

HERITAGE ESTATES PROPERTY OWNERS ASSOCIATION
MINUTES FOR BOARD OF DIRECTORS MEETING VIA VIDEO CALL
MON DEC 2, 2024

Directors present: Duane Esarey, President; Jimmy Copeland, Vice President; Paula Shepherd, Secretary; Janet Johnson, Treasurer; Michele Nowak, Assistant Treasurer; and Emily McNeely, director at large.

At 7:03 pm, on Monday, December 2, 2024, President Duane Esarey called the meeting to order.

Secretary's Report

Janet made a motion, seconded by Michele to accept the minutes from the last two Board meetings. Motion passed.

- August 15, 2024 Open Meeting Minutes
- August 17-26, 2024 business by email Minutes

Duane emailed the minutes to the board members for a final look before posting to the website.

President's Report

- September 28 Annual Meeting Votes: There were 33 votes present at the annual meeting about evenly divided between proxy and in-person votes. This amounted to 61% of all possible votes in the Association. The proposed budget for 2025 raised annual assessments from \$300 to \$425/year. It was approved by 27 to 6 which greatly exceeds the margin required by state statute. Non-ratification would have required more than half of all possible votes to reject the proposed budget.
- Gay Cass did not run for re-election, closing her 4 sets of three-year terms of service. The Board took up a collection to send her flowers and a card thanking her for 12 years of service. Michele Nowak, and Duane Esarey were re-elected for three-year terms. Emily McNeely was elected for a three-year term.

The annual meeting fulfilled various annual requirements, such as making a list of the membership available, presented the revised architectural checklist and discussed the Board's continuing effort to explore the status of our covenants and consider next steps.

Election of Board officers for the coming year

All current officers were willing to serve again in their current posts and there were no other nominations. Emily made a motion, seconded by Jimmy, to accept the slate by acclamation. Motion passed. The officers are:

President – Duane Esarey
Vice President – Jimmy Copeland
Secretary – Paula Shepherd
Treasurer - Janet Johnson
Assistant Treasurer – Michele Nowak

Treasurer's Report

- Hurricane Damage and Repairs: Clean up from the hurricane has been done mainly by volunteers. The tree leaning on the common area electrical box needs to be cut back or removed by a professional. We are currently waiting on the power company to notify us of whether the power is off. Blue Ridge Electric will reset the box once the tree work is done. Differing opinions on whether the tree would survive with a large trim or needs to be completely removed.

- The community needs to:
 - Move the gazebo base back to its place.
 - Dig out the ditch to the river. Note: This area was swampy until Duane cleared it by hand and restored the water flow a few years ago. Sand from the flood has silted it up again.
 - Regrade the small landslide that filled the ditch on lower River Sound.
 - Move the large piles of sand left by the flood to create a sandy beach on the river bank.
 - Re-gravel the common area road to the river. It will take at least two loads of gravel. Duane said gravel may cost \$900 per load. Graveling the road was already estimated at \$1000 by our reserve study.

Cole Jordan quoted \$4300 for all the work including the gravel. Donations from community members so far totaling \$2000 will cover part of the cost. These were received after Duane and Janet sent an email to the membership detailing the damage, cleanup efforts, and volunteer involvement. What a great show of community spirit!

Jimmy asked if we ever found the community bulletin board. Sadly, no. It's downstream with our lost picnic tables.

Guardrail Replacement: We need to replace our deteriorating guardrail on Upper River Sound Road. It was already rotted or been damaged over the years. One of the large trees that fell across it broke one section.

There are companies that replace guardrails including a NC company that sells used guardrails at a discount. Duane found a price on-line of \$100 for 25 foot lengths not including the vertical steel supports and assembly. Duane said if we buy steel we should be good for the foreseeable future. Duane gave a very rough estimate of \$2000 total and agreed to look into it further. In the reserve study, Janet has budgeted \$400 every five years for guardrail replacement which may just about cover the cost. We have not spent any money on it since it was originally installed.

Volunteers and Liability: The board agreed to implement a volunteer liability waiver to protect the HOA if a volunteer is injured. The board members were in favor of the draft waiver as our final version. Paula made a motion, seconded by Jimmy, that volunteers be required to sign the HEPOA liability waiver. The motion passed.

Credit Card: Our credit card was compromised and we are awaiting a new one from the bank.

HOA Leader Newsletter

Janet credits HOA Leader with educating her on the many policies required by HOAs as well as providing sample policies that saved us the expense of a lawyer. For example, we obtained sample fiscal policies from the newsletter that were instrumental in meeting the standards required by our insurance company. These policies include provisions such as requiring bids for work, obtaining board approval before hiring anyone to perform work, and ensuring payment approval before the treasurer processes payments. Additionally, the policy stipulates that no one can be reimbursed for expenses unless they receive prior board approval. Among the many webinars Janet watched was one that explained how to conduct a reserve study, which was invaluable in creating ours.

note: The 2021 Florida Surfside condo collapse occurred because that HOA never fixed anything. Florida now has a law that HOAs must have to have their reserve money up to where it needs to be. People there have been hit with \$100,000 special assessments because some HOAs never collected enough or fixed anything, and no one was paying attention. Other states are moving in the direction of Florida, so we need to know what's coming down the pike.

The HOA Leader has been as a resource for understanding HOA obligations old and new. Without it, we would not have known about the new federal Beneficial Ownership Information requirement that could cost us \$500 a day up to \$10,000 in fines if we do not comply by January 1st.

For three years, Janet has paid for the HOA Leader subscription with her own money. Michele made a motion, seconded by Janet to subscribe to the HOA Leader for the Board. The motion passed. The next annual subscription of \$119 will be paid from our operating budget and all board members can have their own HOA Leader account.

On the chance that our new credit card does not come in time to pay the HOA Leader subscription before the December 12 webinar on federal requirements for HOAs to supply Beneficial Ownership Information, Janet requested Board approval to pay with her personal credit card and then be reimbursed. This webinar is free to HOA Leader members. Webinars normally cost \$69.

Beneficial Ownership Information

There is a new federal requirement for HOA Board Members to supply personal information and an ID such as Driver's License or Passport for entry into a federal database under the **Corporate Transparency Act**. All the Board members agreed to send this information to Janet to meet the federal deadline.

- When anyone expresses interest in running for the Board, we need to let them know this requirement.
- We need to have a protocol to ensure personal information is deleted from our computers once someone is no longer on the Board.

Optimizing our Reserve Fund

Our reserve fund is split into a \$75,000 CD earning 5% interest and a checking account with \$15,000.

Janet learned about a financial instrument called a Blended Certificate of Deposit (CD). The Blended CD offers 4% interest and allows us to write one check a month as long as we keep a minimum \$500 balance. Janet said we rarely write even one check a month for reserve expenses. The one check per month limit should not be a problem especially if we know what expenses are coming up.

With our regular CD maturing in January, we need to estimate how much to take out before it rolls over for another year. For instance, one upcoming road repair estimate is \$10,000. Jimmy and Janet will calculate estimated reserve expenses for 2025.

In order to maximize interest available on money we are setting aside for upcoming bills, Paula made a motion for Jimmy and Janet to move \$15,000 from the checking account and the amount of money they estimate we need from the CD into a Blended CD for use in paying reserve expenses in 2025. Michele seconded it and the motion passed.

Old business

Covenants status update: As a refresher, Duane reiterated information presented to the membership and recorded in the annual meeting minutes: Consultation with an HOA expert lawyer (Atty Timothy Swanson) revealed that **only** our original 1999 Covenants are valid, although he exclaimed they also were “strange.” We received inaccurate legal advice in 2020/2021 that the Developer and the Board could institute new Covenants. Instead, the stricter requirement of the NC Planned Community Act takes precedence. New Covenants require notarized signatures by 2/3 (67%) of the community. Atty Swanson outlined two options for addressing this situation.

Option 1) Because the various attempts at revising the Covenants were recorded with the court, we can ask for a judicial declaration that these Covenants are invalid. Approximate cost would be perhaps \$10,000, which still leaves us with only the 1999 Covenants, which are a confusing mix of Developer and HOA rights and obligations. This option would cost \$185 per lot for only one year to the assessment to cover this cost.

Option 2) Establish new Covenants which require approval and notarized signatures by 67% of the community. Atty Swanson can provide a draft incorporating current HOA law, which we can customize if desired. Approximate cost would be perhaps \$2000-\$3000. We would need about \$40 per lot for one year to cover this option. Normally, our annual contingency fund would cover this if not for Hurricane Helene damages.

Duane observed that if we get new covenants approved by the community, the entire question of all the various invalid covenant revision attempts (2006, 2009, 2013, and 2021) goes away. This will require legwork, but it can be done over time. If we get the same level of cooperation we’ve gotten for our annual meetings, we have a good start. For instance, the 2025he budget was approved by 50% of the vote (27 out of 54) without any extra lobbying. With a concerted effort 67% approval of the covenants could be within reach.

We should let members know there is a problem with having all these invalid versions of our covenants out there. It could cost HEPOA \$10,000 to have a judge nullify the four or five invalid covenants created by various Boards over the years.

Atty Swanson could provide us with normal covenants for our kind of community. We then address any issues we think are missing, keeping it simple.

Duane suggested clarifying that the consolidation of lots was originally a sequence of steps with a deadline laid out by the Declarant and not meant to continue forever and not meant to extinguish assessments. Janet wondered if the new covenants should not discuss lot consolidation at all. As long as the new covenants are legal, make sense, and take legal precedent there is no reason for anyone to go back to the old covenants.

Atty Swanson said covenants are not allowed to depart substantially from the Developer’s intent which unfortunately is confusing in our covenants. Early on, the HOA misinterpreted the developer’s \$200 road fee as the assessment costs once the HOA was formed. It is not. Once we became an HOA we no longer had a Developer or a road fee. Although it’s poorly stated, our covenant clearly does give the HOA the authority and obligation to collect enough money for operating and reserve expenses. Lot consolidation should not be a Board concern as long as it does not result in assessment reduction or extinguishment.

Janet moved that we set up a meeting with Atty Swanson, invite all Board members and ask him to draft covenants, Jimmy seconded the motion. Motion passed.

New Business Future Board Meetings Schedule: This is the first of regularly scheduled Board meetings. We will meet on the first Monday of every other month at 7 pm. Future meetings will be in February, April, June, August, October, and December 2025.

Jimmy made a motion to adjourn, seconded by Emily. The motion passed.
Meeting was adjourned at 8:18 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. Members' 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.