

A Short History of the Canaan Crossing Homeowners Association

The CCHA is an officially designated Corporation, with the “right of perpetual existence,” according to the state of West Virginia. Individuals come and go, but the Association continues indefinitely. Thus, it is important that the entire membership at any given time be aware of historical events and legal precedents. Each outgoing Secretary is tasked with the writing of a few paragraphs to update this Short History so that it may continue to provide useful information to the membership as the years go by.

Background

Canaan Crossing was developed from a 548-acre tract of land purchased from a local farmer in 1988. It consisted originally of 113 lots of varying sizes, but with the addition of a new lot in 2003 the total rose to 114 lots. Each lot represents one vote for purposes of the Association. Some legal actions require a simple majority of 58 votes, but others require a 67 percent majority of 77 votes. A meeting quorum is 20 percent of 114 or 23 votes.

There are four levels of legal guidance for the Association. First, the ***Uniform Common Interest Ownership Act*** [Act] of West Virginia, Chapter 36-B, enacted on July 1, 1986. Second, the ***Declaration of Protective Covenants and Restrictions*** [Declaration] issued by the Developer and provided to each lot owner at the time of purchase. Third, the ***Bylaws*** of the Association approved on August 31, 1995. Fourth, the ***Rules and Regulations*** adopted by the Board from time to time. The last-mentioned, consisting mostly of ***Resolutions***, must be consistent with the Bylaws, which in turn must be consistent with the Declaration and the Act.

A general meeting of the membership takes place in October of each year [Bylaws, Article II, Para. 2] at a local site. A five-person Executive Board, elected by the members present at the meeting, represents the Association throughout the next year. The five Directors decide among themselves who is to be the President, Vice President, Secretary, Treasurer, and non-officer Director. Each Director is elected to a two-year term, with two persons terminating in one year and three persons in the second year to maintain Board continuity.

West Virginia law recognizes Canaan Crossing and its Association as a ***Common Interest Community*** established for dwelling and recreational purposes. It contains 19 acres of common elements in addition to the 114 member-owned lots. Lot owners enjoy an easement in the common elements, and the Association has a right-of-way road easement through most lots. Two more easements were obtained in August 1995 that gave the Association the right in perpetuity to landscape and maintain the entrance area of the development. These easements were granted without compensation by the owners of Flatrock Run Lots 1 and 2, and were formalized and recorded. The Association is obligated to maintain the area and keep it attractive.

Each lot owner is subject to a common expense assessment on January 1 of each year. Five of the 114 lots pay only a modest fraction of the assessment, however, because they front on Route 32/2 and do not require use of the internal roadways. This is in compliance with the WV Act cited above, which specifies that common expenses benefiting fewer than all units must be assessed only against the units benefited. The Act also states that lot sellers must obtain a Resale Certificate from the CCHA Secretary prior to closing. The current charge for the certificate and related documents is \$50, payable to the CCHA.

A Twenty-four-year Capsule History

At the organizational meeting of October 22, 1994, arranged by John Lounsbury, the Developer, five Directors were elected. They are named in the attached list of *CCHA Directors, 1994-2018*. The Developer himself agreed to serve as a non-officer member and liaison to an Architectural Standards Committee.

In the year that followed, the Board scrambled to put flesh on the bones of the Association, which was destined to inherit full responsibility from the developer for managing Canaan Crossing. It was necessary to create an accurate list of lot owners, for one thing, with up-to-date mailing addresses. A central task was to review a draft set of Bylaws prepared by the Developer, make changes as deemed necessary, and submit the final document to the full membership for approval. That approval came on August 31, 1995. It was also necessary to obtain two insurance policies, one to protect directors and officers and another to protect Canaan Crossing itself. And finally, it was necessary to pursue lot owners who had neglected to pay their assessments.

A post office box was rented in Dryfork, with keys for each Director, and a bank account was opened. Arrangements were made for snow removal and maintenance of the roadways - two tasks that soon were recognized as the most important responsibilities of the Board. Throughout the process of making "handover" a reality, the Developer helped the fledging Board to understand and carry out its mandated duties.

By mid-October 1995 the Board had issued three Resolutions:

- No. 1 Established an 18 percent interest rate on unpaid assessments.
- No. 2 Established a 25-mph speed limit inside Canaan Crossing.
- No. 3 Provided guidance with respect to fuel storage tanks, television and radio antennae, and satellite dishes.

Lot owners accounting for 36 lot-votes attended the 1995 general meeting in the Canaan Valley Fire Hall. The Board explained that the three new Resolutions were to take effect on January 1, 1996. It was announced that Karl Badgley had agreed to serve as the CCHA Sign Designer, and would advise the Board on location, content, and appearance of new signs at the entrance and elsewhere. It was also announced that William Bristor had agreed to serve as chairman of an Entrance Beautification Committee. Several members suggested that a short Checklist of CCHA rules be drafted and circulated for guidance, which was done a few weeks later.

With the same Board in place, Resolution No. 4 was issued on November 30, 1995. It concerned Canaan Crossing's development as a Residential, Recreational Community. This is a key document, in that it interprets "business or commercial enterprises" referred to in the Declaration to include hotels, motels, inns, lodges, bed-and-breakfasts, and similar lodging activities conducted for financial gain. It states that applications to construct facilities for such enterprises will be rejected, as they would violate the community's preference for single-family residences [Declaration, page 2, item 1].

The 1995/1996 winter was hard, with lots of snow. It was necessary to spend heavily to keep the roads open, and later to re-rock them in the spring. It also became necessary to increase the common expense assessment by 50 percent, from \$100 to \$150 per year, on January 1, 1997.

Responding to member concerns, the Board issued Resolution No. 5 on March 16, 1996, regarding Policy Concerning Motorized Vehicles. On September 15, 1996, came Resolution No. 6, which deals with the Enforcement of CCHA Rules.

During the October 1996 annual meeting at the Canaan Valley Fire Hall many people expressed satisfaction with the grand new sign erected at the entrance as well as with small signs placed elsewhere. There was much discussion of hunting activity in and near the project, and also about the placement of snow fencing.

The 1996/1997 winter was relatively mild, and the budget situation improved. On April 26, 1997, the Board issued Resolution No. 7, concerning Overdues Collection Expenses. It states that expenses incurred to collect overdue assessments, interest charges, and fines are the responsibility of the negligent lot owner. Such expenses are subject to the same interest rate as other overdues. A one-page handout with suggestions to enhance member security was distributed.

At the October 1997 general meeting at the Canaan Valley Fire Hall it was announced that 99 percent of the assessment collection had been accomplished, with only one lot owner in arrears. That was seen as a significant achievement which reflected very positively on the CCHA membership. On October 30 the Directors issued a Board Note Concerning Speed Limit and another Note Concerning Walking Permission. The notes urged people to drive slowly, and solicited permission from owners of lots adjacent to Sugarcamp Run to allow walkers along the trail.

The 1997/1998 winter was another mild one, with lots of rain rather than snow. During the October 1998 general meeting at the Windward Resort in Canaan Valley the Bylaws were amended to introduce staggered Board terms. During the 1998/1999 Term, Resolution No. 8 was issued concerning Directors Liability and Special Assessments. By the time of the October 1999 general meeting at Tucker's Restaurant in Canaan Valley, the Association was in the midst of a full-scale legal battle. The Board had filed an injunction against a lot owner who emphatically refused to comply with guidance. He in turn had requested a jury trial, charging discrimination because of ethnicity and national origin. After all sorts of ruses and threats and postponements the trial was held in Elkins on January 18-20, 2000. The jury voted unanimously in favor of the CCHA on all counts, and the presiding judge indicated his agreement with the decision. The lot owner was required by the court to reimburse the Association and its insurers for all legal expenses, and was instructed to come into compliance with guidance.

The October 2000 general meeting was held in the Balsam Room of the Canaan Valley Lodge, and the subsequent 2001 and 2002 meetings were held at the Hickory House in Flatrock Run. After that all meetings have been held in the Dryfork Assembly of God Fellowship Hall on Route 32. During the 2002 meeting there was much discussion of the record snowfall of the winter season. In December 2001 snowfall was measured at 55 inches, with January 2002 at 98 inches and February 2002 at 96 inches, for a total of about 250 inches. Later snowfalls brought the winter total to over 290 inches (24+ feet). Average snowfall in the Canaan Valley area is about 160 inches. Due to the huge costs incurred to cope with so much snow, the Board imposed a Special Assessment of \$50 per lot. At the general meeting of October 2004 members voted to raise the annual assessment to \$250 per lot, effective January 1, 2005. Despite strong effort to avoid such an increase, the weather and its effect on Canaan Crossing roadways could not be denied.

At the general meeting of October 2005 many members expressed satisfaction with the new 911 Road Signs installed to meet Randolph County requirements. The Treasurer reported a greatly improved fiscal situation, and said that good progress was made toward reaching a desirable level of reserves. A target reserve level was set at \$20,000. On November 18, 2005, Resolution No. 11 was issued, concerning Canaan Crossing Property Rentals. The Resolution was the result of considerable research and discussion. There had been increased demand for properties in the area, related to ski resort activities and rumors of expansion. Many members expressed concern about the lack of policy guidance. The Resolution provided that guidance. In addition to limits on the number of persons staying in units of different sizes, written to avoid the frequently observed practice of “ski bums” swarming together and disturbing the neighbors, the Resolution stipulates that the total number of rental days should not exceed sixty days in a calendar year. Beyond that number, a property owner would be deemed to be operating a business or commercial enterprise in violation of the Declaration as interpreted by Resolution No. 4 of 1995. Also, the Resolution places full responsibility for monitoring the behavior of renters on lot owners and property managers.

A particularly thorny case soon surfaced concerning the rental activity of a specific property in Canaan Crossing. The Developer had approved construction of a very large house with eight bedrooms and baths well before the creation of the Homeowners Association, and subsequent Boards had tended to ignore the fact that the house was in violation of the 1995 Bylaws. A lawyer for the owner of the house attacked the CCHA Board in a formal letter of December 2005, stating that Board Resolution No. 11 was “without legal force or effect” and would not be recognized by his client. The lawyer went on to state that even if the CCHA Bylaws were to be amended by 67 percent of the membership, any change could not be applied retroactively.

The Board realized that the case was complicated, and sought outside counsel. Numerous complaints had been received from neighboring property owners about the rowdy behavior of groups renting the house - noise, traffic, intoxication, bright lights. The owner appeared to be indifferent to CCHA regulations, and something had to be done. He had put the property up for sale, and the Board feared that a new buyer might well continue the unacceptable behavior. The new CCHA counsel, who had experience with such issues in the Canaan Valley area, emphasized that all purchasers of lots were legally subject to written covenants given to them at time of purchase. Such covenants were enforceable, even if buyers had received verbal permission to ignore them. Mediation was arranged, and both sides agreed to meet half-way. The expectation is that both the current owner and all future owners will abide by the regulations.

The next big event for Canaan Crossing was the prospect of receiving piped water from the town of Harman. That subject dominated discussion at every general meeting during the 2012-2017 period. Members were in general supportive of the idea, in part because several had experienced intermittent well problems. Having an assured water supply would be a good thing. And the project as presented would include several fire hydrants, which could be very helpful in the event of fire. Nevertheless, people wanted to know the details of the water scheme. Who would do what, when, and what would be the cost? The short answer is that the time-table slipped badly, cost estimates rose, and the ultimate cost to CCHA members doubled. By late 2017 all underground water pipes were installed, a pumping station was ready, and people were moving ahead with the connection of lines from their lot boundaries to their houses. They would have to pay approximately \$60 per month for three years, even if they drew no water from the piped system.

Lessons Learned

The most important lesson learned by CCHA members not native to the area is that the winter weather in the area is extremely variable. One season is fairly mild and the next is ferocious. Snowstorms hit with sudden force and dump huge quantities of snow on the roads. Identifying and retaining qualified contractors with suitable trucks and plows, willing to work at a reasonable price, is difficult. The Developer shielded the community in the early years, but the problem reappears at regular intervals.

Another lesson is recognition of the hard work required of CCHA Directors, and the related fact that many members are reluctant to volunteer for service. With the recent access to the CCHA website and List-Serve feature, making it feasible to conduct business via the Internet, it is hoped that more people will step forward. Some of the current Directors have served several terms, in order to see the water project through to completion. They should be congratulated for their service, but they should not be expected to carry on forever. New members should allow themselves to be nominated for the 2018/2020 period at the October 2018 general meeting.

Finally, experience has shown the desirability of carrying a substantial financial reserve fund, in order to cope with unexpected expenses as they arise. A heavy winter storm or two can eat up the road budget very quickly. The current common expense assessment of \$330 per year may be sustainable and sufficient to accumulate additional reserves, but only time will tell. Even if further increases prove necessary, the CCHA assessment appears to be well below that of similar organizations in Canaan Valley.

All things considered, Canaan Crossing is a very nice place, and people who spend time here enjoy the natural beauty and peace it offers.

This Short History was written by Gary Hyde for the CCHA Board on November 1, 2017.