

The Last 10 Years

With the abandonment by Landtrust, the fate of the neighborhood was left to the property owners. The simple task of neighborhood maintenance was up in the air since Landtrust was not taking responsibility and the Community Association, which would normally handle these matters, was controlled by Landtrust. A small group of the property owners gathered and decided to mail a proposal to all property owners suggesting several key steps, including: electing owners to the Board, inform owners of the intent to hire an attorney to expedite the transition of common-area ownership and to reinstate the annual dues (initially collected by Landtrust, though later allowed to lapse). Basically, the owners were ready to take over the responsibility for managing the neighborhood. Three interim directors (Bear River residents) were assigned to the existing Community Association, which would legally allow them to take control of the funds collected by Landtrust on behalf of the owners. However, actually taking control of the funds was another matter as the funds were still in the name of the Landtrust managers. At one point, John Folds, the president of North American Land, was willing to give access to over \$120,000 in a Hot Springs bank account but only under the condition that Landtrust was to maintain control of the Association. Legal representation suggested it would be prudent to have a BRLCA meeting and elect new officers from the Bear River community. Nominations were taken for the Board and the first annual meeting of the Bear River Lodge Community Association was scheduled for July 14, 2008.

At the first annual meeting, three directors were elected to the Board. Callie Wellendorf was elected as the first President, to serve a 2-year term, Deb Burks was elected Vice President for three years and Bill Klipp was elected to a one-year term as Treasurer. The position of secretary was to be split amongst the three. Landtrust signed a document allowing the Board to access the bank funds and arrangements were made to pay off legal, maintenance and insurance bills. The HOA address was officially changed to 189 Bear River Lodge Trail (the lodge) and plans were made to collect the 2008 annual dues, set at \$550. Note that at this time the Lodge and common areas were still, legally, under control of Landtrust.



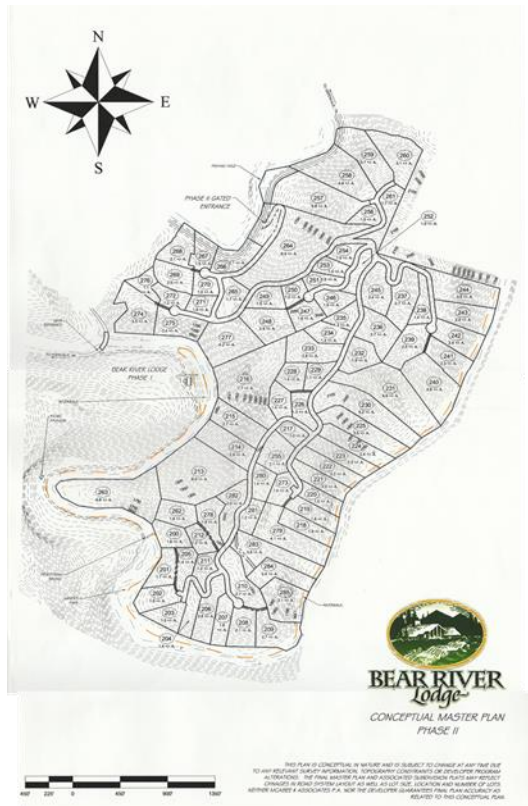
In 2008, after the first annual meeting of the owner-managed BRLCA, the lodge, at 189 Bear River Lodge Trail became the official mailing address of the Association.

In October, a notice of foreclosure against Landtrust is filed by the state, on behalf of Asheville Savings, who held the note for the original 644-acre purchase in 2004. All acreage not previously sold would be included in the foreclosure. At the time, a foreclosure sale was scheduled for early November (though this sale never took place.) Coincidentally, also in late 2008, lot 42, purchased in 2004, was the first private lot to be foreclosed by a financing bank.

Now the responsibility of the POA, common area maintenance, including the roads, was a financial and logistical, challenge for the new group. For the winter of 2008 much of the salting was done by the residents, usually by hand off the back of a pickup and later with a spreader which never seemed to work quite right. Light snow was removed using a plow on an undersized, and overworked, ATV owned by the Wellendorfs. An outside contractor was hired to plow the heavy snow which added to the financial woes. Dues collection proved to be a challenge as well as 8 lots were still delinquent on their 2007 dues and 37 lots still hadn't paid for 2008.

A significant landmark for the management of the community occurred in December 2008 with the formation of Bear River Lodge, LLC, with Debra Lewis, formerly a contract employee with Landtrust, named as the only member. In negotiations with Asheville Savings and following the foreclosure of Landtrust's holdings, the development rights for the community were assigned to Bear River LLC

through a deed of trust signed on January 29, 2009. This document transferred legal title to Asheville Savings as security for the \$2.5 million dollar loan held by BRLLC. In February, Debra Lewis announced plans to the BRL owners that she and her husband, Mark, planned to sell and develop Bear River Lodge Phase 2, located immediately across the Big Laurel Creek from Phase 1.



Conceptual plan of Bear River Lodge Phase 2, used to promote sales by Bear River, LLC in 2009-2010.

In July 2009 the second annual meeting of the POA was held. Two By-Law amendments were passed. The first, to permanently schedule the annual meeting for the second Saturday of July, and the second to increase the Board of Directors from three to five. With Bill Klipp's term expiring (they later moved out of the neighborhood), Jim Barber, Tish Desjardins and Roy Hurley were elected to the Board.

In 2010, tensions increased between the Lewises (Bear River LLC) and the POA as some basic maintenance of Phase 1 was neglected in favor of their promoting the Phase 2 acreage. Only 2 lots in Phase 2 had been sold, as the real estate market struggled. The neighborhood roads were a particular sore point and the POA decided to hire an attorney to review the governing documents for possible options. Though the POA was a valid entity and had certain rights and should have expected cooperation from Bear River LLC, it was recommended that negotiation, rather than litigation, may be the better option. Seeing little improvement in the Lewises commitment to maintenance, in November the Board hired a community property manager for a 4-month contract to gain a bit more control on Phase 1 upkeep.

The situation came to a head in March 2011 as a notice was filed, on behalf of Asheville Savings, announcing the intent to foreclose on the property owned by BRLLC due to nonpayment of their loan. A legal opinion solicited by the POA stated that the Association had control of the votes and therefore BRLLC had limited negotiating power. In September, Asheville Savings assigned a Deed of Trust for the Phase 1 common areas, and all of Phase 2, to the Southern Financial Group out of Waco, Texas for a negotiated price of \$640,000. It was assumed their primary interest was to market Phase 2 as the management of Phase 1 appeared to be of low priority.

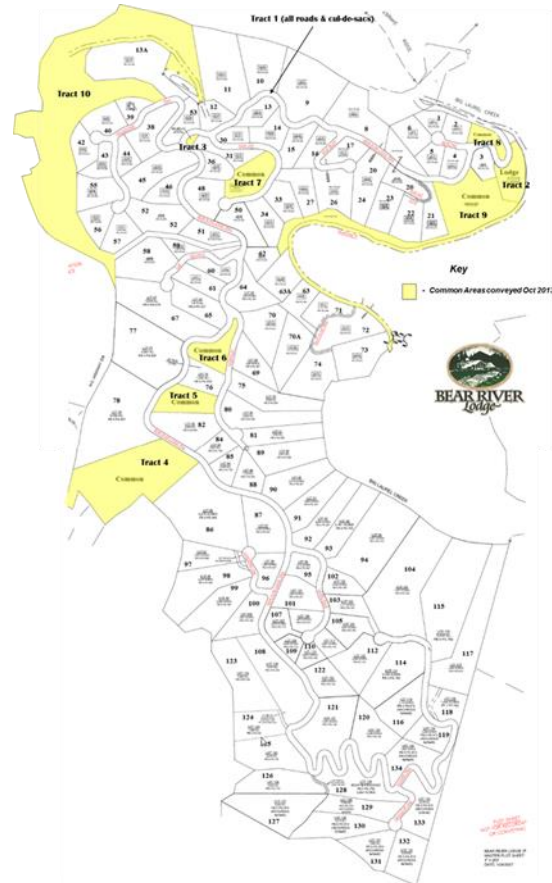
Meanwhile, the POA continued to take responsibility for maintaining the lodge and common areas despite not yet having legal ownership. The contract for the property manager was extended and a used tractor was purchased for grounds maintenance. The Board also approved lodge rentals as a means to boost revenue and help minimize the annual dues, but it was later recommended by legal counsel to wait until after the common areas were deeded to the POA. It was also in mid-2012 when CAMS, Community Association Management Services out of Wilmington, NC, was contracted to start handling all the financial matters for the Association.

On June 11, 2012, BRLCA filed suit in Madison County Superior Court against both BRLLC and Southern Financial Group for Breach of Duty regarding the Common areas, for 1) failure to uphold the Covenant to Convey and 2) failure to obtain owners consent before encumbering the properties. A trial date was set for 8/12/13 which obligated the loser to pay legal fees. Lawyers for both sides quickly determined that Mediation would be the better course.

An agreement of 12/31/12 provided for BRLLC to quit claim deed 10 tracts of land designated as common areas complete with buildings (Lodge and Stables) to BRLCA in exchange for a voluntary release. This was to occur within 15 days after an agreement with Southern Financial, but due to discrepancies identifying the metes and boundaries of some of the tracts, it was 11/13/13 before the final tract was recorded.

A Court-conducted Mediation conference with Southern Financial was held on 2/26/13 in which the parties agreed to the following:

- a) Southern Financial would release all liens and encumbrances on said 10 tracts in Phase one.
- b) Southern would retain the “Declarant” rights allowing them to annex property to the original “Bear River Lodge” community. (phase one) In the process of preparing for this lawsuit, it was determined that neither previous developer, Landtrust or BRLLC, filed a “Declaration of Annexation”. Thus, even though both marketed Phase Two, as a part of Bear River Lodge, as of this writing, it is not.
- c) Should Southern (or the developer they sell to) annex any property to Bear River,
 - 1) No existing funds may be used for the annexed property for repair, maintenance or improvement.
 - 2) Roads and buildings must meet State and Local codes.
 - 3) Utilities must be underground.
 - 4) Existing Governing Documents shall apply.



Plat of Bear River Lodge Phase One, with the common areas conveyed to the BRLCA in 2013 shaded yellow.

Due to the extended time required to settle the quitclaims, the final agreement was not signed until 10/25/13. A voluntary release was provided to Southern. It was at this time that the Bear River Lodge Community Association became a bonafide property owner.

With the legal battle behind and preparing for future lodge rentals, the Board approved the decision to add a new bathroom, replacing one of the old sales offices. It was also in early 2014 that the Board approved raising the annual dues 10% to \$605, the first increase since the Community Association was formed in 2008. A marketing budget was approved for the lodge, with Dave and Callie Wellendorf, proprietors of River Dance in Bear River Lodge, agreeing to actively market the lodge for rentals. The Wellendorfs also agreed to solicit lodge rentals and act as coordinators for any scheduled events.

2014 also saw the end, due to unforeseen circumstances, of the contract with our property manager and here after the maintenance of the community was handled by a committee of homeowners, the Maintenance Committee, along with a local contracted couple, that would handle the day-to-day maintenance chores. The first rental event at the lodge was held in June 2014 in conjunction with the Wild Goose Festival in Hot Springs.

The first wedding was held at the lodge in May, 2015, with a total of 6 events during the year bringing in approximately \$3500 to the HOA. That number grew to over \$15,000 from 15 events in 2016 and

another \$20,000 from 16 events in 2017. As of this writing lodge rentals continue to add significantly to the revenue stream of the Association.

Starting soon after the original lots were sold in 2004, Bear River has always had a number of owners that have stopped paying their annual dues. This, of course, was exacerbated in 2008-2009 with the real estate market downturn. Through perseverance by the POA and legal help from CAMS, that trend has reversed itself over the last several years, with the number of delinquent property owners currently (late 2018) down to six, accounting for eight lots, including 2 lots still listed under John Folds, Daniel Shattuck and others originally associated with North American Land and Landtrust. It should be noted that over the last couple years the County has been slowly foreclosing on many of the delinquent owners for non-payment of property taxes. The resale of these lots has helped put these lots, and the new owners, on the positive side of the ledger.