

HERITAGE ESTATES PROPERTY OWNERS ASSOCIATION
MINUTES FOR OPEN BOARD OF DIRECTORS MEETING VIA VIDEO CALL
THU, AUG 15, 2024

Directors and members present: Duane Esarey, President; Jimmy Copeland, Vice President; Paula Shepherd, Secretary; Janet Johnson, Treasurer; Gay Cass, director at large, Ginger Jordan, director at large, Emily McNeely, Covenants committee member; and Michael Shepherd, member. At 6:34 pm, on Thursday, August 15, 2024, President Duane Esarey declared a quorum and called the meeting to order.

Welcome and news

- Notice of this open HEPOA Board meeting was mailed to all members on June 28, 2024.
- State law requires at least one open Board meeting per year.
- As advertised in the advance notification, the Zoom link and agenda were posted on HEPOA website.
- The meeting extends an open forum to any Association member who wishes to question the Board or be heard.
- One community member requested the meeting be recorded for watching at a later date. The video will be posted on the website.

Secretary Report

- Minutes from the May 22, 2024 Board Meeting were reviewed.
- Janet made a motion, seconded by Jimmy to accept the minutes with no corrections. Motion passed.

Treasurers Report

- Janet clarified our HOA assessments and budget process.
 - Before we became an HOA, the developer set up a road fee.
 - (As recently confirmed by legal counsel) our assessments **are not** based on the developer's road fee.
 - (As detailed in our covenants, bylaws and NC Statute 47F) our annual assessments **are** based on predicted operating budgets and annual depreciation rates of our common property.
 - By law, we are required/authorized to collect funds needed to operate and maintain common property.
 - It was our misconception that we could levy a special assessment for unexpected expenses, or to cover maintenance needs rather than collecting annual depreciation rates annually. Our Covenants do not give us this right. We have to determine what is needed and collect it annually.
 - If HEPOA has an unexpected expense (legal fees, insurance claim, tree falling for example) we use our contingency fund. If insufficient, we can borrow from the reserves with Board approval and a repayment plan with interest within a set time limit. HOAs can borrow from a bank but this is a bad option. Member Michael Shepherd asked if we could add a clause to our covenants forbidding the Board from borrowing from a bank. Duane said we could pose this question to Attorney Swanson who is working with us on our covenants.
 - Historically we had an operating shortfall. We were not collecting enough for reserves to cover annual depreciation rates, we used over \$20,000 reserve money for operating costs, and we believed we were limited to using 60% of the developer's road fee.
 - The 2025 proposed budget will include a higher assessment.
 - Member Michael asked if our annual assessments will fluctuate year to year. Janet said probably not. The reserve study provides predicted costs over several years and we have a contingency fund which provides stability.
 - The budget will be shared with members prior to the annual meeting.
 - Members vote on the budget at the annual meeting. They cannot vote to stop essential services (mowing, insurance, etc.) but are welcome to suggest cost saving measures.
 - Members have a right to review financial records. Understanding how assessments are set is important.
 - We have made \$4000 interest on our Certificate of Deposit. It has been reinvested at over 5% interest.
- Paula made a motion to accept the Treasurers report, seconded by Duane. The motion passed .

Open forum for member input or questions

- none

Old Business – HEPOA Covenants

- Our Covenants Amendments Committee (Duane, Janet, Jimmy, Michele, Paula, and Emily) reviewed a draft of proposed changes to our Covenants prior to submitting to our new lawyer.
- We then had a video meeting with HOA specialist Attorney Timothy Swanson on August 6, 2024.
 - Attorney Swanson informed us we are still operating under the original 1999 Covenants. All previous amended Covenants (2009, 2013, 2021) are invalid because they did not meet state law requiring approval by 67% of the membership.
 - We were operating under incorrect information from Attorney Lawson Newton in 2020.
 - He said the HOA needed to transition from the Developer to get independent governing power (under Article 18 of our Covenants). This was wrong. Article 1 states that as soon as HEPOA filed its articles of incorporation we met the required terms for legal governance.
 - He said Article 18 requires and allows amended covenants be signed and filed by the Developer and the majority of the Board and that NC Statute 47F did not apply. This was wrong. NC Statute 47F requiring 67% approval by membership does take precedence, and Article 18 was invalid. Note: When state law is stricter than an HOA governing document, state law takes precedence. Note: Our Article 18 is not legal. It reads in part “The covenants and restrictions of the Declaration may be amended by an instrument signed by a majority of the members of the Board of Directors of the association and the developer.” This violates 47F. Note: Duane and Janet recently reviewed the video of the meeting with Atty Newton and confirmed that he gave Janet and Dean Moore incorrect information.
 - We took his recommendations on finances, insurance and bylaws which were correct. So our new 2023 bylaws are valid.

Michael and Jimmy asked if we could submit our amended Covenants to the members for a vote since a lot of the work has been done to update them. Duane said no because they are only a draft and, after talking to Atty Swanson, we may no longer need to revise them. They were based on our invalid covenants. We need legal review to make sure anything we propose is correct.

- Atty Swanson offered to attend a community video meeting to answer questions. It would be worth the cost *only* if we could guarantee maximum participation of community members.
- Atty Swanson offered to provide boilerplate covenants that align with NC law. We may be able to add some extra clauses, for instance, to protect homeowners from NC predatory foreclosure laws.
 - New covenants will require approval by 67% of the membership. Duane noted that we have never gotten 67% of the members to vote on anything although with great effort we may be able to reach that threshold. The ballots may need to be notarized which adds another obstacle.
 - If we can't get 67% approval, what is our status?
 - Do we need new Covenants or are the 1999 Covenants are good enough, keeping in mind we are also governed by NC Statute 47F?
- The good news is we are not in a hurry because we can legally govern under the original Covenants. We felt rushed in 2020 because Atty Newton said we had no governing authority.

Next Steps

- Should we schedule another meeting with Atty Swanson for guidance on short term governance and long term plans?
- Need to have a list of questions before scheduling the meeting so we don't waste time and money.

- The meeting will be recorded for viewing by anyone who could not attend

Ginger made a motion, seconded by Jimmy to set up another meeting with the lawyer. Motion passed.

Janet said anyone who watches today's video and wants to be on the Covenants Committee should contact her or Duane. They can attend the lawyer meeting and ask questions. We welcome member involvement.

Bottom line is under the upcoming 2025 budget, our finances will be in good shape and the 1999 Covenants give us the proper authority to run the HOA although it would be optimal to have newer, clearer Covenants.

Old Business – Board

- Board terms ending (Gaye Cass, Duane Esarey, Michele Nowak)
 - Duane will run again.
 - Duane will ask Michele if she will run again.
 - Gay declined to run again. We thanked her for her many years of service to the community.
 - Emily agreed to run for a Board position. Paula made a motion, seconded by Jimmy to nominate Emily to run for the Board.
- Nominations will be solicited from the membership, then proxy forms mailed out the the members.
- Board will have to approve the budget via email before it is submitted to the community.
- Other preparations for September 28, 2024 Annual Meeting?
 - None
- Will set next Board meeting date once we have the follow up with the lawyer

New Business

None

Jimmy made a motion to adjourn, seconded by Janet. Motion passed. Meeting ended at 7:52 pm

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).