

2021

Annual Report



West Jefferson, North Carolina

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Annual Report 2021

Activities 2021

- Obtained legal advice on moving forward to validate governing documents.
- Amended Restrictive Covenants and Restrictions Agreement
- Scheduled an upcoming Agreed Upon Procedure (AUP) for review of financial records and processes.
- Reviewed insurance policies
- Added following sections to member-only access on web site (<https://heritageestatesnc.com/>, Login: member; PW: river123!)
 - Up to date HEPOA members list posted Oct 2021
 - A high-resolution map unifying all utilities, monuments, datums, lot corners and lines, lots extinguished by combination or deed restrictions, deeded common areas, and Blue Ridge Electric right of way.
 - A June 2021 high resolution version of the 2019 air photo of the subdivision with accurately geo-referenced lot lines, restricted driveway easements, and 45-foot right of ways housing our 16-foot roadbeds.
 - A section housing links to useful Ashe County Well & Septic Applications and Permits; Ashe County Taxes; Ashe County Remote Deed/Document Search; and Ashe County GIS tools.
 - A historical overview parsing out the history of Heritage Estates, Incorporated (the subdivision's developer). The relevance of this history came into critical focus while examining and validating the legal standing of early documents and filings foundational to Heritage Estates Property Owners Association.

2021 and HEPOA Board's Evolving Goals

At the 2020 annual meeting a motion passed that the Board of Directors report to the membership their goals for 2021. The starting goals for 2021 included efforts to revise the governing documents to be more concise, clear, and enforceable. But the more closely we examined these documents, the processes by which they had been created, and their content, the more questions we encountered. We advanced as far as circulating draft revised bylaws and restrictive covenants to the membership, as well as collecting and processing valuable feedback. During this process, we also discovered inconsistencies with North Carolina law.

Due to these inconsistencies, and our lack of expertise, we requested that HOA attorney Lawson Newton review our draft documents. We immediately learned from him that **no** amendments to our original governing documents were done correctly, and thus no post-1998 documents (covenants and bylaws) were adopted consistent with NC statutes governing HOAs. In essence, all our documents after 1999 were invalid. We have had to start back from the beginning.

Here, we outline our plans moving forward to govern our maturing community and be accountable to members more carefully. As we move forward, we want to focus on serving the basic needs of the community, which include:

- having operating procedures and governing documents aligned with state and county laws.
- ensuring that our governing documents will support our needs.
- maintaining fiscal procedures that are both transparent and sound.
- understanding in advance what will be needed to maintain our roads and rights-of-way, with timelines and cost estimates and proper fiscal procedures.
- having and documenting adequate and appropriate insurance policies; and
- expanding and maintaining communication between the Board and the membership.

We have followed the attorney's advice and begun by amending the 1998 Restrictive Covenants (our only valid document). With his help, we got an initial revision of this foundational document aligned with the North Carolina statutes. We are moving ahead to create valid bylaws. These two documents will once again put the HOA on firm standing. All future amendments will need to be presented to the members for required votes.

Fiscal Procedures

Transparency and Separation of Duties

Our fiscal procedures also need to be aligned with state statutes and best practices regarding transparency. Beginning with an Agreed Upon Procedure (AUP), conducted by a CPA, our financial records will be reviewed, and fiscal processes will be recommended.

Planning

The BOD created a projected budget for the upcoming year and sent it to the members for review and approval. The membership will ratify or reject the budget at the annual meeting. The projected budget is based on review of previous years' costs.

Balances and Past Due Assessments

Certain facts/figures need to be reported to the membership annually. Heritage Estates Property Owners Association (HEPOA) has two bank accounts. One is used for operating expenses and the other is dedicated to road maintenance. The 2020 balances for these funds are:

- Operating Expenses Account: \$14,681.61
- Road Maintenance Fund: \$56,732.37
- We currently have Past Due Assessment on 1 lot of 49 total lots.

We have 1 continuing lien in place for a total of \$2,900.

Reserve Study

HOAs are held to a “prudent businessperson” standard. Moving forward, road maintenance will be based on expert advice and planning in the form of a Reserve Study. A Reserve Study is a two-part professional review of common areas and roads providing a timeline for projected maintenance and an estimated budget:

- **Physical Analysis.** This portion assesses the physical condition of community areas that an HOA is responsible for maintaining and repairing. It also includes an analysis of the cost and schedule of repairs or replacements.
- **Financial Analysis.** This portion assesses the HOA’s revenues, expenses, and reserve fund balance.

This study will allow us to determine whether we are on track financially to be able to maintain our roads as needed.

Paying for the eventual major repairs on our roads by special assessment is currently not an option. North Carolina law does not allow special assessments unless specified in the governing documents. If primary documents are eventually amended so that special assessments are allowed, the HOA still needs to be able to show that the regular assessments (aka, annual dues) done over time were reasonably sufficient to meet the anticipated needs of maintaining the roads. Thus, special assessments should be relatively low, and cover costs that could not be expected, such as an unforeseen rise in materials costs. Without a Reserve Study on which the annual road assessments are based, defending the need for a special assessment would be difficult. Neither our original nor our current governing documents allow for a special assessment. An amendment to do so would require two-thirds of all membership votes, and likewise be justified by a reserve study.

Insurance

We list our status on five types of insurance policies that HOAs should consider.

- **Property Insurance*:** The gazebo is in the floodway, and therefore is neither insurable nor replaceable. Under current law it can only be maintained as is. The mailboxes have depreciated past their insurable value. We do not currently have any property insurance.
- **Liability Insurance*:** The BOD recently reviewed our liability insurance, and it is appropriate and adequate to cover injuries in the common areas.
- **Directors and Officers:** HEPOA has had this policy since 2014.
- **Fidelity Insurance:** Fidelity insurance, sometimes called “bonding” protects against loss of funds due to crime or fraud. HEPOA does not have this insurance. We propose to purchase this in the 2022 budget.
- **Workman’s Compensation Insurance:** This insurance is recommended if members do compensated work for the HOA. Members volunteering is not a problem. HEPOA does not have this insurance.

Additionally, any company doing work for HEPOA must provide a certificate of insurance to show that they are insured.

*Required by law in North Carolina since 1999 for HOAs.