

HERITAGE ESTATES PROPERTY OWNERS ASSOCIATION
MINUTES FOR BOARD OF DIRECTORS MEETING VIA VIDEO CALL
THURSDAY DECEMBER 21, 2023

Directors present: Duane Esarey, President; Jimmy Copeland, Vice President; Gay Cass, Secretary; Janet Johnson, Treasurer; Michele Nowak, Assistant Treasurer; Paula Shepherd, director at large. At 6:09 pm, on Thursday, December 21, 2023, President Duane Esarey declared a quorum and called the meeting to order.

Updates since the Open Board meeting July 30, 2023 and the Members annual meeting on August 5, 2023:

- Duane and Janet added a sign on the guardrail to help people find River Sound road.
- Lot 50 (Milner) has a storage building and Lot 13 (Esarey) has a pond and picnic area. These are projects which fall under the 2023 new bylaws allowing certain kinds of improvements on lots without homes.
- Lot 39 (Coggins) considering building a garage that would be tied permanently with Lot 40.

Election of Officers

- To fulfill the annual obligation to elect officers, Duane asked current officers if they were willing to continue in their positions (President, Vice President, Treasurer, Assistant Treasurer, and Secretary). Gay requested to step down as secretary and continue as a director at large. All other officers agreed to continue in their roles.
- Paula agreed to take on the Secretary position.
- There being no other nominations, Jimmy made a motion, seconded by Michele, to accept the officer slate. The motion passed.

Approval of Minutes

- Duane suggested a small change to highlight that the Board meeting was *open to all* members. Janet made a motion, seconded by Jimmy to accept, as altered, the minutes from the Board of Directors Annual Open Meeting (via Zoom) on July 30, 2023. Motion passed.

HOA Foreclosures

- Discussion about a troubling report on HOA foreclosures in NC. Aggressive HOAs are foreclosing on people who owe very little and often get little or no notice. NC law does not protect homeowners although legislation had been proposed (and failed). Consensus was that HEPOA needs to consider how best to protect our members from possible predatory behavior. Read the article: <https://www.charlotteobserver.com/news/politics-government/article284084048.html>

Treasurers Report

- Janet presented an overview of HOA long-term finances, explaining that laws governing a Developer are different from laws governing an HOA. We did not properly transition into an HOA which affected our restrictive covenants, finances, and insurance for years.
- The initial Boards did not clearly distinguish between the HOA and the developer's roles. The developer had Restrictive Covenants tailored specifically for their purposes. The transition to the HOA should have involved drafting new Restrictive Covenants for the HOA, eliminating provisions unique to the developer. HOAs and developers are subject to different state statutes. Restrictive Covenants stated:

“The initial road maintenance fee shall be Two Hundred (\$200) Dollars per lot per year; provided, however, that in the event two 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 road maintenance fee purposes.”

It is our interpretation that this refers not only to Special Declarant rights, but pertains specifically to the developer’s road maintenance fee (as stated), not the HOA’s annual operations assessment.

By law, the HOA must provide an annual budget that accurately reflects its operational costs for approval by its members. Adjustments in operating costs or plans for new acquisitions require a revised budget and a vote from the members. Initially, our HOA mistakenly used the developer’s road maintenance fee as a set operating budget. A year after forming the HOA in 2009, they decided part of this 1999 road maintenance fee would be used for reserves, then in 2013 added \$100 per lot for the reserve fund, but still without any evaluation of our actual needs. This method was not suitable for determining the annual assessment. As a result, the funds raised were chronically insufficient for our operational needs, leading to dependence on volunteer efforts, use of the developer’s remaining road fee funds, and later, dipping into reserve funds to support the operating budget.

- The reserve budget must be set by a reserve study to determine the needs, and then remains the same until a new reserve study is done (perhaps every 5 years). Members are to vote on this budget any time it changes. Our reserve study was completed in December 2023, so the budget will be presented to the membership at the next annual meeting.
- Special assessments, when allowed, cannot be needed because the HOA failed to plan for obvious upcoming expenses like road repaving. In our case, we are not allowed to charge special assessments at all because this right is not in our restrictive covenants. Our operating budget is supposed to be governed as per state statutes, not set by the developer’s road maintenance fee. So, setting the annual assessment based on the actual operating budget is not a special assessment. This is how the law dictates that we set the assessment. (We had previously incorrectly referred to the assessment amount above that set by the road maintenance fee as a special assessment because of the long-standing use of the developer’s road maintenance fee as our annual assessment.)
- The annual depreciation cost per lot for 54 lots for the reserve budget is \$187 but we will leave it at \$180 this year. We did not have the reserve study done in time for the annual members meeting. The cost per lot for the operating budget is \$125.43. Total assessment per lot is \$305.43 in 2024. This operating budget is supported by donations and volunteer labor because we thought we needed to stay as close as possible to the fee set by the developer in the covenants.
- As things stand, when we repave one of the roads in ten years, we will be short by \$45,000. We can make up the shortfall by charging an additional \$90 per lot for 54 lots for 10 years. We should plan to propose this to members by 2025.
- The CD income will hopefully help us keep up with inflation. Volunteer labor and donations have also greatly helped the bottom line although we want to rely less on this in the future.
- Ultimately, we need to redo our covenants as soon as we can achieve a 67% approval. The lawyer urged speed in 2021 because the HOA did not have any authority until we completed the transition. We did not understand we needed to remove the Declarant (Developer) rights and fees.
- Paula asked if the annual assessment will be close to \$400 moving forward. Answer is yes. She asked if the assessment will vary each year. We only need to change it if costs change. Janet said we could keep it the same for simplicity, keeping in mind that any surplus funds must be credited or returned to the members.
- Duane looked into average HOA fees and some are \$250 or higher a *month* in Ashe County. Our fees have been lower compared to most HOAs, although our fees were set based on the developer’s road maintenance fee, not on our actual costs.
- Janet said we have been operating without a budget based on costs for 15 years. We used up the developer’s road maintenance savings, and then diverted additional money from the reserve fund to the operating budget. This resulted in more than \$20,000 being spent on operations beyond what was collected for that purpose. We could not tell this until the financial records were digitized and reorganized. This is also when we were able to discover that not all lots were being assessed.

- The Treasurer's report will be sent out with the assessment so members can see our financial status.
- Our assessment letter will have a specific due date after which it is late and will accrue interest. After a year, it becomes an unpaid bill. It is not until it is an unpaid bill that we are to place a lien.
- Michele made a motion, seconded by Paula, to approve the Treasurers Report. The motion passed.

Old Business

Status per resumption of five lot assessments

- In November, the Board received a legal challenge from a member regarding our request they resume paying assessments for each of their lots.
- We want to know if we are on firm legal ground to ask them to resume their assessments so the Board agreed to seek legal advice.
- Duane, Janet, Jimmy, Michele and Paula had a video call on December 13, 2023 with Attys Cole Booth and Pardis Moreland from Anderson law firm. Technical difficulties prevented Gay from attending.
- Atty Booth recommended re-sending the letter about resumed assessments, which another member refused to accept, to her again (this was subsequently successfully done via registered mail).
- There is still a clause in the Covenants about combining lots and then extinguishing the developer's road maintenance fee when a house is built on the combined lots. If the transition had properly occurred, the clauses that referred to developer rights would have been removed.
- Duane thinks that, even if the Board had ever taken any action on these supposed extinguishments, the Board did not have that power in 2015, 2019 and 2020. Nor did the individuals subsequently build houses on the combined lots as required in the Declarant's clause.
- HEPOA has lost between \$10,000-\$14,000 due to the supposed extinguishments and could lose much more if we recognize this as a member right to add and extinguish lots.

New Business

- The federal Corporate Transparency Act applies to large companies and will soon apply to small businesses. The CTA is meant to prevent money laundering and requires a business owner to submit an online form confirming employee identities (driver's license or passport). The law will apply to HOA board members. Failure to comply will result in hefty fines. Janet will look into this further to see if we need to actually submit board members personal data.
- Janet will look into a records retention policy for our archives.
- The website has been reorganized with clearer document storage.

Given time constraints, various other business on today's agenda will be postponed to the next meeting.

Gay made a motion to adjourn, seconded by Jimmy. Motion passed.

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. Member's 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.