<u>HERITAGE ESTATES PROPERTY OWNERS ASSOCIATION</u>
<u>MINUTES FOR BOARD OF DIRECTORS MEETING VIA ZOOM</u>
<u>SATURDAY, May 28, 2022</u>

<u>Directors present:</u> Duane Esarey, President; Dean Moore, Vice President; Gay Cass, Secretary; Janet Johnson, Treasurer; Michele Nowak, Assistant Treasurer; Joe Nowak; Robert and Janice Landen.

President Esarey called the meeting to order at 1:34 p.m. and extended a warm welcome to the Directors in attendance. The Board was advised this is an important meeting and will require time and concentration. In an effort to get HEPOA up to standard and in compliance with state statues, the President and Treasurer have been looking at the organization diagnostically and reading laws and HOA advice. President Esarey reported we have good financial records and have retained necessary documents. Jean Moore, Janice Landen and Sherrie Herlehy were acknowledged for their fine work in this area. Gay Cass and her predecessor, Ann White were recognized for the excellent secretarial records. All Board actions, transactions and stewardship of the finances, as well as, minutes recording actions taken at annual membership meetings and all Board meetings are in good order.

The President reported that he envisions the goals of the BOD to be: small scale, non-intrusive management of our responsibilities to protect the property values of families that have investments here and provide amenities and appearances that maintain the frankly beautiful and delightful setting we live in.

The President reported that some progress has been made in regards to our legal standings; however, we cannot let our guard down. Our governing documents and elections must be validated; we must follow the State's HOA laws; we must follow our own rules (By-Laws and Restrictive Covenant) and we must be consistent in our practices.

During our meeting today, Saturday, May 28, 2022 we will be addressing some of these issues.

Effective February 26,2022 the BOD accepted Jean Moore's resignation from the Board after faithfully serving for over 10 years and producing excellent financial records for that period of time. Under new business we will officially acknowledge her services.

Currently Lot 39 and Lot 18 are for sale. Looking at the sales pattern for the development it was noted that 42% of lots in Heritage Estates have changed hands in the last 30 months.

The following administrative projects have been accomplished this year:

1. Letter to membership concerning decorative fences was mailed April 20 and to date no replies have been received.
2. The 2022 Mowing contract with Shape Up Lawncare has been signed reflecting an annual savings of about $1,000.
3. To meet our obligation under §47F-3-118, the Annual Financial Overview was posted within 75 days of the close of the fiscal year.
4. The 2022 member contacts and an owners map has been added to our website. We now consist of 49 lots/votes in the hands of 30 memberships.
5. The following chores, listed in the February 26 Directors meeting, have been completed: front fence repaired, subsidence holes over culvert at Common Area and Lot 47 filled, river Common area major brush clearing, culvert outfalls unblocked Lot #3 and river Common Area, ditch channel reestablished Lot #19 and Gazebo, overhanging limbs at entrance to front Common Area and mailboxes have been trimmed back.

The following projects remain to be done:

1. Picnic table gifted to HEPOA being reconditioned and installed at Gazebo (Esarey/Jordan)
2. Need to finish trenching creek at Gazebo (no cost – Esarey)
3. Remove most of the big pine at Gazebo (no cost – volunteer felling/dismantling).

4. Remove large dead locust on ROW at Lot #23 (no cost – volunteer felling, dismantling)
5. Heritage River Road being undercut by erosion (no cost – restack ditch, remove leaves)
6. Trimming limbs on the rest of the roads, as Dean Moore and Duane Esarey did on River Sound last year.

Janet Johnson reported to the Board that the 2021 annual financial statement is posted on the website and shared the following report with the directors:

<u>End-Of-Year Status</u>

As of January 1, 2022, we had $19,922.33 in the operation expense account and $57,492.37 in the Reserve Account.

As of now, there are no long-term dues in arrears, and all liens are cleared.

Income tax return for 2021 was filed.

<u>Current Status</u>

Except for one lot, all annual assessments have been paid for 2022.

A new checking account was opened for operating expenses and the Money Market account was closed.

Current operating account balance: $26,744.04

Reserve Fund balance: $57,492.37

Agenda item to discuss: how much to move from operating to reserve based on information presented in New Business.

<u>Fiscal Procedure</u>

Assistant Treasurer, Michele Nowak, is reviewing bank statements and reconciliation at the end of each month and signing them.

Check signer, Jimmy Copeland, is signing a form showing he knows what the check is for, whether we have a contract, invoice and it has been approved. He also co-signs the checks.

<u>Proposed vs. Actual Budget to date</u>

AUP and Lawyer fees together were about $300 more than proposed.

Mowing is going to cost about $1500 less than budgeted.

The treasurer reminded us that a 2023 Annual Budget will need to be prepared and presented to the membership for a vote at the Annual Business meeting.

<u>Old Business</u>

The President reported that an addendum of implementing language to Construction Checklist has not been drafted. (This addendum would clarify our extension policy should someone not be able to complete the construction of their house by the predetermined deadline)

President Esarey reported that the deadline for completion of the Nowak's house, Lot 53, has been extended to August 20, 2022. The Nowaks have spoken with the builders and there is recent progress.

New Business

Motion passed: Jean Moore's resignation from the Board and as treasurer of the Association is effective as of the last Board meeting. Joe Nowak made a motion that the Board write a resolution recognizing Jean for over 10 years of faithful and comprehensive service to the Heritage Estates community. Robert Landen seconded the motion and it passed unanimously. President Esarey will write a note expressing our sincere appreciation for her services.

The President reported on renovation/building projects completed or underway, none of which required Board approval:

Helms has installed a pre-fab storage building of complimentary color to the house

Jordan planning retaining wall on Lots 41 & 42

Esarey/Johnson planning earthmoving for expansions of driveway, yard and eventual garage.

Garcia completed a new deck

Garcia storage building being added

Swan asphalt driveway completed

Tanseer/Fortune are considering a backyard fence for their dogs

Main Body of today's (May 28) meeting: Two presentations on attaining proper functioning status

1. President Esarey presented 28 power point slides for the Directors to consider to put HEPOA in proper order to manage the affairs of the Association.
   Slide #2 History of BOD 2008 -2022
   Slide #3 New mowing contract - $160 per mowing resulting in an annual saving of $1,000
   Slide #4 Reporting to the Directors projects completed year to date – as detailed under New Business
   Slide #5 Projects which still need attention
   Slide #6 Treasurer's Report & Pilot Reserve Study as provided to Board April 2022
   Slide #7 Anticipated Owner's Projects
   Slide #8 Legal status – Fiscal Planning Needs and basis for Initiatives.
   Slide #9 Validity of HEPOA Governing Documents 1999-2021
   Slide #10 Legal Status of HEPOA
   Slide #11 Checklist from an article in *HOA-Leader* – considerations for incomplete developments
   Slide #12 Typical Steps for forming an HOA
   Slide #13 Transition from Developer
   Slide #14 Set up Accounts
   Slide #15 Create Budget
   Slide #16 Complete Reserve Study
   Slide #17 Relevant Laws
   Slide #18 Laws governing Directors
   Slide #19 IRS Status
   Slide #20 Sound Fiscal Practices
   Slide #21 HEPOA as regards Transition from Developer
   Slide #22 HEPOA as regards Bank Accounts
   Slide #23 HEPOA as regards Annual Budget
   Slide #24 HEPOA as regards Reserve Study
   Slide #25 HEPOA as regards State Laws
   Slide #26 HEPOA as regards Laws governing Directors
   Slide #27 HEPOA as regards IRS Status
   Slide #28 HEPOA as regards Sound Fiscal Practices

2. Treasurer's comments on various problems
   Janet Johnson, Treasurer, presented a Power Point report on matters concerning financial aspects of HEPOA:

Slide #1 Decisions for the Board:

1. _Financial overview
2. Checking Account and Fiscal Procedures
3. Moving Reserve Funds to an interest bearing account
4. How to handle IRS regulations per residence definition for rentals
5. Correcting tax returns
6. Unify our procedures per late fees for Annual Dues

Slide #2 – Key Fix Concerns:

1. In 2012, Members voted for an annual dues increase of $100, with 100% of the increase to go into the Reserve Fund for future road needs. However, only 40% went into that account and 60% was used for Operating Expenses.
2. It was noted that without those monies (60% of increase) the amount of money in the Operating Account would not have been sufficient to cover expenses.
3. Over the years excess funds have accumulated in the Operating Account.
4. According to law, surplus funds (dues) have to be credited or returned to Members, unless diversion into savings is justified under a Reserve Study.

Slide #3 – Reserve Funds:

1. In 2012 Members voted to increase annual fees by $100 with increase going to Reserve Fund. To date, only 40% has gone to the Reserve Fund.

Slide #4 – Effects of Extinguished Lots:

1. Not counting the two lots merged by the Developer, HEPOA income has so far decreased $6900 because dues have not been charged after member lot mergers.
2. Restrictive Covenants (1998/2021) reads:
   "*In the event 2 or more lots are combined and one residence is constructed on the combined tract, the combined tract shall thereafter be considered as one tract for all voting and annual assessment fee purposes*." Note that this lays out a specific sequence in which the residence is then built on the combined lot.
3. However, a North Carolina Supreme Court ruling in 2001 (Claremont Prop. Owners Ass'n v. Gilboy, 142 N.C. App. 282, 542 S.E.2d 324) reads, "*Purchasers of lots from the plats as filed had a right to assume that they would be paying a certain proportion of the road maintenance costs as shown by the plat, and to assume that the owners of each and every other lot on said plat would pay an equal sum pursuant to the plan of road maintenance as contained in the restrictive covenants*." Unless the covenants specifically authorize it, combining of lots itself does not alter the real covenant that previously attached to each lot. Extinguishing fees places undue burden on other lot owners.
4. Accordingly, we need legal advice.

By-Laws

President Esarey called to the Board's attention that our existing By-laws are legally incomplete and, therefore, not valid. As we begin drafting new By-Laws, we want to consider the following items:

1. Allowing only one person per lot to serve on the BOD at a given time. (no motion was made; therefore, no action taken)
2. **Motion passed:** Decreasing the number of directors (per &55A-8-03-b). Gay Cass moved we "reduce the number of directors from nine (9) to seven (7), effective next year." Janet Johnson 2nd the motion, and it passed unanimously. This determination is to be written into the Bylaws revisions.
3. Consider bylaws language requiring home owners insurance to include a clause in which claims for total loss must include demolition regardless of plans to rebuild, or reconstruction to the original standards of community.
4. Language complying specifically with §47F-3-106 (required components of association bylaws) as needed. (this tells us what By-Laws must cover)
5. Codify annual construction and submission of budget to the membership for ratification or refusal.
6. Replace current Bylaws Article IX, Item D-5 reference to $1,000 with reference to procedure for expenditures beyond the member approved budget for that calendar year.
7. Define the terms and procedure of handling "excess funds" with reference to rationale expressed in the most recent Reserve Fund Plan and guiding these funds automatic deployment into the Reserve Fund near end of each calendar year.
8. As part of the dues collection section(s) include a specific delinquent date for late dues and a differentiation between penalties and interest (Section D-11 of Section IX – Powers and Duties of the BOD, as well as Article XIII. (There was discussion about adding "late fees" to next year's dues, but no action taken)
9. Explore and draft for Board approval terms of handling the IRS-allowed levels of rental properties in the community. (This needs to be included in the By-Laws)

Motions and Votes on action target issues for today (May 28, 2022)

1. There has been a fair amount of cross-cutting information today
2. Very important to understand these issues
3. Debit card approval as free standing issue
4. Approval open savings account for Reserve Fund as free-standing issue
5. Fiscal procedure points to be codified into By-Laws
6. Late fees processes to be codified into By-Laws
7. Approval to use existing Pilot Reserve Study as rationale to be codified into By-Laws
8. Policy points for 85% rule to be codified into By-Laws
9. Approval to put money in 2023 Budget to get legal advice (By-laws, extinguishments/dues, tax returns).

Dues to lack of time, no other issues from this list were voted on by the BOD at the meeting.

Annual Considerations:

1. **Motion passed**: After discussion whether the final draft of the new By-Laws should be voted on by membership vote on By-Laws at Annual Meeting, a motion was made and passed that new By-Laws be presented for membership approval, pending the review of our attorney.
2. We will soon begin 2022 Annual Report to members (routine annual data, plus 2023 Budget, plus versions of Reserve Study and Treasurers Report)
3. Need to set target date for 2022 Annual Meeting to get various notices and budget preview in motion. It was recommended we try to find a date in August.
4. Upcoming elections: 3 Directors terms expiring, Janice Landen, Dean Moore, and Janet Johnson. New By-Laws will govern number of new Directors needed.

Next BOD Meeting is set for June 18th @10:30 a.m.

Janice and Robert Landen exited the meeting at 3:20 p.m. due to other obligations

At 3:48 p.m. Joe Nowak moved meeting adjourned, seconded by Duane Esarey.

Respectfully submitted,
Gay T. Cass, Secretary