

**Golden Valley Estates Homeowners Association
General Meeting – April 21, 2018, 12:00 noon – 2:00 pm
Cherry Mountain Fire Station
5841 Bostic Sunshine Hwy, Bostic, NC**

Welcome and Call to Order

The Golden Valley Estates Homeowners Association met on Saturday, April 21, 2018 at the Cherry Mountain Fire Station. Carol Davis, GVE HOA President, welcomed everyone and called the meeting to order at 12:02 pm.

Invocation

The invocation was given by Fran Marshall.

Lunch

After lunch, the meeting resumed at 12:56 pm.

Introductions - Board of Directors

Board members present: Carol Davis – President, Bruce Roberts – Vice President, Christy Bryant – Secretary, Michael Gallacher –Treasurer, Directors – Sandra King, Paul Bucklin, Francis Holt and Shannon Kinder.

New Homeowners were welcomed!

Secretary's Report – Christy Bryant

The minutes from the Oct. 21, 2017 meeting were distributed via email to the membership. A limited number of hardcopies were available at the meeting. A motion was made by James Hussmann (Lot# 130) and seconded by Georgia Hollis (Lot# 35) to approve the minutes as submitted. The motion carried.

Treasurer's Report – Steve Cardo

- Current Financials
 - Steve provided a high-level overview of the association's finances (details provided at the October meeting). There is approximately \$85,000 in the Reserve account.
- Discussion on Due Increase - There was a lengthy and robust discussion on the current costs of road repairs and the anticipated need to complete more extensive repairs in the future.
 - It is a known fact that the roads were not built to North Carolina Department of Transportation (NC DOT) standards when the sub-division was established and at some point the entire ~ 5.5 miles of roads will need to be completely re-paved. Only severely damaged sections throughout the sub-division have been repaired in the past. The members agreed it is highly likely a future large one-time assessment of thousands (TBD) of dollars by lot to cover these anticipated costs will be required. After much discussion, the members agreed smaller payments to build up reserves would be more acceptable. A motion was made and seconded to increase the annual dues assessment, effective January 2019, from \$250 to \$300. The motion carried.
 - In addition, it was agreed that subject-matter-experts should be engaged to complete an assessment of anticipated costs to repave the sub-division. This will involve doing the research and collecting the facts on the costs, including securing a list of potential NC DOT certified vendors to complete the work. With this in mind, a motion was made by James Hussmann (Lot 130) and seconded to setup a Road Repairs Committee to complete an evaluation on anticipated short and long term costs to re-pave the entire sub-division roads to NC DOT standards with this assessment not to exceed \$10,000 in expenses. The motion carried. The committee is expected to provide a status update at the Fall meeting in October, 2018.
 - Since we still need to complete the sealing of the roads following the repairs just completed in March (estimated to cost \$60,000 - \$64,324 was reported to the Board in a previous discussion),

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to offset part of this expense, the members agreed a one-time assessment of \$250 per lot (there are 132 registered lots) due immediately should be considered. This should bring in approximately \$32,000 in funds to apply towards the sealing costs. Those present agreed that getting the roads sealed now would be prudent against any future deterioration of the roads. A motion was made by Lot #77 and seconded for the one-time immediate assessment of \$250 per lot to go towards the previously approved expense to seal the roads. The motion carried.

Vice President's Report/Elections – Bruce Roberts

The current Board consists of Carol Davis, Bruce Roberts, Steve Cardo, Francis Holt, Paul Bucklin, Shannon Kinder, and Christy Bryant with one (1) vacant position. Board members eligible for re-election were Francis Holt and Shannon Kinder. Paul Bucklin decided not to run for another term and Carol Davis will be resigning effective the meeting. Four (4) nominees were presented for Director on the board:

- John Hayes (Lot #36)
- John Higdon (Lot #40)
- Roger Wentz (Lot #88, 89)
- Gil Zmithrovitch (Lot#77)

A motion was made to close the nomination on the four names. The motion carried. A motion was made that the slate be elected by acclamation. The motion passed unanimously.

Another motion was made and seconded to re-elect Francis Holt and Shannon Kinder to the Board. The motion passed unanimously.

Old Business

▪ **Front Gate**

○ **Camera Internet Hookup**

- Work on getting the internet hookup for the Front Gate camera is still underway. Francis Holt will contact the Electric Company to determine the options for getting power to the site. Carolina West Wireless will be explored as an option for an internet provider.

○ **Gate Repairs**

- Brian Moran, who handles gate repairs, was unable to attend the meeting. Carol reported the association needs to look into upgrading the gate due to on-going expenses (approximately \$400 per repair) when storms and/or lightning strikes the gate. The association had about four (4) repairs in the past two years. In discussion with Brian, he stated there's no way to modify the gate to prevent or minimize lightning strikes and the resulting outages. It already has surge protectors. He provided an estimate of \$4,800 for a new gate. It would have a solar panel feature, allowing us to shut off the power during the storm season (spring/summer). This will reduce the threat of strikes and the gate actuators (power arms) could be more readily detached, when needed, rather than being taken apart as they have to be now. This will be investigated by the board.

▪ **Back Gate Camera and Light**

- This was not discussed during the meeting.

▪ **Road Repairs**

- See previously discussion related to Due Increase.

▪ **Website**

- Shannon was unable to attend due to work commitments. Carol provided the update. The website will be upgraded to provide a secure area. This will allow the association to pay due and provide association only

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information. A domain name must be purchased. The annual cost is estimated at \$300. There will be no ads. The Facebook site is still available.

▪ **Real Estate Update – Karen McCall**

- GVHOA – Three properties have sold – 1 lot, 2 homes. Eight (8) properties are on the market.

New Business

▪ **Landscaping Needs**

- Francis Holt will look into getting estimates to cover landscaping contractors to meet all of the needs of the sub-division.

▪ **Snow Removal**

- There was a general discussion regarding the past and current association position of not providing snow removal. It was noted that Clayton Self has previously provided a proposal. There are more full-time residents on the mountain. A motion was made by Michael Gallacher (Lot# 121) and seconded by Diane Atwell (Lot# 125) for the board to reconsider snow removal. The motion carried. Francis Holt will investigate this.

▪ **Home Rental (see attachment below)**

- Carol reported that she engaged the law firm of Moretz, Karb & Gelwicks, P.A. to look into the issue of home rentals. After a review of the response, it was determined that based on the current GVHOA Restrictive Covenants, homeowners can rent out their property. The covenants would need to be changed to place this restriction on homeowners. From attachment below is the following finding:
 - *In conclusion, in order to enforce some sort of policy regarding rental restrictions, there needs to be some specific language specifically restricting rentals within the community. Renting property has not been deemed to qualify as commercial use if the property that is rented is being used by the renter for residential purposes.*

▪ **Annual donation to the Cherry Mountain Fire Department**

- This was not addressed during the meeting.

▪ **Yellowtop HOA – Plans for gate at Arbra Mountain Way**

- The Back Gate is currently slated as the emergency exit for the sub-division into a connector road to the Yellowtop sub-division. The Yellowtop HOA will be installing a gate at the connector road, thus eliminating this as an emergency exit. The new gate is meant to be locked most, if not all of the time. Members expressed concerns regarding this decision. The Board will share these concerns with Yellowtop Management.

Door Prizes

Next Meeting

The next meeting is scheduled for the 3rd Saturday in October (Oct. 20, 2018).

Adjournment

With no further business, the meeting was adjourned at 3:26pm.

Respectfully submitted,
 Christy Bryant, GVEHOA Outgoing Secretary

Name	Position	Contact email
Christy Bryant	President	christybryant@windstream.net
Roger Wentz	Vice President	RWentz@dwhomes.com

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Name	Position	Contact email
Gil Zmithrovitch	Secretary	gzmithrovitch@triad.rr.com
Steve Cardo	Treasurer	csacjr@aol.com
Bruce Roberts	Director	bruceroberts88@gmail.com
Shannon Kinder	Director	skindersc@gmail.com
Francis Holt	Director	bjhstudios@gmail.com
John Hayes	Director	brendarn503@gmail.com
John Higdon	Director	johnandkellyhigdon@msn.com

Attachment:

Information provided by Carol Davis related to Attorney response related to Home Rentals:

From: cbdavis17@aol.com [mailto:cbdavis17@aol.com]
Sent: Saturday, April 28, 2018 10:01 AM
To: christybryant@windstream.net
Subject: Fwd: Golden Valley Estates and commercial use

Christy -

Here's Chris's full text on rental/residential property use.

Carol

-----Original Message-----

From: Chris Gelwicks <Chris@mkglawfirm.com>
To: cbdavis17 <cbdavis17@aol.com>
Sent: Fri, Apr 20, 2018 5:19 pm
Subject: Golden Valley Estates and commercial use

Dear Carol:

I have reviewed the email you provided wherein you provide the language that is contained in Paragraph 1 of the Declaration of Restrictive Covenants for Golden Valley Estates ("Declaration"). Specifically, you indicate that the question has arisen as to whether homes may be rented in the community and whether renting of a lot or house turns the property into commercial use. You indicated this has arisen due to owners experiencing nuisance-type activity from renters. I reviewed the entire Declaration as well as trends in case law for North Carolina and my analysis follows.

The concept of renting and restricting such rentals within HOAs has been one that has been at the forefront of association law for a number of years. The normal way for associations to prevent or restrict rentals within a community is by enforcing a specific residential leasing restriction that is contained in the Declaration itself. In other words, specific language exists indicating that renting within the community is limited either via a cap on the number of rentals, restricting

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the minimum length of time that a property may be rented or even prohibiting them altogether. Neither the North Carolina Court of Appeals nor Supreme Court have opined on the idea of rental caps or restrictions within association law. The general rule within North Carolina is that of being in favor of free use of property. This generally means that courts would lean in favor of someone being allowed to use their property as they wish. This would include renting the property. At the same time, specific restrictions within a Declaration of Covenants are generally enforced unless they are deemed unreasonable in some fashion. Thus, you have the ongoing conflict between those two ideals. Note that what I mentioned above dealt with a specific rental restriction.

The Golden Valley Estates Declaration contains no such specific restriction. The Declaration contains a requirement that a lot be used for residential purposes. It does not prohibit commercial use for the lot in general, but only prohibits commercial use of a secondary guest cottage. North Carolina courts have not treated residential rentals as akin to commercial use. North Carolina courts have not addressed residential renting in the context of whether such renting is commercial use. Courts have indicated that simple residential use restrictions that indicate that so long as an occupant of a lot or unit is using it for normal residential things (eating, sleeping, doing chores, homework, cooking, cleaning, etc.) are enforceable, but that such use is residential. So in this situation, if an owner rents his or her lot and the renter is living on the premises and using it for residential purposes, it is my opinion as well as of most others who practice in this area that such rental would not move the use of the property from residential to commercial and thus, not be in violation of the Declaration. There would need to be some sort of more specific restriction on rentals to enforce any sort of rental restriction.

The above was addressing long-term rentals, longer than 6 months. Where there is more of a gray area and where there is case law now developing throughout the country is in the area of VRBO or Airbnb-type properties. There were cases out in the western portion of the United States in which associations have argued that the rental of a property every weekend to a different person, a vacation-type rental, is not a lease or rental issue, but more of a hotel business-type use and therefore would fall under the definition of commercial use, thus violating a residential only use restriction. That argument has not been upheld in any court of which I'm aware, but that is a growing trend throughout the country. In an association that I represented last summer, I presented a dual argument to an owner who was using his unit as an Airbnb that he was violating the rental restriction and the residential use requirement by operating an Airbnb out of his unit. The owner ceased such use and then he eventually sold the property. I point this out to you because that area of attack on rentals is one that is still developing.

In conclusion, in order to enforce some sort of policy regarding rental restrictions, there needs to be some specific language specifically restricting rentals within the community. Renting property has not been deemed to qualify as commercial use if the property that is rented is being used by the renter for residential purposes. My guess is based upon what you have provided, that the properties that are being rented are being used for residential purposes. If these are more transient-type rentals (VRBO or Airbnb), we may be able to make some argument that the use is not residential even though the renters are using it in a residential fashion because of the transient nature of the rental. It would seem to be a stretch, but we can explore that if that is the situation.

Please let me know if you have any questions or if you wish to discuss this via telephone or in person.

Sincerely,

PLEASE NOTE OUR NEW NAME AND EMAIL ADDRESS

**MORETZ
KARB &
GELWICKS**

Christopher P. Gelwicks

Licensed to practice in North Carolina, South Carolina and Maryland

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Construction law · Real estate development law

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