

Heritage Estates Property Owners Association
Members Annual Meeting
West Jefferson Municipal Park Shelter, 201 Church St.
Sept 28, 2024

Welcome and Call to Order

Members present: Duane Esarey, *President*, Janet Johnson, *Treasurer*, Jimmy Copeland, *Vice President*, Paula Shepherd, *Secretary* and Michele Nowak, *Board Member*. Other Members present were Emily McNeely, Brad McNeely, Michael Shepherd, Michael Sipple, and Joe Nowak. The gathering thus represented a total of 16 lot-based memberships in person. Proxies were presented for 17 lot-based membership votes. With this total of 33 lot-based votes present, a quorum was declared.

President's Remarks

President Duane Esarey called the meeting to order at 5:22 pm. Emily offered a prayer for those suffering from Hurricane Helene. We expressed gratitude our neighborhood was spared from the worst of it. We prayed to make wise decisions for our community at today's meeting. The only serious damages Heritage Estates suffered were at the riverfront common area. The West Jefferson river gauge showed our river peaked at 18.2 feet. Normal Fall gauge height is 2 feet.

- Duane noted that HEPOA held an August 15, 2024 open Board meeting for the members as required by NC Statute 47F-3-108. That said, members are welcome to address the Board at any time.
- Duane passed around the following handouts for viewing. All records are available for members.
- Membership List
- Heritage Estates Record map (1999)
- Architectural checklist implementing terms of the Declaration & Bylaws
- HOA Myths and Myth busters
- Map of current Heritage Estates homes and lots

Our web address is <https://heritageestatesnc.com/>

HEPOA projects since previous annual meeting:

- Architectural Review Committee checklist established
- 2023 Revised By-Laws implemented
- Trimmed and removed several trees in our Right of Ways
- Cleared the 2 trees from Hurricane Helene that blocked River Sound

NOTE: Volunteer labor continues to save our community thousands of dollars. Among other things, HEPOA taxes were calculated without paying a CPA, the gazebo was painted without paying for labor, office supplies were donated for HEPOA mailings. In 2015, HEPOA paid \$1300 to remove two trees by the river, and in 2014 we paid \$6,000 to trim tree branches that were hanging over the roads.. Over the years, volunteers have removed and disposed of dozens of trees with no compensation. Member volunteers started cutting the trees that fell over our roads during this hurricane while it was still raining. Our assessments would have risen significantly for the last several years without the contribution of our members.

Secretary's report and minutes

Duane read the 2023 Annual Membership Meeting minutes. No revisions or corrections were requested. Michael Shepherd made a motion to accept, seconded by Emily McNeely, and the minutes were approved unanimously.

Treasurers Report

Janet Johnson presented the following information.

Assessments

- It has been a long process to understand how HOA finances work and how to implement financial security. Recent legal advice confirmed HEPOA has the authority and obligation to collect the amount needed to operate, without being bound to a decades old developer's road fee.
- By law, we must collect sufficient money to operate and to fund our reserves (mainly road repair and replacement).
- We have not collected enough in the past to cover operating costs. We incorrectly used reserve funds to cover the shortfall for most years.
- The IRS does not allow you to save more money in reserves than you estimate you will need.
- It is illegal to comingle operating funds and reserve funds.
- Our budget is calculated on prior years' costs. Our assessment is **\$425** for 2025.
- By being extremely frugal (finding a cheaper lawn service, for instance) and relying extensively on volunteer labor and donated resources, we spent almost the same amount in 2015, 2017, and 2023. This is not sustainable in the long run. Prices continue to go up and our assessments must cover operating and reserve costs.
- Member Michael Shepherd asked if we should budget as if we had no volunteers. Janet does not want to do that at this time. It would significantly raise our assessments. We have a moderate amount in our contingency fund that can be used for emergencies.
- You cannot impose a special assessment for large expenses that an HOA knows are coming. In other words, it is illegal to wait until we have to replace our roads and then charge owners the entire cost at that time. Special assessments are also prohibited by our Covenants.
- In 2024, all lots that were billed paid annual assessments on time.
- HEPOA paid \$10,000 in legal fees to square away assessment issues by a member and for advice on our Covenants.

Taxes

- HOAs are taxed in special ways. We are a non-profit but not tax exempt.
- We pay no tax on our assessment income (federal or state).
- We pay 30% federal tax on investment income.
NOTE: We have made \$4,100 interest on our \$60,000 Certificate of Deposit (CD). Even after paying 30% tax on the interest, we come out far ahead. We added another \$10,000 to the CD from the reserve fund.
- We pay state tax on depreciated assets (\$42 in 2024).
NOTE: Janet calculated 18 years of depreciation on our assets (gazebo, guardrail, roads, mailbox) as was required by NC DOR to calculate what we owed. We now have a depreciation table that can be updated each year so we can accurately calculate this state tax. This was another instance of volunteer labor saving the community money that would have gone to an accountant.

Michael Shepherd made a motion to accept the Treasurer's Report, seconded by Joe Nowak, and the motion was approved unanimously.

Old business

None

New Business

Duane mentioned how sorry we are to see Gay leave the Board. Emily suggested sending a thank you gift and card. A private collection was taken up for flowers and a card for Gay in appreciation for her 12 years of service to the community.

Election and Annual Budget Vote

- Request mailed to members in August resulted in no further nominations to the Board.
- Ballots were handed out. Duane called attention to the paragraph at the bottom. NC law mandates that budgets are ratified unless the majority of all possible lot owner votes reject it. If that happens, the prior year's budget is continued until a new budget is ratified.
- Members commenced to vote on three (3) available Board seats and the 2025 Proposed Annual Budget via anonymous ballot.
- The membership elected Emily McNeely (26 votes), Michele Nowak (27 votes), and Duane Esarey (27 votes) for 3-year terms to the BOD. Their terms start on September 29, 2024.
- The 2025 Budget was ratified with 27 supporting votes and 6 rejections. The ballots and proxy records will be added to our historical archive, which is open to inspection by any member. Results are also posted on the website.

Covenants Status

Consultation with an HOA expert lawyer (Atty Timothy Swanson) revealed that only our original 1999 Covenants are valid (although he noted that they were "strange." In addition to invalid covenant amendments filed in 2009 and 2012, we received inaccurate legal advice in 2021 that the Developer and the Board could work together to institute new Covenants. Instead, the stricter requirements of the NC Planned Community Act take precedence. New Covenants will require notarized signatures by 2/3 (67%) of the community's 54 votes. Atty Swanson outlined two options.

- 1) Atty Swanson advised that having several sets of invalid Covenants on file at the courthouse can create confusion, as it makes it difficult for owners to determine which Covenants are legally enforceable. Because several invalid sets of Covenants have been recorded with the courthouse, we can ask for a judicial declaration that these Covenants are invalid. The approximate cost would be \$10,000 which still leaves us with the 1999 Covenants, which are a confusing mix of Developer and HOA rights and obligations.
- 2) Or we can establish new Covenants which require approval and notarized signatures by 67% of the community. Atty Swanson can provide a draft incorporating current HOA law, which we can customize if desired. Approximate cost \$2000-\$3000. This approach would also give us a clear, up-to-date set of Covenants that would supersede all previous versions, ensuring there is no ambiguity about which Covenants are valid and enforceable.

This is an endeavor that will be addressed by the board and community in subsequent months.

Meeting was adjourned at 6:32 pm.

Respectfully submitted,
Paula C. Shepherd (Secretary)

HERITAGE ESTATES PROPERTY OWNERS ASSOCIATION, INC., is a non-profit corporation empowered under the Planned Community Act (§ 47F-3-102) and other laws of the State of North Carolina to serve the interests, uses, and benefits of our community, and to enforce the real Covenants in order to preserve appearance and property values to which the Declaration and Bylaws have been made applicable. Members' per lot rights and obligations under the Declaration and Bylaws are allocated memberships, assessments, and voting rights as defined in NCGS § 47F-1 (103) (2-6).

Our purposes and obligations – to plan for annual and perpetual maintenance of our private roads and common area(s), ensure the maintenance of collective property values by enforcing our Covenants and Bylaws, and otherwise serve the common interests of the community while meeting state and federal requirements and regulations.



**Heritage Estates
Property Owners Association
Annual Membership Meeting
28 September 2024**

*Meeting
Tally*

Place Seal here

Annual Election Ballot

One ballot per assessed lot for owner(s) (or their proxy)

Part 1

Three open positions on the Board of Directors

Select up to three (3) candidates for Board Member positions to serve from for the next three years.

- | | | | |
|--------------------------|-------------------------------------|-------------------------------|-----------|
| <input type="checkbox"/> | Emily McNeely | <i>HHH HHH HHH HHH HHH 1</i> | <i>26</i> |
| <input type="checkbox"/> | Michele Nowak | <i>HHH HHH HHH HHH HHH "</i> | <i>27</i> |
| <input type="checkbox"/> | Duane Esarey | <i>HHH HHH HHH HHH HHH 11</i> | <i>27</i> |
| <input type="checkbox"/> | Person nominated from meeting floor | _____ | |
| <input type="checkbox"/> | Person nominated from meeting floor | _____ | |
| <input type="checkbox"/> | Write in: | _____ | |

Part 2

Proposed 2025 Budget

(If the proposed budget is rejected, the previous year's budget will be used.)

- | | | | |
|-----------|--------------------------|---|------------------------------|
| <i>27</i> | <input type="checkbox"/> | Vote in favor of accepting the proposed budget. | <i>HHH HHH HHH HHH HHH "</i> |
| <i>6</i> | <input type="checkbox"/> | Vote to reject the proposed budget. | <i>HH 1</i> |

NC law regarding Planned Community votes on any proposed budgets states "The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board."

40 ballots printed/sealed. One for tally, six destroyed, 33 cast

Heritage Estates Property Owners Association

Agenda – Members Annual Meeting

Ashe County River Access Shelter, 8250 Highway 163 (at New River Bridge)

5:00 pm, 28 September 2024

Declaration of quorum and call to order

Welcome and news from President:

- Review purposes and obligations
- Notifications and hand-outs. Availability of records.
- HEPOA projects since previous annual meeting
 - ARC implementing the 2023 revised Bylaws
 - Removed a major tree in ROW.
 - Trimmed back overhanging limbs Heritage River and River Sound.
 - Volunteers and costs

Secretary's report

- Reading and approval of last year's minutes
- Posting of 2023 Annual Meeting and Board minutes since previous Annual Meeting.
- Motion to accept Secretary's report

Treasurer report

- End-of-2023 report (posted on web site last March)
- Current status of Reserve Planning and Funding
 - Road repairs and repaving study
 - Long-term financial planning
 - Full-funding goal
- Current status of 2024 Operating Budget
- Current status of investments
- Comments on 2025 proposed budget
- Availability of historical Association financial records to ALL members
- Motion to accept Treasurer report

Old business

- Call for old business.

New business

- Gay Cass leaving Board.
- Consultation with legal counsel Timothy Swanson – new understanding of covenants
- Need for revising our covenants. Mode of revisions and member feedback
- Flood damage and expected costs
- Call for other new business

Director positions Election and Annual Budget vote

- Refer to call for nominations.
- Votes being taken today.
- Explanation of votes and proxies.
- Annual budget vote and election of Board members
- Announce Board and Budget voting results.

Call for any other business

Call for motion to adjourn