

An Independent AAFPO Board

In 1995, the Association of Angel Fire Property Owners was assigned oversight responsibilities by the court—including the right to examine and approve how Angel Fire Resort (the Resort) spends members' assessments.

In October 2020, after the Resort refused to recognize the AAFPO Board, the Board was forced to file a lawsuit requesting the court: (1) recognize its status as a legally-constituted Board; (2) declare that the Board is entitled to information from the Resort necessary to operate as an association and to fulfill its oversight responsibility; (3) declare that AAFPO has the right to collect assessments; (4) declare whether the Resort has breached its fiduciary duty to AAFPO's members.

In its initial ruling, the court ruled that the AAFPO Board was, in fact, legally-constituted. The Resort has been challenging the rights and duties of the AAFPO Board ever since.

The central platform of the seven Resort-sponsored candidates for election to the AAFPO Board of Directors is to dismiss AAFPO's lawsuit against the Resort. Yet, the Resort's candidates have not explained how they intend to provide independent oversight of the Resort's expenditures and to enforce the rights of AAFPO's members if they are elected.

If the Resort-sponsored candidates are elected and subsequently drop the lawsuit, what leverage or credibility would they possess to defend AAFPO's member rights?

Would the Resort-sponsored Board simply accept whatever the Resort's legal counsel assures them it can do legally, regardless of the AAFPO governing documents or the law?

In addition to a request for legal recognition, the lawsuit filed by the AAFPO Board seeks affirmation of the rights and duties found in the governing documents and under New Mexico law, including:

- AAFPO's right to subcontract assessment collection to an independent third party.
- AAFPO's right to subcontract balloting and election administration to an independent third party.
- AAFPO's right to review and approve the Annual Amenities Budget prior to the AAFPO assessments being issued.
- AAFPO's right to review the Annual Report of AAFPO assessments collected in the prior year showing how the assessments were spent, including supporting documentation.
- The Resort's duty to keep assessment funds in a separate segregated account to be held in trust for AAFPO's members.

- AAFPO's duty to conduct oversight of Resort expenditures of the members' assessments and right to object to allocations for anything other than the Amenities, prior to spending those sums.
- The Resort's obligation to allocate to AAFPO either \$100,000.00 or 5% of the collected annual assessments every year, whichever is greater. It is estimated that for 2020 this figure is approximately \$250,000.
- AAFPO's right to access its own member database now in possession of the Resort.

Fundamentally, a nonprofit association, such as AAFPO, owns the list of its members and associated data. It must access this information to perform its core operations, including providing notice, collecting assessments, and conducting elections. Currently, AAFPO is forced to rely on the Resort to voluntarily disclose to the Election Committee Chair a list of names of members who are in good standing to vote in the election. However, there is evidence the database is incomplete and has inaccuracies. Because the Resort is actively participating in the election by funding and promoting seven candidates, withholding the AAFPO database is a direct conflict of interest and wildly improper.

In its court filings, the Resort has opposed AAFPO's attempts to exercise the above legal rights and duties. Does the Resort believe it is not bound to abide by these obligations? Should it have the option to pick and choose which legal obligations it will adhere to — all in the name of "getting along"?

Threshold Question: The outcome of the next few weeks and months will determine the ability of the AAFPO Board to protect its members' rights. When you cast your vote in the next election for AAFPO Board of Directors, please consider this question: Would an independent Board or a Resort-sponsored Board provide better oversight of the millions of dollars of annual assessments paid by AAFPO members that fund the Resort's Amenities?