

Relationship Status: It's Troubling

April 1, 2021

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Today, the Angel Fire Resort sent a mass email to our AAFPO Members containing all manner of spurious allegations against the AAFPO Board. The purpose of this communication is to address those allegations and to answer frequently asked Member questions.

FAQ

1. Why is the Resort accusing the AAFPO Board of Directors of misleading its Members?

The Resort has unleashed a cynical PR campaign against AAFPO in an effort to get it to drop its lawsuit seeking a determination that AAFPO is a homeowner association whose Members have a right to know and control how our dues are being spent. In a run up to this June's Board Member elections, the Resort continues to accuse the AAFPO Board of all manner of malfeasance and lack of transparency. For a time, the Resort withheld our own Members' email addresses to prevent us from communicating with you.

Now that we have those addresses and an email delivery system in place, we will work hard to keep each of you up-to-date and will not hesitate to counter the misinformation being spread by the Resort. We remain committed to ensuring that our Members have all of the information they are entitled to under the law and that their dues are being spent properly, in conformance with our governing documents.

2. Will the AAFPO Board consider dropping the lawsuit since you're spending hundreds of thousands of dollars of Member dues on legal fees?

AAFPO's legal fees to date are not even close to \$100,000 – and the Resort knows this since we have shared our legal costs with them. Nevertheless, the Resort continues to accuse AAFPO Board of out-of-control spending on attorneys on a frivolous and unnecessary lawsuit. In fact, the AAFPO Board and its attorney spent months trying to obtain financial documents from the Resort – documents which the Association is legally entitled to – only to be repeatedly stonewalled by the Resort. Once the Resort made clear its position that the AAFPO Board is not legally constituted and therefore is not entitled to the information we were requesting, we sought a legal determination from the court.

3. During last month's AAFPO Board meeting, a smaller budget than last year's was approved and a follow up letter stating that Members' annual assessments should be much less than the previous year's, yet the invoice I received from the Resort shows the same annual assessment as last year. Should I pay the assessment due as billed by the resort?

At this point, the AAFPO Board has little control over the actions taken by the Resort. Until we get a ruling from the court, we believe Members should pay the amounts shown on the Resort-generated invoices.

4. What if I pay the assessment due and I did indeed overpaid since it should be much lower? Will I get a refund?

The AAFPO Board will seek a determination by the court on the question of the AAFPO approved budget and associated dues. Should we prevail on this question, the AAFPO Board will look to refund Members' dues or to credit overpayments toward future dues payments.

Fact checking the Resort's "Fact Check" of AAFPO's March 11, 2021 Board of Directors Meeting

What You May Have Heard

1) AAFPO Board does not have the authority to reduce your Member assessments. False.

Pursuant to the AAFPO By-Laws: "The method for calculating the amount of the assessments will be based upon the percentage of use of the Amenities by the Members compared to that of the general public." AAFPO's Board has done this calculation, based on the information made available to the Board by the Resort, and has determined that AAFPO's Members should not be paying the amount of assessments currently being charged by the Resort, based on the percentage of usage of the Amenities by AAFPO's Members compared with the usage of the general public.

Section 4.16(f) of the By-Laws states that the AAFPO Board "will receive the annual amenities budget from the [Resort] prior to the Annual Assessment being spent. . . The process will be worked out with the [Resort] whereby the [AAFPO] board cannot unreasonably withhold the Annual Assessment funds from the [Resort] or its successor."

No process has been worked out for negotiating the amount of the Annual Assessment. There is no contract between the Resort and AAFPO regarding how assessments are collected, despite the fact that the Plan required such an agreement. As far as we can tell from the documents available to us, no AAFPO Board has ever withheld Annual Assessment funds from the Resort.

The By-Laws were an exhibit to the Plan, and were incorporated by reference as part of the Plan. The Resort claims it is not bound by the terms of the By-Laws. This is an issue that is disputed in Court.

AAFPO will be seeking a determination of this dispute in court. Additionally, AAFPO will be seeking a ruling on whether the Resort is properly performing its duties as AAFPO's agent for collecting assessments when the Resort has sent assessment invoices to AAFPO Members that are not consistent with the instructions of the AAFPO Board.

We are hopeful that the court will be able to make a determination regarding the applicability of the By-Laws and the Resort's duties to act as AAFPO's agent in the near future. However, at this time, AAFPO is having to first address several other issues that have been raised by the Resort, including whether AAFPO has a legally constituted Board, and whether AAFPO is a Homeowner Association.

2) The AAFPO Board does not have the authority to ignore the Resort's budget and approve its own.
False.

The Plan states that the AAFPO Board has the authority to disapprove of the Resort's budget and withhold funds, if doing so is reasonable.

Per the By-Laws, AAFPO has a responsibility to its Members to only pay amounts to the Resort proportionate to Members' use of Amenities compared with use by the general public. If AAFPO fails to enforce this provision, its Members will continue to subsidize the public's use of the Amenities to the Members' financial detriment and the detriment to the values of the Members' properties.

3) The Resort has consistently collected approximately 91-92% of Member dues since 2010. Don't Know.

The AAFPO Board cannot specifically confirm nor deny this statement, as the Resort is not providing complete information regarding what Members have paid what amounts of assessments.

The AAFPO Board has received a summary of Members who are in good standing and those who are not. Based on this information, it would appear that approximately 1,800 of AAFPO's 5,600 Members are not in good standing. However, this information might be inaccurate.

4) The Resort provides a monthly dues collections and amenities improvement report to the AAFPO Finance Committee. Partially True.

It is true that the AAFPO Finance Committee receives a report that shows total amounts collected and a line item summary of how assessments are spent on amenities. However, AAFPO does not receive a report regarding what Members are not paying assessments, nor how much they owe.

At this time, the Resort is providing AAFPO's Finance Committee a spread sheet showing categories of Amenities and how much they claim has been spent on each. We do not have backup documentation to confirm how much has been spent on Amenities.

Without additional information, we do not know if the Resort has spent any of the Annual Assessment on something other than Amenities. However, we also know that at least one category of Amenities, the Country Club, has shown approximately \$100,000 being spent for the past 11 years. This amount coincides with the agreement whereby AAFPO would pay 40% of its 4% of assessments collected each year for spending on Amenities. It was contemplated that these amounts would be necessary to pay off a loan the Resort stated it was obtaining to fund construction of the Country Club. We now know that the Resort did not borrow money to build the Country Club. Therefore, we don't know how the approximately \$100,000 per year line item for the Country Club has been used.

We do not know if the line item for the Country Club is the only line item that is not being used as represented by the Resort. That is why we are seeking this information in discovery.

5) Requiring an NDA is reasonable. False.

Nothing in the Plan requires an NDA. One reason AAFPO has filed suit against the Resort is that AAFPO wishes to know the details regarding how the Annual Assessment has been spent, such as backup documentation showing how it was spent, and bank records from the segregated account from which the money is spent. The Plan does not specify what information must be in the annual report.

If the Board members signed an NDA, they would not be able to provide information on how the

assessments paid by AAFPO Members is spent to anyone, including Members of AAFPO. Pursuant to the New Mexico Homeowner Association Act, AAFPO has an obligation to provide this information to its Members upon request. Failing to do so would be a violation of statutory law.

In its Response to AAFPO's Motion to Compel, the Resort has taken the position that AAFPO is not a Homeowner Association, as defined in the Homeowner Association Act. A hearing is set on this motion for April 22 at 1:15 p.m. The Motion to Compel, Response and Reply are posted on the AAFPO web site.

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Of course, you probably have questions of your own. Please know that we—the members of the AAFPO Board—are here to answer them in a timely and respectful manner, and with the same honesty we've always demonstrated in our dealings with you.

Contact us at Executive-director@aafpo.org.

Thanks!