

HERITAGE ESTATES PROPERTY OWNERS ASSOCIATION
MINUTES FOR BOARD OF DIRECTORS' MEETING VIA ZOOM
SUNDAY, MARCH 26, 2023

Directors present: Duane Esarey, President, Jimmy, Vice President, Janet Johnson, Treasurer, Gay Cass, Secretary, Michele Nowak, Assistant Treasurer, and Directors at Large Paula Shepherd, Ginger Jordan, and Robert Landen.

President Esarey declared a quorum and called the meeting to order at 2:00 p.m.

Welcome and News: The President extended a warm welcome and expressed his appreciation to the Board Members for their presence and interest in the Heritage Estates Property Owners Association. Open discussion was encouraged as the Board began to consider several documents and review the new proposed Bylaws. (Printed materials had been emailed to the board member prior to the meeting and copies will be attached to these minutes)

President Esarey shared updated news with the Board: During the winter, three (3) trees fell across the roads requiring clean-up, thanks are extended to Duane Esarey and Chris Jordan for taking care of that task. The gazebo needs to be painted and there are three (3) dead trees in the right-of-way that still need to be cut.

Secretary Report: Gay Cass, Secretary reported that December BOD meeting minutes, with supporting documents, had been emailed to the directors on January 6 and were posted on the Web site Jimmy Copeland made a motion to approve the minutes as presented and the motion was seconded by Robert Landen. The Board voted unanimously to accept the minutes as presented.

Treasurer Report: Janet Johnson, Treasurer reported that, with email approval of the Board, the Annual Financial Report was posted on the web site by March 15th in accordance with the state law. Janet reported that all 2023 assessments were received prior to the deadline and deposits have been made. The Board received a printed summary of a report to HEPOA outlining relevant North Carolina HOA financial management facts following consultations with CPA Priscilla Norris and consultations with Anderson Legal, PLLC (attached). Ginger Jordan made a motion that we accept this document and it be **attached to the minutes for permanent record**. Motion was seconded by Gay Cass and it passed unanimously.

Old Business: President Esarey reported with the Ashe County Revaluation of property value, property owners are seeing an increase between 45% and 70% in their property value.

Married coupled on the Board: After Duane and Janet recused themselves and left the meeting, a brief discussion and considering the number of property owners in our HOA, the BOD voted to continue to allow couples to serve on the BOD.

Voting rights: Based on the attached review of how North Carolina covenants HOA voting rights and assessments, the Board took no action. Voting rights remain as is – one (1) vote per lot.

Financial information on web site: BOD voted to post financial reports on the HEPOA web site. It is the feeling of the Board that we want to be transparent with the membership.

It was confirmed that all votes will continue to be paper ballots. Although North Carolina law has now changed to allow mixing mailed paper ballots and remote voting, an insufficient number of HEPOA members are interested in on-line voting.

Bylaws: BOD have in hand revised Bylaws to be reviewed and considered by the Board Members before distribution to the membership. Current Bylaw recommendations (dated March 9) have been reviewed by an attorney and are considered to be legally correct. A Board committee was appointed to review the document and report back to the BOD for a final vote. Bylaws Committee, Duane Esarey, Paula Shepherd, Robert Landen, Jimmy Copeland and Janet Johnson will meet on April 1, 2023 to begin the process.

New Business:

In keeping with the above voting policy, the membership will be required to vote via paper ballots on the Bylaw revisions. We will send the Board recommended bylaws version out and then call a Zoom meeting for the membership to have the opportunity to ask questions.

We are waiting for the Comprehensive Road Study report to take action on Reserve Fund plans for maintaining the roadways.

Shape-Up Lawn care will receive \$195 per mowing. This is a slight increase; however, this includes additional areas for care. We are still within our budget for 2023.

The BOD will hold an open forum meeting for the membership annually. The Zoom meeting to discuss Bylaws will be an open meeting and we will extend an invitation for an open meeting prior to the annual membership meeting, dates to be determined.

It is the goal of the BOD to have regular Board meetings in the future, number and dates to be determined.

Future consideration: we may need to address the issue of larger parcel postal receptacles. As number of residents increases we can expect more demand.

Encroachment Letter: Our attorney recommends that we send a letter to the membership annually explaining the issue fences and improvements on the ROW. Jimmy Copeland made a motion we send a letter in January. Paula seconded the motion and it passed. President Esarey will modify last year's letter for annual distribution.

Consolidated lots assessment: President Esarey will present the Board with a draft letter explaining the assessment for consolidated lots, to be approved and sent before January.

There being no other business, the meeting adjourned at 4:05 p.m.

Respectfully submitted,

Gay T. Cass

Gay T. Cass, Secretary



Summary report to HEPOA BOD 26 March 2023 to be included in the minutes

Summary of relevant North Carolina HOA financial management facts following consultations with CPA Priscilla Norris and consultations with Anderson Legal, PLLC.

NC Laws

- The HOA must have a member-approved budget for operating expenses. Member-approved budgets provides the HOA authority to collect annual assessments.
- The annual operating budget can contain contingency for unexpected expenses, like fallen trees, legal, etc. Otherwise, excess annual operating funds must be returned/credited.
- All board member reimbursements must be pre-approved in writing. Board members cannot use personal credit cards that have rewards.
- Treasurer must make a year-end report available to members by March 15.
- Reserve funds require a reserve study (see IRS rules). Reserve studies can be done internally (as opposed to by a professional) if projected costs are documented.
- The HOA must collect assessments sufficient to maintain and insure the common property. If the governing documents set a fixed amount that is insufficient, a special assessment must be used until the governing documents are changed (state law trumps HOA governing documents).
- Funds for large long-term maintenance costs, such as major road repairs, must be budgeted and collected gradually over time. HOAs must not fail to collect the needed funds over time, and then rely on a large special assessment of those who own property at the time that the repair is needed.

IRS Regulations

- Reserve and operating funds cannot be co-mingled. They must each have their own budget and their own account.
- When doing cash accounting, expenses must be paid within the year they occur.
- Reserve funds cannot be saved unless there is a Reserve Study. The HOA cannot collect reserve funds in excess of what is needed as projected by the Reserve Study.
- An HOA can file form 1120-H if they meet the 3 criteria, which includes 85% of houses meeting IRS definitions of a residence. Saving other than justified by the reserve fund, or co-mingling operating and reserve funds, requires filing 1120 and paying a flat tax rate of 30%.

Our Theft Insurance Requirements

- A Board member who cannot write checks reviews the bank statements monthly against reconciliation documents provided by the Treasurer.
- Payments by bank auto-drafts or HOA credit card need be reviewed only by the reconciliation statements, but our fiscal policy also requires that a member reviews all payments by check, documents whether invoices match checks, and then provides a second signature on the check and a review form.

Unit-based voting rights within a North Carolina HOA (D. Esarey March 2023)

One foundational aspect of planned community voting in North Carolina is that all HOAs in the state created after January 1, 1999 are required to be non-profit corporations (*NCGS 47F-3-102*). The other foundational aspect is that, in a system where lot ownership automatically covenants both voting rights and assessment calculations there will always be some sort of concrete formula relating to the share of ownership in the community.

The first aspect means that, simply put, **HOA voting is corporate, not democratic**, because planned community covenants “run with the land” on a lot by lot basis. All owners are automatically covenanted by the act of lot ownership. Financial obligation (assessments) and voting rights are allocated on a per lot basis by virtue of ownership (*NCGS 47F-1-103, items 2 through 6*).

- The “**common expense liability**” is the owner’s per- lot liability for the community members’ share of operating budgets and maintenance reserves.
- The **owner’s voting rights** are typically “one vote per lot.”

Votes and assessments are linked – both are created by lot ownership. Votes reflect any given member’s proportionate interests in the corporation as a whole.

If the Declaration was differently worded, assessments and voting rights still would be apportioned by something measurable about ownership or each lot. Typically (*NCGS 47F-1-103, items 2 through 6*), the unit of quantification is the lot itself (each lot equals one vote and one pro-rata share of the common expenses with all other lots). It would be possible to set up an HOA in which the apportioned rights are spatial. For instance, in a condominium, the common financial obligation and proportional votes can be set by the unit’s square footage; or in an HOA representation by ownership of total acreage. Likewise, it is possible to imagine HOA appurtenant interests supporting **ONLY** road maintenance in which votes and assessments were calculated by overall linear feet of road frontage. HEPOA uses lots. But what is consistent in all these examples is that the quantification is somehow related to aspects of ownership that can be measured. **Leaving per lot assessment obligation in place but removing the voting right of ownership is impossible.**

A Developer creating an HOA or condominium could pro-actively create governing documents that set a rule on how many units can be owned by any one entity. But in an existing HOA/Condo, putting such a restriction in place to control the number of votes held an owner after the fact of their ownership would infringe on the terms that the lots were purchased under.

Clickable references to this topic and discussion:

<https://www.ncleg.gov/Laws/GeneralStatuteSections/Chapter47F>
<https://www.hoaleader.com/public/Can-Your-CondoHOA-Limit-Voting-Power-Owners-with-Multiple-Properties.cfm>
<https://wmdouglas.com/voting-classes-in-a-homeowners-association-hoa-part-ii/>
<https://www.parli.com/hoa/voting-in-hoas-corporate-not-democratic>
<https://www.davis-stirling.com/HOME/1-Vote-Per-Unit>
<https://findhoalaw.com/one-vote-per-unit/>
<https://www.tcpalm.com/story/money/real-estate/2016/10/03/condominium-association-voting-practices>
<https://www.hoaleader.com/public/Does-HOAs-OneVotePerUnit-Rule-Apply-Married-Board-Members.cfm>
<https://baysideoc.net/as-corporations-hoas-must-vote-differently/>