retroactively, and an objective of the proposed revisions was to incorporate those laws and corresponding definitions. Mr. Prunty also explained that the Association was incorporated with ByLaws under West Virginia's old non-profit corporation act that was repealed and replaced in 2002. The new corporations law governing the Association (as a corporation) was not made retroactive and did not include provisions reconciling it with the 1986 subdivision statute and thus the need to both revise the PC&Rs (Declaration) as a form of deed for land but also the ByLaws of the corporation identified in the PC&Rs. Simply put, the goal was to have a current corporation operating as an Association under current law that is the only party charged with the duties and liabilities of the common areas, and that is required to keep insurance in place to protect the Lot Owners.

With regard to the 1986 Act, Mr. Prunty briefly and generally identified other benefits, including that the retroactive provisions obviated any tax on common areas, which meant that common areas could not be taxed or sold for unpaid taxes, that the Association acquired all the statutory powers necessary to maintain common areas, what happens if part of the Subdivision is condemned, that the ByLaws cannot conflict with the Declaration (thus the need to do both at the same time), that after all common area duties are assumed by the Association, legal actions claiming breach of those duties must be brought against the Association and not against individual Lot Owners, that the Association now has statutory liens for unpaid assessments, and that West Virginia law now requires Resale Certificates by selling Lot Owners with the association required to provide certain information to make those Certificates possible.

There was a question and significant discussion regarding Resale Certificates. GS explained that when he received a request for a Resale Certificate for a certain Lot, he normally would turn it around in 24 hours and answer the request. A Unit Owner questioned whether a Resale Certificate could be requested without having a contract with a realtor. It was explained that normally once a Lot Owner has signed a contract with a realtor, the realtor requests the Resale Certificate which is then provided to the settlement attorney, buyers realtor and the new Lot Owner. Another Lot Owner said that no Resale Certificate had been provided when they purchased their house. Mr. Prunty pointed out that the Association is only required to provide information to a Selling Lot Owner, and the statutes charge the Selling Lot Owner with the duty to complete and provide the final Resale Certificate to the Buyer. It was speculated that the previous Lot Owner failed to do so. Mr. Prunty emphasized that Sellers must provide Resale Certificates, the Association has to provide information to the Seller so the Seller can complete a Resale Certificate, and failure to provide a Resale Certificate means that the buyer can walk away from the deal without penalty.

When requested from the Association, Resale Certificates are turned around quickly, and they must be issued within 10 days of the request. This has been the law since 1986, and a reference is 36B-4109.

There was significant discussion of Mr. Prunty's revisions to the PC&Rs and he explained that in many instances the same subject matter was scattered across different number covenants using inconsistent terminology so his organizational focus was to use uniformly defined terms to combine all the same substance in a single provision so they were functional and objective and attempt to establish bright line rules rather than general concepts that all originally lead back to Allegheny perpetually telling the membership what they can do with the Lots they bought from Allegheny. Regarding specific covenant subject matter, Mr. Prunty explained that everyone has different expectations based on their subjective history and life so a goal was clear rules defining what everyone should expect as part of a community.

There was also discussion of the difference between PC&Rs and ByLaws. Mr. Prunty explained that the Declaration (PC&Rs) are a deed made by Allegheny as original owner of all the land that runs with the deed, and all subsequent Lot sale deeds were made subject to the Declaration because it is public record in the Court House where deeds are registered. The Declaration identifies the Association and requires that each Lot Owner is (by virtue of their deed and ownership of the land) a member of the Association. The Association itself is not a Lot Owner, rather it is a corporation comprised of all the Owners of all the Lots and exists in its corporate form by the authority of the State to exercise the powers and purposes given it by the original PC&Rs and later by the 1986 legislation. The State authorizes the Association to exist as a corporation based on its Articles of Incorporation and the ByLaws are the direct day-to-day operating rules of the corporation. Thus, the link between the corporation and the land is the Declaration or PC&Rs made by Allegheny as original owner of all the Lots that requires all subsequent purchasers of Lots to be members of the Association and serves as the link giving the Association rights in relation to the land. Under 1980 law, the Declaration (form of deed) has the Association rights in relation to the land and as a result, the ByLaws of the Association cannot conflict with the Declaration. Mr. Prunty observed that beginning in 1986, the relationship between land and corporation, and Association and Lot Owners, was also retroactively established in the subdivision statute.

An Additional question regarding proposed PC&R revisions related to the felling of trees. A Lot Owner objected to the wording of the proposed provision that if a living tree is felled, a tree must be replanted at a suitable location on the same Lot. She stated her concern was that on a heavily wooded lot, there might be no suitable location. There was considerable discussion of the original PC&R language about Yoakum Run being a wooded community where no tree could be cut without Allegheny's permission except in certain limited circumstances and thus the goal was to provide a more realistic and workable covenant. It was also explained that there are considerable safeguards in place that include Owners electing the Board, Owners having a right to remove the Board, and Owners authorized to change covenants. Hence, if the Association denied a tree related request, the Lot Owner could ask for variance or if that failed, seek a meeting and vote of all Lot Owners to address unique or atypical circumstances. While Allegheny stipulated that no trees may be removed, a more flexible approach is proposed that the Association has discretion to consider a multitude of factors in making informed decisions subjective to each Lot, each tree, and the reasons for a Lot Owner's request to remove a tree (i.e. a Lot Owner submits an architectural review form outlining the plan and reasoning for removal to be reviewed by the ARC leading to discussions of the covenant and the Lot Owner's concerns).

With regard to the proposed document revisions, the instruments were circulated before the meeting together with a page (Exhibit B) for approval by signature. It was observed that while

certain Members had already signed to approve the changes, none of the documents could be accepted until approved by the requisite majority of Members, and the approval process was by written signature of Lot Owners rather than a vote at the meeting. A Unit Member, present at the Meeting, then requested a sixty-day delay so the Unit Owners could read the proposed changes. It was agreed that even if approved before then, none of the changes would be recorded or take effect until after the sixty days. Mr. Prunty expressed that the fewest possible substantive changes were made to the restrictive covenants because of the need for community approval and that the efforts were primarily focused on orderly presentation of the original subject matter reworded to present the same by subject using consistent terminology. He did identify certain limited changes requested by the Board, giving as examples that fire pits must be screened to limit risk to the community, and that detached garages cannot be larger than the Dwelling they serve.

Mr. Prunty also requested that everyone read the instrument as soon as possible taking into consideration the facts that the Declaration does not include applicable subdivision law from 1986. and that the Bylaws do not include applicable corporate law from 2002. That said, he emphasized that because the Declaration is perpetual, it is by its very terms evolutionary to address the needs of the community over time by Owner amendments as and when needed, so the current proposed documents are not intended to be final — rather, they are merely a step in the evolution of the community and thus, additional amendments can occur every year as needed and authorized by the requisite majority of Units.

A motion was made to accept the Declaration as a fluid and evolving document that may be changed in the future. It was noted that the ByLaws cannot conflict with the Declaration (because it is the deed that originally created the Lots and linked the Association to them before the 1986 Act made that relationship statutory saying the same thing).

Mr. Prunty also emphasized that significant changes were made to the ByLaws because, among other matters, the 2002 corporate law revisions charged the Association management with a duty to act in good faith, making timely and informed decisions that are in the best interests of the corporation, while avoiding material conflicts of interest, and that under the 2002 corporate law and new ByLaws, a small percentage of Lots can call a special meeting to address any issues or concerns in keeping with the fundamental democratic principles of the community. Mr. Prunty requested that all Lot Owners read the revised and amended Declaration and ByLaws and if they approve the same, sign Exhibit B by their Lot number observing in light of the concerns of the Owner requesting the sixty-day extension that if any Lot Owner has already signed Exhibit B, they are entitled to change their minds by communicating the same to the Association in writing.

A Lot Owner observed that Mr. Prunty included the original Yoakum Run Plat as an Exhibit to the Declaration and asked certain questions relating to Timberline Road as shown on the original Plat. There was general discussion that the State took Timberline Road into the State Road System at some point in time, and for so long as it remained a public road, all private rights of the Association and Lots Owners were suspended by sovereignty of the State. The original plat had Timberline Road and Four Seasons Drive as part of the Association and the Board expressed its observation and understanding that the State was providing maintenance and snowplowing of both roads.

Timberline Mountain: Tom Price updated the members. He advised that the new maintenance building was being built near the Ski Team House. It would measure 60' X 120' and be made of steel and have a heated floor. Timberline does not want to continue parking snow maintenance equipment outside in the weather. Improvements will be made to the trail behind the ski team house to enable the equipment to access the mountain. The building itself will be dark gray and landscaping will be planned. Noise will be limited as much as possible but it is part of having a ski area.

The old maintenance building will be torn down, but the pump house will stay. Drainage will continue to be monitored and thus far, Timberline has done well. There have been no major issues and catch basins will be monitored. Future plans include a trail to the Crites property which will roughly follow the gas line. The maintenance building will not have lights facing Yoakum Run. Snow will be moved toward the mountain. The road around the back of the new building will be retained as an emergency evacuation route, but will be closed as necessary. Time of equipment use will be roughly 4:30 AM and 8:00 PM out and back.

Timberline has been engaged in installing 4000 feet of new pipe for snowmaking. It replaces aging infrastructure and will include making snow on the "Drop". 28 degrees is the optimal snowmaking temperature, and some spots will be upgraded. The objective is to open earlier and close later in the year. There will be activities: Brew with a View, Artober Fest, Mimosas on the Mountain.

TP expressed that he anticipates continued growth of about 15 to 20%. There are ongoing talks with the other ski area with the objective of assuming responsibility for their operations. There are plans to design a rope tow for the beginner area and terrain park as well as plans to design a parking area near the Owl, as well as near Idleman's Run.

New Business:

GS briefed the financial documents. A motion was made, seconded and unanimously passed to accept the proposed budget and assessment.

There was general discussion regarding the budget during which Mr. Prunty observed that roads have a finite life expectancy because asphalt is sand and stone bonded by a fundamentally petroleum base. Thus, although traffic does contribute to their deterioration, asphalt will fail even without use because it is left out in the elements and subjected to water and temperature variations. For that reason, he recommended that all budgets include annualized asphalt repair and repaving reserve based on the life expectancy of the asphalt and projected repair and repaving costs so that the Association would have the money to take care of the road when it required maintenance. A member mentioned that an average 10-15 year paving cycle in his home County of Monongalia. A general discussion included that the paving cycle can be extended by periodic repairs, and the benefit of budgeting paving expenses in small annual increments rather than collective significant sums immediately before repair contracts. A motion was made to seek three estimates for resurfacing Yoakum Run including projected cost and when the road would require work. The motion was seconded and unanimously passed without objection. Mr. Smith observed the significant portion of paving expenses is mobilization, and for that reason, he proposed that when plans are made to resurface Yoakum Run, Lot Owners will be canvassed to determine their individual interest in having the paving contractor resurface their asphalt driveways or pave their crushed rock

driveways to reduce the mob-in and mob-out costs to the Lot Owners and Association. (NB: The Association has an interest bearing Reserve Account that is capitalized at \$45,000.00 into which any excess annual assessments are paid.)

Director Election: Director Election ballots were collected and presented to the Election Committee consisting of two Board members who were not on the ballot. The ballots were counted multiple times and given a final review by a third Board member not on the ballot. DK reported the results of the election, with the three nominee's vote counts being as follows: Faller 19, Smith 16, Ayers 14. Faller and Smith were elected to a new 2 year term on the Board. The ballots are retained as part of the corporate records for purposes of the credibility of the election results.

There being no other business for the membership, the motion was made, seconded and unanimously approved to adjourn and have lunch at 12:30 PM.

/S/Greenleaf Smith

Greenleaf Smith
Secretary

8/19/2024