

THE CROSSING AT KENBERG
PROPERTY OWNERS' ASSOCIATION

BOARD OF DIRECTORS REGULAR MEETING MINUTES
February 21, 2023

Mr. Steve Cruz called the scheduled meeting of The Crossing at Kenberg Property Owners' Association (POA) Board of Directors (Board) to order at 7:02 PM at the Pavilion.

Present:

Steve Cruz, President
Judy Hinnant, Vice-President
Rebecca Rosier, Treasurer
Neil Ciotola, Secretary
Steve Frost

Robert Neel
Mary Cooper
Jack Banowsky
Michael Hemdon

Absent: None

Guests in Audience: Chris and Terry Skubal; Larry and Jo-Ann Ryon; William Gosdin III; Kathleen Kirby; Claudia and Jim Nester; Tracy Bendele; Tom Rosier; Darlynn and Paul Garczynski; James Ruschhaupt; Gerry True; Terry Boehner; Christina Huckaba; Jack Henckel.

1.. Confirmation of Quorum, Acceptance of Agenda, Approval of Minutes:

Quorum: A quorum was determined present with all Board Member(s) present.

Agenda:

Modifications and or amendments to Agenda: Paragraph 4. (New Business)
Item A. "POA Residential Construction Standards" was moved down to Item G.
Item E. "POA Mowing Contract Review" was removed (deferred to March).

A motion to approve the agenda as modified was made by Becky Rosier, seconded by Mary Cooper, and approved by the Directors present.

Minutes:

Minutes of January 17, 2023: There being no recommended changes or modifications to the minutes a motion to approve the minutes as written was made by Michael Hemdon, seconded by Judy Hinnant, and approved by the Directors present.

2. Reports:

A. Financial/Property Management: (Becky Rosier/Betsy McFarland)

Becky Briefed selected aspects of the attached financial report in addition to the following: There is currently \$150,445.00 in the various accounts held at RBFCU. Robert Neel asked if a new accounting line had been established addressing major repairs. A brief Discussion ensued. In her comments Becky stated that there was no new accounting line created . Betsy McFarland, the POA's New Business Manager introduced

herself to the members present. Betsy highlighted her office hours and selected aspects of the attached Property Management Report. Mrs. Kathleen Kirby asked, of those that have not paid their annual assessment to date, how many are currently under lien? A Brief discussion ensued. Mrs. Tracy Bendele stated that none of those that had not paid their assessment were under a lien. Mr. Jim Nester asked if over \$8,000.00 had been spent on repairs to POA property in just six months, and why we were so far over what was budgeted? A brief discussion ensued. Becky Rosier explained what the overages were attributed to what included, amongst other things, electrical repairs at, and to, the pavilion.

- B. ARA Committee Report:** (Gerry True) A written report was submitted to the Board Members showing the activity for the last month (See Attachment). Gerry True briefed selected aspects of the attached report. Mrs. Terry Boehner asked for clarification of construction standards related to sheds. A brief discussion ensued.
- C. Community Events Committee:** (Maryanne Schuster Fernandez) MaryAnne being absent, Judy Hinnant highlighted the following executed and upcoming events: our 11 February Chili Cook-Off; 11 March community clean-up day; dumpster day on either March 25 or April 8; The Association Easter Egg Hunt on 1 April 2023; the Association Yard Sale on 29 April 2023; the Association Salsa contest on 5 May 2023; and the Association Annual Meeting scheduled for 3 June 2023. Terry Boehner asked how much money was spent on prizes for the Chili Cook-off. Judy stated that \$95.00 was spent on prizes for the event. Terry Boehner asked how much money was left in the approved budget for community events? Becky Rosier stated that there is \$613.00 remaining in budget line for community events. A brief discussion ensued.
- D. Welcome Committee:** (Michelle Horstman) Michelle being absent Judy Hinnant provided the following: there are no visits currently outstanding for new residents, and the new coffee mugs are in for the welcome committee to present to new residents.
- E. Property Maintenance Committee:** (Jack Banowsky)
Jack provided an overview of events and efforts (by Directors on the Board) associated with the recent ice storm and clearing tree damage throughout the community, along the county roads, and in Pavilion park. Terry Boehner asked if a walking path could be established along Mountain Creek Trail. Neil Ciotola asked if she envisioned this walking trail within the county easement or on the private property along the road. A brief discussion ensued. Jack went on to highlight the Pavilion Park gate malfunction during the ice storm. A brief Discussion ensued. Robert Neel highlighted issues associated with the gate control unit at the entrance to our pavilion. A brief discussion ensued.
- F. Playground Equipment Committee:** (Judy Hinnant)
Judy Hinnant announced that a committee of five members had finally been established, and that subject committee will meet shortly to develop a three-year plan to present to the board.

G. Financial Reserve Committee:

Neil Ciotola and Robert Neel presented comments on the importance of establishing this committee and how it's efforts will have an impact on the amount of future POA Assessments. Terry Boehner is interested in being on this committee, but expressed no interest in being the chair. Discussion ensued. Betsy McFarland asked if our insurance carrier required us (the association) to maintain a certain amount in our reserve? Discussion ensued. Kathleen Kirby shared comments related to her experience in the accounting profession and what best practices would indicate we set aside. Discussion continued.

3. Old Business:

- A. Board Huddle Highlights January 24, 2023:** Steve Cruz commented on the following items that were addressed during the huddle: Welcoming the POA Business Manager Betsy McFarland; Use of the Association's Facebook page; Violations of the Association's RR&Cs; and the Pavilion electrical service. Steve also highlighted items that were discussed at a February 7, 2023 huddle of the Directors which included; Updates to violations of the Association's RR&Cs; The POA's Certificate of Deposit maintained at RBFCU; the RBFCU bank accounts; upcoming events; and the Association's cleaning contract. Steve Also announced that the Directors meet with the Association's By-Law update committee for a review of all the updates proposed by the committee.
- B. Contract Labor:** Steve Cruz provided comments related to the use of contract labor in transitioning to Betsy McFarland as our POA Business Manager; the contract laborer's scope of work focusing on systems and procedures moving into the March timeframe. Terry Boehner asked who is providing training? Ms. Boehner stated that there are company's that provide/conduct training. Discussion ensued. Steve Cruz stated that we (the association) generally use contracted labor on Tuesday and Thursdays, that there are seven total days until the next monthly meeting in March, assuming three hours a day for a minimum of 21 hours of contracted labor requirement. Discussion ensued related to hours remaining in previous month authorizations. Judy Hinnant made the motion to carry forward the unused hours of contract labor to cover the period 21 February to 21 March, the motion was seconded by Steve Frost and approved by the Directors present.

4. New Business:

- A. POA residential Construction Standards** (discussed last under the category of New Business):
Steve Cruz introduced Robert Neel who presented excerpts of the attached slide show addressing prefabricated, manufactured, and modular homes as interpreted under Texas Law and the Association's RR&Cs. Discussion ensued. Steve Cruz offered that there is a great deal of ambiguous language in our RR&Cs which were written in the 1970's, and that we, the Association must agree to come together and update our RR&Cs. A great deal of discussion continued. Steve Cruz summarized

the substance of the discussion and offered that we ought have a discussion with the POA attorney, and if warranted, establish a committee and potentially amend our RR&Cs.

B. Rebranding Facebook Garage Sale Page:

Steve Cruz provided comments addressing the following: the Association's Social Media Policy and what content may or may not be permitted on Facebook, the Crossing at Kenberg Community Highlights page, and the On-Line Garage sale page. Steve asked for discussion focused on potentially rebranding the POA's On-Line Garage Sale page. Discussion ensued. Judy Hinnant shared the idea of "Sales and Services"; Robert Neel said it makes sense to keep the title of the page as generalized as possible. Discussion continued. Robert Neel asked for clarification of what would be posted on one page or the other. Discussion continued. Christina Huckaba asked if you have to be a member to be on the page. Discussion continued. Robert Neel offered that we ought first review, and potentially update the Association's Social media policy before we attempt to rebrand any aspect of the Association's Facebook page. Discussion continued. It was agreed by the board to table the issue to a date in the future.

C. Playground Park Road Access:

Steve Cruz recapped the events leading to the private road at/in playground park being first blocked and then gated. He stated that part of the road is on private property; that some portions of the road are in a deteriorated state of repair; the road is owned and maintained by the association; that there is a known safety issue and a potential liability to the association. Steve went on to state that there have been multiple surveys of the members to determine what type, if any, traffic ought be permitted on the road. Steve highlighted the results of a survey conducted on July 15, 2021, in which 132 members responded, 24 respondents recommended pedestrian traffic only; 84 members recommended traffic be limited to small wheel-based ATVs and golf carts, and 24 members supported the position that any type of traffic ought be permitted. Discussion ensued related to potential options and methods that could be employed to mitigate/reduce the potential for an accident on the road. Bill Gosdin offered that a body be established to identify options for the future of the road and access to the same. Discussion continued. Robert Neel offered that we, the association, ought consider Terry Skubal's recommendation of clearing lines of sight to reduce the potential for an accident. Discussion continued. Steve Cruz offered, and it was agreed upon, to take up discussion of park road access at the March Board meeting.

D. POA Cleaning Contract Bid Opening:

Steve Cruz announced where the announcement was posted and the number of respondents to the bid. Terry Boehner stated that she wanted to put a bid in and Steve Cruz informed her that the window for bid submission had closed on the previous Friday. Betsy McFarland opened and announced the bid that was made. Discussion ensued. Tracy Bendele recommended that future announcements/bids ought cover the POA's operating year. Neil Ciotola made a motion to accept the bid

that was presented by Mr. Terry Skubal. Robert Neel seconded the motion, and all the Directors present approved the motion.

- E. POA By-Law Update: Huddle; Review; Discussion: Way Ahead:** Neil Ciotola provided comments addressing the following; establishment of the By-Law update committee; the number of meetings the committee has executed; the repeated announcements for members ; and the final draft presented to the board of Directors. Neil asked for permission to present the efforts (changes) of the by-law update (to ensure legal sufficiency) to the POA attorney for legal review. Discussion ensued. Robert Neel recommended the product of the By-Law update committee and specific questions, be presented to the POA attorney. Discussion continued. Terry Boehner asked that the recommendations of the By-Law committee not be limited to release on merely Constant Contact. Discussion continued. Jim Nester asked if the By-law changes would be voted in its entirety , or by article. Discussion continued. Neil gain asked if the board would approve presenting the By-Law committee's recommendations to the POA attorney; Robert Neel seconded the motion, and the directors present approved the motion.
- F. Coordination, scheduling, and notification policy for all board gatherings:** Steve Cruz asked if this item could be tabled to the next month's meeting. Robert Neel provided the following: he asked for additional notice of Board "Huddles". He asked that all future board huddles be announced no less than seven to ten days prior to execution. Discussion ensued. The Board generally agreed to a seven-day notification timeline. Terry Boehner asked if we were going to discuss manufactured housing. Discussion continued.

5. General Members Questions/Concerns: None

6. Announcements: March 11, 2023 Community cleanup; Next Regular Board Meeting, March 21, 2023, at 7:00 PM, Pavilion Park.

7. Recess to Executive Session: 9:11 PM Motion by Judy Hinnant, seconded by Michael Hemond, approved by the Directors present.

Executive Session convened at 9:18 PM

8. Executive session:

- A. A property owner asked if a lawsuit was threatened by a property owner related to the movement of a manufactured home on to a property in the crossing:** A brief discussion ensued.

Executive Session adjourned at 9:19 PM on a motion made by Robert Neel, seconded by Michael Hemond and approved by the Directors present.


9. Open General Session reconvened at 9:20 PM.

Comments: There were no members present.

Adjournment: With no more business to come before the Board, a motion to adjourn was made by Becky Rosier, seconded by Michael Hemond, and approved by the Directors present.

Meeting adjourned at 9:20 PM.

Minutes Approved: 9/21/23



Neil L. Ciotola, Secretary

Attachment for Corporate Binder:
Agenda

Filed: 1 Original—Corporate Binder
1 Copy—Secretary

Final

The Crossing at Kenberg Property Owners Association
Open Meeting of the Board of Directors
February 21, 2023
POA Conference Room - 7:00 PM
PROPOSED AGENDA

1. Call to Order 7PM; Welcome Guests; Confirmation of Quorum; Acceptance of Agenda; Review and Approval of Minutes from January 17, 2023
2. Reports:
 - A. Financial/Property Management – Becky Rosier/Betsy McFarland/Steve Cruz
 - B. Architectural Review Committee – Gerry True
 - C. Community Events Committee – Maryanne Schuster Fernandez
 - D. Welcome Committee – Michelle Horstman
 - E. Property Maintenance Committee – Jack Banowsky
 - a. River Park Gate Battery
 - F. Playground Equipment Committee – Judy Hinnant
 - G. Financial Reserve Committee – Committee lead to be named
3. Old Business
 - A. Board Huddle Highlights January 24, 2023
 - B. Contract Labor
4. New Business
 - A. POA Residential Construction Standards
 - B. Rebranding Facebook Garage Sale Page
 - C. Playground Park Road Access
 - D. POA Cleaning Contract Bid Opening
 - E. POA Mowing Contract Review *TO NAR*
 - F. POA By-Law Update: Huddle; Review; Discussion; Way ahead
 - G. Coordination, scheduling, and notification Policy for all Board Gatherings
5. General Member: Questions & Concerns
6. Announcements:

Next Scheduled meeting – March 21, 2023, 7:00 PM at the POA Conference Room
7. Recess (as required)
8. Executive Session (as required)
9. Reconvene/synopsis/Adjournment _____AM/PM

2-21-73

Sign In

- 1/2 Chris + Terry Schulz
- 3 Kathleen Killy
- 45 Larry + Jo Ann Ryan
- 4 William H. Gosdin
- 7 James E. H. (Tom Rozier)
- 89 Darlynn & Paul garczynski
- 10-11 Claudia & Jim Pester
- 12 Jay Bludell
- 13 James Buschaupt
- 14 ~~James Buschaupt~~
- 15 JERRY BOEHNER
- 16 ~~CLAUDE HUCKABT~~ HUCKABT
- 17 Dan S. DAVID SYKES
- 18 John Hunkel JACK HEWEL

2022-2023 APPROVED Operating Budget vs Actual Expenses thru January 31, 2023

EXPENSES	Budgeted	Actual	Difference	% Used
CONTRIBUTIONS (VFD)	\$ 1,000.00	\$ -	\$ 1,000.00	0.00%
INSURANCE				
D&O LIABILITY	\$ 2,750.00	\$ 2,484.00	\$ 266.00	90.33%
GEN LIABILITY	\$ 1,000.00	\$ 4,357.95	\$ (3,357.95)	433.80%
FIRE	\$ 1,000.00	\$ 1,099.00	\$ 99.00	109.90%
Total Insurance	\$ 4,850.00	\$ 7,940.95	\$ (3,090.95)	163.73%
MAINT ACCOUNTS				
REPAIRS	\$ 5,000.00	\$ 8,179.47	\$ (3,179.47)	163.59%
PAVILION MOWING	\$ 1,325.00	\$ 450.00	\$ 875.00	33.96%
PARK II MOWING	\$ 5,400.00	\$ 3,700.00	\$ 1,700.00	68.52%
ENTRANCE MOWING	\$ 1,800.00	\$ 675.00	\$ 1,125.00	37.50%
Total Maintenance	\$ 14,085.00	\$ 13,324.47	\$ 760.53	94.80%
POSTAGE	\$ 1,000.00	\$ 629.65	\$ 370.35	62.97%
SUPPLIES				
OFFICE	\$ 600.00	\$ 860.99	\$ (260.99)	143.50%
CLEANING	\$ 600.00	\$ 186.58	\$ 413.42	31.10%
COMMUNITY EVENTS	\$ 2,000.00	\$ 1,386.78	\$ 613.22	69.34%
PRINTING & COPIES	\$ 750.00	\$ 68.00	\$ 682.00	90.93%
Total Supplies	\$ 3,950.00	\$ 2,502.35	\$ 1,447.65	63.36%
MILEAGE REIMBURSEMENT	\$ 1,200.00	\$ 103.39	\$ 1,096.61	9.05%
FILING FEES	\$ 200.00	\$ (812.68)	\$ 1,012.68	506.34%
PROFESSIONAL FEES				
ATTORNEY	\$ 3,150.00	\$ 735.00	\$ 2,415.00	23.33%
FINANCIAL OVERSIGHT	\$ 2,000.00	\$ -	\$ 2,000.00	0.00%
NOTARY	\$ 200.00	\$ -	\$ 200.00	0.00%
2024 AUDIT	\$ 3,500.00	\$ -	\$ 3,500.00	0.00%
Total Professional Fees	\$ 8,850.00	\$ 735.00	\$ 8,115.00	8.07%
TAXES				
BISD	\$ 20.00	\$ 14.70	\$ 5.30	73.50%
KENDALL CO.	\$ 10.00	\$ 5.87	\$ 4.13	58.70%
INCOME	\$ 300.00	\$ 9.60	\$ 290.40	3.20%
PAYROLL TAX	\$ 1,400.00	\$ 196.18	\$ 1,203.82	14.01%
Total Taxes	\$ 1,730.00	\$ 226.35	\$ 1,503.65	86.92%
UTILITIES				
ELECTRIC	\$ 2,100.00	\$ 1,763.00	\$ 337.00	84.14%
TRASH	\$ 600.00	\$ 182.47	\$ 417.53	30.41%
TELEPHONE/INTERNET	\$ 1,300.00	\$ 620.90	\$ 679.10	47.70%
WEBSITE SERVICES	\$ 1,000.00	\$ 1,020.87	\$ (20.87)	102.09%
Total Utilities	\$ 5,000.00	\$ 3,687.24	\$ 1,312.76	71.74%
SALARY BUSINESS MANAGER	\$ 17,160.00	\$ 3,465.48	\$ 13,694.52	20.20%
CONTRACT LABOR (TEMPORARY)	\$ -	\$ 4,163.50	\$ (4,163.50)	N/A%
Operating Expenses	\$ 59,025.00	\$ 35,365.70	\$ 23,659.30	59.92%
Reserves Addition	\$ 17,500.00	\$ -	\$ 17,500.00	0.00%
TOTAL EXPENSES	\$ 76,525.00	\$ 35,365.70	\$ 41,159.30	46.21%

INCOME	Budgeted	Actual	Difference	% of Budget Fulfilled
Yearly Dues @ \$225/Year				
INCOME				
INTEREST - BANK & CD	\$ 1,000.00	\$ 401.92	\$ (598.08)	40.19%
LOT TRANSFER FEES	\$ 6,000.00	\$ 8,826.77	\$ 2,826.77	147.13%
POA DUES (309 Owners Paying)	\$ 69,525.00	\$ 70,399.12	\$ 874.12	101.70%
Total Income	\$ 76,525.00	\$ 79,627.81	\$ 3,102.81	104.71%
Net Income/loss	ZERO			

February 2023

Financial/Property Mgmt. Report

Financial:

224/316 Property Owners have PAID

92/316 Property Owners Still Owe Dues.

71% of Assessments have been paid as of 2/21/2023-
Up from 43% last month.

Sending out balance due statements by the end of
February.

Property Mgmt:

Sales:

Lot# 285 (Hidden Lake) – 1/20/23

216 Roaring Creek Drive – 1/18/23

113 River Vw. Dr. – 1/30/23

102 Highland Woods – 1/30/23 mki89999999

Pending:

Lot 398 Misty Trail

Architectural Review Authority Report

February 2023

Applications Approved since last meeting:

Date Received	Lot Number	Address	Construction Type	Date Approved
January 17, 2023	34	222 Saddle MNT DR	Well House	Jan 27, 2023
January 17, 2023	382	328 Saddle MNT DR	House	Jan 27, 2023
January 31, 2023	423	210 Highland Woods	Workshop	February 11, 2023

Applications Received and Pending

Date Received	Lot Number	Address	Construction Type	Date Approved

Progress on Home Construction

Start Date	Lot Number	Address	Status of Progress
May 19, 2022	8	219 Oak Forest Dr	Foundation Completed, Framing started, Framing Complete, Windows Installed, Stucco Completed, Interior in progress
Sept 18, 2022	22	102 Saddle Mountain Dr	Site Cleared, Foundation Completed, Framing Completed, Roof Completed, Windows Installed, Siding completed
Oct 20, 202	376	314 Saddle Mountain Dr	Site Cleared
Sept 6, 2022	383	330 Saddle Mountain DR	Site Cleared
July 16, 2022	469	108 Highland Woods	Foundation Completed, Framing Completed, Insulation in Progress, Roof Completed, Ext Completed, Interior Completed, Driveway completed
Dec 7, 2022	509	709 Mountain Crk Trl	Site Cleared, Septic Installed, Prefabricated home set on pier and beam foundation
Aug 15, 2022	154	118 River View Dr	Foundation Completed, Framing Completed, Roof Completed, Siding Completed, Exterior painted, Driveway completed, Landscaping in progress
March 31, 2022	209	108 White Water	Foundation completed, Framing Completed, Siding completed, Windows installed, Roof completed, Interior in progress

Home Construction Completed

Date Completed	Lot Number	Address	Construction Type

ARC Members: Gerry True, Oscar Hernandez, and Christina Huckaba

**The Crossing at Kenberg Property Owners Association
205 Hidden Lake Drive,
Boerne, Texas 78006
(830)336-2192**

INVITATION TO BID

Cleaning and Maintenance Contract Parks I and II

Contractor agrees to furnish all labor necessary to complete the listed maintenance and cleaning of the real property herein referred to as Parks I (205 Hidden Lake Drive) and II (295 Mountain Creek Trail) and all improvements located on the same. The Contractor further agrees to purchase and maintain a minimum of \$1,000,000.00 in general liability insurance during the term of this contract.

Maintenance and cleaning of Parks I and II is completed on a weekly basis, the only exception to this being the annual cleaning of the Park I Pavilion Ceiling and semiannual cleaning of the Pavilion gutters. During high utilization months (April thru September) all maintenance and cleaning requirements reflected in the substance of this scope of work shall be completed twice a week or as directed by the Association Business Manager. During low utilization months (October thru March) all recurring maintenance and cleaning shall be completed once a week or as directed by the Association Business Manager. Regardless of the time of year, special attention shall be paid to the Park One Pavilion immediately before, and immediately after, reservation of the same for Owner or Association events.

In accordance with the frequency defined in the preceding paragraph the following is required:

- Clean Pavilion Restroom fixtures (toilets and sinks) using a cleaning agent that cleans and disinfects.
- Sweep and mop restroom floors.
- Sweep and wash Pavilion floor.
- Replenish Pavilion Restrooms with toilet paper, paper towels, and soap as needed.
- Sweep or blow-off all debris (dirt, leaves, branches, or standing water) from the Park I tennis and basketball courts.
- Ensure all steps around the perimeter and slab of the Pavilion, and steps providing river access are free of any debris (mud, dirt, leaves, branches, or standing water).
- Police all trash and debris (including tree branches) in Parks I and II, paying particular attention to the areas in and around: the Pavilion; Tennis Court; Basketball Court; and play areas (Picnic areas, swing sets, teeter tooters, etc.).
- Empty (as required) all trash barrels and place a clean trash bag in each in Parks I and II.
- Report and replace burned out light bulbs. Report damaged fixtures to the POA Business Manager.
- Empty all bar-b-que grills of ash and debris and dispose of the same. Report any damaged or degraded grills to the POA Business Manager.
- Report all damaged or deteriorated assets In Parks I and II to the POA Business Manager.
- Provide a list of all required cleaning supplies/resources/equipment to the POA Business Manager no later than one week prior to need. All perishable and nondurable cleaning items will be purchased by the POA.
- Remove or reduce foliage in and around steps, sidewalks, parking areas, and roads in Parks I and II which restrict the use of the same. Notify the POA Business Manager of tree trimming required in parks I and II which exceed the scope of this contract.
- Twice a year clean the gutters and downspouts of the pavilion.



2 of 31 DOCUMENTS

Stephen R. Wilmoth, et al., Petitioners, v. Rhonda Robertson Wilcox, et al., Respondents

No. C-6141

SUPREME COURT OF TEXAS

734 S.W.2d 656; 1987 Tex. LEXIS 363; 30 Tex. Sup. J. 536

July 1, 1987, Decided

PRIOR HISTORY: [**1] Appeal from Henderson County, Eleventh District.

COUNSEL: Donald Ray, Ray & Terrell, for Petitioner.

Melvin G. Bateman, Bateman & George, for Respondent.

JUDGES: Wallace, J.

OPINION BY: WALLACE

OPINION

[*657] The issue presented is whether a double-wide mobile home with an attached porch violates a deed restriction prohibiting "house trailers." The trial court held that the structure was a house trailer and ordered its removal. The court of appeals reversed. *721 S.W.2d 587*. We reverse the judgment of the court of appeals and affirm the judgment of the trial court.

The restrictive covenants of Caney Creek Addition, a subdivision on Cedar Creek Lake, Henderson County, Texas, stated in pertinent part:

5. No building, house or cabin shall be moved onto any lot in this addition from other locations, unless they are new construction.

7. No tents, house trailers or temporary structures shall be permitted to remain on any lot for more than 30 days.

The Wilcoxes purchased a new double-wide manufactured home and had it transported to a lot in the Caney Creek Addition. The two 12 feet by 48 feet units were placed on concrete beams and joined together [**2] to make one structure. The wheels and axles were removed and a skirt was placed around the perimeter. A covered porch was then attached to one side of the home. Steven R. Wilmoth and other homeowners brought suit seeking a mandatory injunction, ordering the manufactured home removed because it violated the deed restrictions of the subdivision.

In addressing the issue presented we note that covenants restricting the free use of land are not favored by the courts, but when they are confined to a lawful purpose and are clearly worded, they will be enforced. *Davis v. Huey, 620 S.W.2d 561 (Tex. 1981)*. All doubts must be resolved in favor of the free and unrestricted use of the premises, and the restrictive clause must be construed strictly against the party seeking to enforce it. *Brown v. Wehner, 610 S.W.2d 168, 170 (Tex. Civ. App. -- Houston [1st Dist.] 1980, writ ref'd n.r.e.)*. The words used in the restriction, and the restriction as a whole, may

734 S.W.2d 656, *657; 1987 Tex. LEXIS 363, **2;
30 Tex. Sup. J. 536

not be enlarged, extended, stretched or changed by construction. *Gilbert v. Shenandoah Valley Improvement Association*, 592 S.W.2d 28, 29 (Tex. Civ. App. -- Beaumont 1979, writ ref'd n.r.e.). Rather, the words and phrases used [**3] in the covenant will be given their [**658] commonly accepted meaning. *Curb v. Benson*, 564 S.W.2d 432, 433 (Tex. Civ. App. -- Austin 1978, writ ref'd n.r.e.). The words used in the restrictive covenant must be given the meaning which they commonly held as of the date the covenant was written, and not as of some subsequent date. *Davis v. Huey*, 620 S.W.2d at 627.

Our task is to determine the intent of the framers of the restrictive covenants. Did they intend that the term "house trailer" should be limited to the type of house trailer which was built at that time, as is contended by Wilcox; or did they intend the term to include the generic successors, i.e., "manufactured homes?" The record shows that the term "house trailer" acquired an undesirable connotation resulting in a concerted effort by the industry to change its image. In the late 1960's the term "mobile home" began to replace the term "house trailer." In the late 1970's the industry applied the term "manufactured homes" to the products, replacing the name "mobile home." The Texas Manufactured Housing Standards Act, *TEX. REV. CIV. STAT. ANN. art. 5221f* (Vernon 1987), section 3 (a) defines the term "mobile [**4] home" and section 3 (u) defines the term "HUD-Code manufactured home." The definitions are identical except that a mobile home was constructed prior to June 15, 1976, and a manufactured home is one constructed subsequent to June 15, 1976, according to the Rules of the United States Department of Housing and Urban Development. This is essentially a distinction without a difference.

The only direct evidence of the framers' intent is from the testimony of J. B. Overturf, who co-developed the subdivision with his brother, John E. Overturf, Sr., the owner of the land comprising Caney Creek Addition. He testified that he, his brother and a surveyor named Hodges sat around the table and created the restrictions. He further testified that their definition of a "house

trailer" was anything with a tongue on it that somebody pulled in and that the structure placed on the Wilcox' lot was a "house trailer" as they defined it in the restrictions.

In deciding a similar question, this court in *Lassiter v. Bliss*, 559 S.W.2d 353 (Tex. 1977), held that a 12 feet by 65 feet mobile home was prohibited by restrictive covenants proscribing "trailers." We approved the holdings in *Bullock v. Kattner* [**5], 502 S.W.2d 828 (Tex. Civ. App. -- Austin 1973, writ ref'd n.r.e.) and *Phillips v. Zmotony*, 525 S.W.2d 736 (Tex. Civ. App. -- Houston [14th Dist.] 1975, reversed per curiam 529 S.W.2d 760 (Tex. 1975), which held that the phrase "no trailer" in the restrictive covenant proscribed mobile homes and house trailers. In *Zmotony*, the 14 feet by 80 feet trailer was connected to a private water supply. The wheels and tongue were removed, a metal skirt was installed around the bottom, and the unit was on concrete blocks and attached to the ground by tie-downs. In *Lassiter*, we further held that the term "trailer" is to be understood in its usual meaning regardless of whether it is referred to or described as a "house trailer" or a "mobile home." *Lassiter v. Bliss*, 559 S.W.2d at 356. We recently considered *Gigowski v. Russell*, 718 S.W.2d 16 (Tex. Civ. App. -- Tyler 1986, writ ref'd n.r.e.), a case almost identical to this one. The restrictions in that case prohibited "any kind of mobile home." The mobile home, or manufactured home, was a double-wide, finished out with foundation, skirt and added porches, very similar to the Wilcox's unit. The court of appeals, in [**6] a well-reasoned opinion, concluded that the difference in nomenclature did not alter the intention of the framers of the restrictive covenants. The court further held that the use of the term "mobile home" included the term "manufactured home," therefore, the unit violated the restrictive covenants regardless of which term was used.

We hold that the intent of the restrictive covenants of Caney Creek Addition was to prohibit house trailers, mobile homes and manufactured homes in the Addition.

The judgment of the court of appeals is reversed and the judgment of the trial court is affirmed.

Legal Interpretation (work in progress)

Tom Newton's opinions:

- *Thank you Kathleen Kirby for the help finding some of these*
- 2009: Mobile/manufactured homes are prohibited
- 2014: Not sure what "prefabricated homes constructed with new material" would be, and would not be surprised if someone argued that this provision conflicts with the prohibition against "house trailers", but the Wilmoth v Wilcox case justifies an ARC denial
- 2014: "Clarification" of section 3 of the RR&Cs written to redefine what was meant by "house trailers" and "prefabricated home"
- 2022?: "Clarification" doc from 2014 is not valid as it did not receive two-thirds approval of POs
- 2022: The general restriction against bringing in things built off-site has to yield to the more specific provision that allows prefabricated homes - if the Association were to go to court over this, claiming a prefabricated home is not allowed, it would lose
- Make sense?

Prefabricated Homes in The Crossing

Trailer, Mobile, and Modular Homes

This is an actively researched topic - data is subject to change

Terminology (1)

- Prefabricated Home
 - Umbrella term that includes manufactured and modular homes as well as RVs/Travel Trailers
 - Homes that are manufactured off-site (in a factory), moved to location, assembled (if needed), and possibly anchored
- Travel Trailer (AKA: house trailer, trailer home, etc.)
 - Defined in Texas CTAC 96-254
 - Transportable, <45' long, permanent wheels for transportability, etc.
 - Titled and taxed as a trailer with the DMV

Terminology (2)

- Manufactured Home (FKA Mobile Home, house trailer, etc.)
 - Note: "Mobile Home" was replaced in 1974 with "manufactured home" and mandated language after 1976 (Federal regulation 24 CFR Part 3280)
 - At least 320 sqft permanently wheel/chassis for portability, permanent foundation is real property is optional, etc.
 - Built to Federal HUD code and standards
 - Titled and taxed as "manufactured home" with state classification code A2 (Mobile Home)
- Modular Home (AKA industrialized housing)
 - Built to an equal or greater standard as a traditional built home, requires a permanent foundation (attached is real property), equivalent to a pier and beam structure, etc.
 - Built to the same state/local/regional building codes as site-built homes - ex. Texas HB code (which includes IRC, IRC, NEC, IPC, etc.)
 - Titled and taxed the same as an on-site, stick built home - state classification code A1 (Residential)

Terminology (3)

- "House trailer"
 - "A trailer designed for human habitation, including a park model as defined in this section.
 - The term does not include:
 - mobile offices as defined in §3.306
 - manufactured homes as defined in this section
 - or portable buildings, prefabricated buildings, and ready-built homes, as defined in §3.306 of this title.
- Note that Texas tax code states that a mobile/manufactured home is NOT a "House trailer".

Source: _____

Terminology (4)

- "House trailer"
 - "Means a trailer designed for human habitation. The term does not include manufactured housing."
- Note that Texas Transportation Code also states that a mobile/manufactured home is NOT a "House trailer".

Source: _____

RR&Cs at The Crossing (1)

- "[N]o structures or house trailers of any kind may be moved onto the property."
 - A strict reading of this might indicate that sheds, travel trailers, mobile/manufactured homes, etc. would not be allowed on anyone's property at any time.
 - It has been interpreted by some to mean "until the primary single family residence structure is complete" as well as being strictly limited to homes/residence since that is the context.
 - Regardless, a "mobile home" or "RV" could arguably be a "house trailer".
 - The next sentence makes some things crystal clear...

RR&Cs at The Crossing (2)

- "Prefabricated homes constructed with new materials will be permitted provided they comply with all of the other restrictions."
 - Our RR&Cs clearly permit prefabricated homes, and legal opinions have agreed.
 - Note: The term "Prefabricated homes" arguably includes not only "Modular Homes" built to traditional site-built home codes, but also "Manufactured Homes" built to HUD standards (AKA "mobile homes") and travel trailers (i.e. a trailer registered with the DMV).

Legal Interpretation (work in progress)

- Tom Newton's opinions:
- Thank you Kathleen Kirby for the help finding some of these
 - 2009: Mobile/manufactured homes are prohibited
 - 2014: Not sure what "prefabricated homes constructed with new material" would be and would not be surprised if someone argued that this provision conflicts with the prohibition against "house trailers", but the Wilmoth v Wilcox case justifies an ARC denial
 - 2014: "Clarification" of section 3 of the RR&Cs written to redefine what was meant by "house trailers" and "prefabricated home"
 - 2022: "Clarification" doc from 2014 is not valid as it did not receive two-thirds approval of PCs
 - 2022: The general restriction against bringing in things built off-site has to yield to the more specific provision that allows prefabricated homes - if the Association were to go to court over this, claiming a prefabricated home is not allowed, it would lose
 - Make sense?

Homes in The Crossing

Current Home Count:

- A1: (Traditional and Modular): **194**
- A2: (Mobile Home-Real): **6** (2 are on White Water)
- M1 (Mobile Home-DMV): **2** (both on White Water)
- F1 (COMMERCIAL): **5**
- E1 (RANCH): **1**

References & Sources

-
-
-
-
-
-
-
-
-
-
-

Prepared by:

- Betsy McFarland
- Mary Cooper
- Robert Neel

FAQs

Q: Has Texas and federal law changed the meaning of "prefabricated" since our RR&Cs were written?

A: The terms being used today were established by law in 1974 and mandated in all legal documents by 1976. Our RR&Cs were written (or amended) in 1978.

FAQs

Q: Are prefabricated homes now allowed because our restrictions are outdated?

A: Yes and No

- Our RR&Cs are not aging well and need to be revisited
- However, the RR&Cs clearly allow prefabricated homes, and have since 1978 - it is not new or due to definitions changing

FAQs

Q: Did the architectural committee/ARA approve the home on XYZ?

A: All final home application decisions during this board's term have been in compliance with our RR&Cs.

FAQs

Q: Why have past ARA/ARC committees and boards denied applications for manufactured homes?

A: We cannot speak for past boards and committees. The RR&Cs have been properly enforced during this board's term.

FAQs

Q: How many applications have there been for prefabricated homes?

A: There has been one application during this board's term. It is unknown how many of the other 4 prefabricated homes submitted an application (that is well before our time).

FAQs

Q: Are "mobile homes" allowed?

A: "Mobile homes" have been called manufactured homes since 1974, which are a class of prefabricated. Prefabricated homes are clearly allowed by our RR&Cs. As shown above, we have apparent conflicting legal opinions that we are trying to resolve.

FAQs

Q: What is the paranoia that led to the recent approval of prefabricated homes?

A: As stated before, prefabricated homes have always been allowed per our RR&Cs. There is no paranoia or agenda at play other than ensuring our RR&Cs are properly followed and enforced.

FAQs

Q: Aren't mobile homes and prefabricated homes considered the same in Texas law and at the bank?

A: No

- "prefabricated home" is an umbrella term that includes manufactured/mobile, modular, as well as RVs/Travel Trailers.
- Manufactured/mobile and modular homes are very different in nearly every respect - how they are built, titled, financed, taxed, insured, appraised, etc..

FAQs

Q: Will our properties be devalued given there are no restrictions on mobile homes?

A: They could be, but ask your realtor. However, any new deed restriction requires two-thirds vote of ALL association members.

FAQs

Q: Doesn't prefab mean the walls are built in advance but then erected on site?

A: Assuming prefab is short for prefabricated, then not necessarily. It "could" mean that, but it generally means anything constructed off-site (in a factory), either in pieces, modules, or in full, and then moved on-site and assembled (if needed). Here's a good overview (with sources cited): [https://www.enr.com/story/2018/05/23/prefab-101-what-it-is-how-it-works-why-it-matters/1000000000](#)

FAQs

Q: How can we prevent more prefabricated homes from being moved into our neighborhood?

A: Vote to add a restriction in the RR&Cs - requires two-thirds vote/approval from ALL POs.

FAQs

Q: Has a precedent now been set with prefabricated homes?

A: Not really.

- There are multiple prefabricated homes in our neighborhood (at least 4), some of which have been here for decades. It is not new.
- Furthermore, the attempt to "clarify" the RR&Cs in 2014 is further evidence that things have not changed recently.

FAQs

Q: If it rolls, is it a mobile home?

A: Maybe, maybe not

- A "transportable" home (AKA Travel trailer) has permanently affixed wheels - ex. an RV
- A "portable" home (AKA Manufactured) has the option for wheels to be installed when needed as to move the home

FAQs

Q: What about the "Clarification" that was voted on and approved by the board in 2014 that interpreted what was meant by "prefabricated" in our RR&Cs?

A:

- That document was NOT legal and would be thrown out in court. Just from a logical perspective, it would not make sense that a board could re-interpret our deed restrictions - that requires two-thirds vote by all POs. TPC 211.004 clearly states the same.
- Even if this document could stand on legal grounds, it clearly still permits modular homes built to the same standard as a traditional on-site built house.
- Furthermore, the fact that a document like this was even considered demonstrates that our current RR&Cs are vague, at best, and would not stand up to legal challenge related to a denial of anything deemed "prefabricated" (per the association's lawyer).

FAQs

Q: Isn't it the board's responsibility to change the RR&Cs?

A: The board can NOT change the RR&Cs. Proposed changes are the responsibility of a committee established for such purpose. Those proposed changes must be approved by two-thirds majority of ALL POs. All members are encouraged to participate in these processes.

FAQs

Q: Why is section 3 (dealing with prefabricated homes) different for the back vs the front lots?

A: The only significant difference in the 1978 versions of both sets of RR&Cs for section 3 is the masonry requirements, and one other insignificant difference:

- "...constructed of new material..."
- vs
- "...constructed with new materials..."

FAQs

Q: What is the explanation for someone's new interpretation of "...no structures or house trailers of any kind may be moved onto the property"?

A:

- The board has tried to deny "mobile homes" in the past, but since those are "prefabricated" it had to be permitted.
- From a legal perspective, "mobile homes" have been and continue to be allowed. This is not a new interpretation.

FAQs

Q:

A:

FAQs

Q:

A:

NOT FOR SHARING...

- NOT FOR SHARING...

Homes in The Crossing

Property Count:

- A1 Traditional and Modular 194
- A2 Mobile Home-Road A 2 on or White Water
 - 24774
 - 25224
 - 25422
 - 26427-1-14
 - 27163 - Carport
 - 28160 - Carport
- M1 Mobile Home/DMS 2 (on or White Water)
 - 28881 - Carport
 - 28882 - Carport
- F1 (COMMERCIAL) 5
 - 27321
 - 27321 - 4-10-14
 - 27348 - FM 3151
 - 27348 - FM 3151
 - 27310 - FM 3151
- E1 (RANCH) 1
