

HERITAGE ESTATES PROPERTY OWNERS' ASSOCIATION

BOARD OF DIRECTORS MEETING

SEPTEMBER 14, 2021

VIA ZOOM: Directors present: Duane Esarey, President; Jimmy Copeland, Vice President; Gay Cass, Secretary; Janet Johnson; Robert Landen and Dean Moore.

At 4:02 p.m. Jimmy Copeland requested an opportunity to speak to the Board of Directors. At this point Jimmy submitted his resignation from the Board of Directors of Heritage Estates Property Owners' Association and relinquished all committee responsibilities. Regretfully, the Board acknowledged Jimmy's request to resign immediately. Appreciated for his devotion to the organization was expressed and Jimmy exited the Zoom meeting. Thank you, Jimmy.

Addressing this request from Jimmy, President Esarey stated that his goal is to stabilize and develop unity within the Board of Directors and the Community at large. The entire neighborhood must come together for the good of all. To make this work we will need to follow our lawyer's advice; put the past behind us and move forward in a positive manner.

At 4:13 p.m. the President officially called the meeting to order with a quorum of 5 board members in attendance.

Approval of Minutes: It was brought to the attention of the Board that the August 5, 2021 minutes of the Board of Directors need to be edited – The original minutes state a motion was made and seconded to audit the financial records of the treasurer; however, the Board wishes to edit that motion to read: **An Agreed Upon Procedure (AUP) Overview be conducted to determine if an audit needs to be done on the financial records.** The AUP was what was described to the Board in the August 5th meeting; however, the word audit was incorrectly used. Janet Johnson moved the correction of the minutes and Dean Moore seconded it. Motion passed and the minutes were approved as edited.

Board members agreed for Janet Johnson to contact Priscilla Norris, a local CPA, concerning the possibility of doing an AUP Overview and the cost of this service. This transaction was handled in the form of a motion made by Janet Johnson and seconded by Dean Moore. Motion passed. Janet will report back to the Board.

President's Preliminary Comments:

President Duane Esarey read the following comments to the Board:

"This is my first meeting as President, and we have some serious work ahead of us this year and next. Before taking up our first order of business, I'd like to say some rather lengthy things for the record.

1. *I've done some research on what type of organization this HEPOA is.*
 - *Our HEPOA has sometimes been described as a tax exempt 501c3, and our financial procedures as being required because of this status.*
 - *The attorney, Lawson Newton, said we cannot be a 501c3. If we are a tax-exempt 501c4 then we have to open our common areas to the public.*
 - *I agree with these opinions. In short, I think we are probably an incorporated non-profit organization that is not tax exempt. This is a very common tax status for HOAs.*
 - *We do need to make sure we are not basing our financial procedures on incorrect understanding of our status. Specifically, we need to verify that we are filing the correct tax returns for our status. I'm providing some links:*
 - <https://www.hoaleader.com/public/1322print.cfm>
 - <https://www.irs.gov/forms-pubs/about-form-1120-h>
 - <https://www.irs.gov/instructions/i1120h#idm140669994892800>
2. *Non-profit BOD handbook: Providing link to NC guidebook for Boards of Directors of North Carolina Nonprofit Corporations (2nd edition). Every member of the board should understand these obligations <https://clearviewfiduciary.com/assets/pdfs/Guidebook-2ed.pdf>*
3. *Basics about our duties, standards, and liability: Before getting into our HOA's current status and what is going to be required of all of us moving forward, I'd like to review some thoughts as to what Board members should know about our obligations going forward. So, I want to cover some basics about duties, standards, and liability as the Board of an incorporated nonprofit HOA in North Carolina. These are not aimed at anyone – in its 13 years this Board has had numerous unintentional false starts and lapses on these points, and now we are trying to set out on a better effort – so I simply want to state these requirements and put them in our record to demonstrate our intent to the membership.*
 - *Duties – Directors MUST*
 - *Must follow state laws pertaining to HOAs, and so:*
 - *Must be aware of those laws*
 - *Must understand we are bound by these laws, and to some extent we are shielded from personal liability only to the extent we do not knowingly violate these laws.*

- *Must realize that breaching these laws will render our HOA vulnerable to charges of malfeasance and very likely to default to a loss in the case of nearly all legal challenges brought up by the membership*
- *Must enforce the association's governing documents (RC&C, Bylaws) and so realize...*
 - *We should not HAVE covenants and bylaws we are not willing to enforce.*
- *Must protect/preserve the assets of the community*
- *Collect and properly manage the owner's annual assessments*
- *Conduct – operate in good faith, with ordinary prudence, and reasonable belief per the best interest of HOA. Specifically, we must strictly avoid breach of fiduciary duty. What is fiduciary duty?*
 - *Fiduciary duty is a standard individually held by every BOD member.*
 - *Members must regularly attend meetings (especially because fiduciary duty cannot be delegated).*
 - *Breaches of individual fiduciary duties can make a Board member personally liable, in spite of insurance.*
 - *Fiduciary Duty 1: Duty to exercise the care an ordinary prudent person... would exercise under similar circumstances, specifically to become informed, rely on CITABLE trustworthy information, retain independent judgement, when monitoring the HOA operations. Each of us is responsible. The “business judgment rule” for protecting Directors from liability requires making informed decisions.*
 - *Fiduciary Duty 2: Duty of loyalty to best interests of HOA: no self-dealing; no conflicts of interest; no usurping opportunities the HOA may be interested in; no breaches of confidential information.*
 - *Fiduciary Duty 3: Duty of obedience above all to purposes and goals of HOA.*
 - *Fiduciary Duty 4: Duty of oversight, especially to retain and protect records and documents.*
 - *Unwillingness to embrace or execute these fiduciary responsibilities is adequate reason to leave or be removed from the board. We are here to WORK.*
- *Requirements to avoid personal liability. Ordinarily, and our Directors and Officers insurance notwithstanding*
 - *Board members may become liable for knowingly breaching their corporate or fiduciary duties.*
 - *Board members may become liable for having participated in a negligent decision that directly harms somebody*

- *There can be liability for violating statutory requirements. Board members may be directly liable for knowingly taking actions that violate statutory provisions. We do not get to pick and choose which laws we follow.*
4. *Now I want to add my own overview to the Board's recorded discussion of our current situation*
- *The last meeting's minutes reveal that we opened August 5 BOD meeting with a Round Robin series of statements from each member of the Board - defining our individual understandings of a current situation and the implications of that status on the Board's self-definition, on-going processes, and upcoming duties and goals.*
 - *Accordingly, I'd like to read into the minutes my own synthesis of that status and its implications, and enter my assessment of where we stand, to close that Round Robin technique.*
 - *Our current status per our governing structure*
 - *We have a serious situation regarding our 13-year effort to establish and govern HEPOA as a Legally Operating Entity. How did we get here?*
 - *Earlier this year, upon observing that a number of HEPOA documents and processes were not aligned with state laws, we abandoned attempts to update our revised declaration and bylaws, in favor of doing a great deal of research and soliciting expert opinion.*
 - *A tremendous amount of time has been spent by some of the BOD members to identify what HEPOA needs to do to operate legally. Dean Moore and Janet Johnson have each spent well over 100 hours each reading the laws, reviewing our documents, meeting with lawyers, and addressing Board member and member-at-large questions and concerns.*
 - *According to HOA attorney Lawson Newton, all HEPOA governing documents post-dating the original 1999 Declaration (aka, "Restrictive Covenants and Restrictions Agreement") and the procedures that created those subsequent documents have been inconsistent with NC statutes and are not valid. Any business that has been conducted under these documents could be successfully challenged. To move forward and establish the HOA as a viable entity, Mr. Newton emphasized that we need to have the support of members and move through prescribed steps.*
 - *The August 5 meeting passed a motion that we accept the attorney's recommendations and begin to move forward.*
 - *We have discovered/detailed a variety of past errors that necessitate this course of action. Examples are...*
 - *The original RC&RA could have only been amended as specified in that document, plus (according to state law in 2008/2009) any subsequent*

amendments required 100% of all possible members votes. All subsequent RC&R versions are thereby invalid.

- *All votes by the membership must be conducted either in person and/ by proxy or else by mail-in ballots, but these two methods cannot be combined. Prior to the 2020 annual meeting, all membership votes were a hybrid of these voting methods and are therefore invalid.*
- *NC state statutes require proposed budgets be presented annually to the members for ratification. We have never done this.*
- *Accordingly, we identified and shared this information as “Talking Points” for the BOD to use to describe our solution to members.*
- *Our priorities as determined in the August 5th meeting are:*
 - *Because state law calls for members to be presented with a proposed budget 30 days prior to voting on it at the annual meeting, our legal obligation is to not fund projects that have not been presented to the members in the proposed budget.*
 - *Under the above referenced informed “business judgement standard” the Board can legally, and should, obtain expert information and present it to justify the need to fund projects.*
 - *Road maintenance work should be based on expert advice (called a Reserve Study) regarding timelines and costs. On August 5th we decided to pursue obtaining a Reserve Study.*
 - *Financial information needed by the Board can legally be obtained by expert input. On August 5th we decided to pursue obtaining expert financial advice. See agenda item below per an “Agreed Upon Procedure (AUP).”*
 - *We reviewed the fact that, without following these procedures, any future special assessment, even if one were allowed in the governing documents, could be successfully challenged by the members.*

To summarize my understanding – the organization’s future is at stake, the agenda below is daunting, we have a LOT of work to do, EACH ONE of us has a role, and we have to be held to a standard that (to tell the truth) we are not used to attaining. Board members who have doubts about being willing or able to do this daunting work, or who are unwilling to meet these standards should consider removing from the Board so we can replace them.”

This concludes the President’s initial comments for the record

Reports of Officers or Committees

No reports

Unfinished Business

Road Work (sealing the cracks) As we have done historically, at the last meeting, it was proposed the Board move to approve a project to apply tar to seal the road cracks. This statement is to affirm that we have no written bids, no contract, and no justification from an expert in hand. Likewise, the project was not included in a proposed budget for membership vote. Going forward our practice will be to present non-emergency proposed projects to the membership for approval. In the future there will be a line item in the budget to cover road work. The above action was taken in the form a motion made by Dean Moore and seconded by Janet Johnson. Motion passed.

Talking Points: After the August 5th meeting, the new president distributed to board members a document with “Talking Points” to be used when talking with members of the Association. Janet and Duane have spoken with several people briefly explaining the challenges we are dealing with and the urgent need to fix the Restrictive Covenant and By-Laws under the guidance of our attorney Lawson Newton. Other board members have also spoken with some of the neighbors. The Board is anxious to get important information in the hands of every member of the Property Owners Association. Our goal is to be completely transparent. We hope everyone will feel free to talk openly about our situation and our goals to make it “right”.

Roads Reserve Study: This Study has temporarily been put on hold. Eventually, we will need to have a Roads Reserve Study done and include the cost of road maintenance in our budget.

Other Old Business:

Duane Esarey and Sheila Helms are up for re-election at the next annual meeting. Meanwhile, we need to appoint a replacement for Jimmy Copeland for the Board of Directors.

New Business:

Meeting with Lawson Newton Our attorney, Lawson Newton has our Restrictive Covenant in hand to review prior to our adoption of same. We need to make sure they are in accordance with NC State laws and statues for Homeowner Associations. The Board agreed that if we have not heard from Mr. Newton by Friday, September 17, 2021 we will begin to move forward on the process.

Certifying signature forms for individual notarization will be required for all affirming board members and Eloise Stewart. Janet Johnson will secure the forms, distribute one to each board member and Eloise. Each signatory will be responsible for getting their signature notarized and return the completed form to Janet

Annual Membership Meeting: Aware of Covid protocols, the Board is in the process of securing a location for the Annual Membership Meeting. Date and location will be announced soon.

Propose Budget: As required by NC Law we will submit a Propose Budget to the membership at least 30 days prior to the Annual Meeting. Janet Johnson will secure financial records and prepare the Budget. The Membership will vote on the proposed Budget for 2022.

Membership Communication: The board recommended that the President prepare a membership packet including: President's cover letter; Annual Report; Proposed Budget; Instructions for Floor Nominations and Procedure/Deadline for Nominations being in the hands of the President, Explanation of Proxy voting; and a copy of Minutes for the September 14, 2021 Board of Directors Meeting. The period of nominations for the two open Board positions will also need to be communicated to the membership. **This packet will be emailed to members with email addresses and a hard copy will be mailed to those who have not shared an email address with us.**

Road Committee: Robert Landen made a motion and Dean Moore seconded that we dissolve the Road Committee. When we have the Reserve Study data the board will proceed as needed. Motion passed.

Adjourning Process:

The board agreed that Gay Cass, Secretary should write Jimmy Copeland a note acknowledging with appreciation his many years of service to the HEPOA.

Robert Landen expressed concerns about the situation leading up to Jimmy's resignation and the misunderstanding concerning the recent road work. Earlier in these minutes one will note that the Board has already acknowledged that this is, historically, the way it has been done all these years and no one is solely responsible for this situation.

At 5:50 p.m. Dean Moore moved that the meeting adjourn, seconded by Janet Johnson, motion passed.

Respectfully submitted,

Gay T. Cass