

The Association of Angel Fire Property Owners, Inc.

Minutes of the September 10, 2020 Regular Board Meeting of the Association of Angel Fire Property Owners, Inc. Board of Directors.

Location of Meeting:

Due to the Corona Virus restrictions and New Mexico governing requirements, all Board of Directors and members were together at a Virtual Meeting through Webex teleconference.

Time Commenced:

The Regular Board Meeting of the Association of Angel Fire Property Owners, Inc. was called to order at 5:36 pm MST on September 10, 2020.

Roll Call: Establish a Quorum

Board of Director's Name	Present	Board of Director's Name	Present	Board of Director's Name	Present
Penni Davey	X	Jim Miller	X	Sandra Trom	X
Holly Ham	X	Hank Rennar		Peggy Trott	X
Spencer Hamons	X	Carol Rupp	X		

Seven (7) Directors present. Therefore a quorum was established.

Penni Davey started the meeting by introducing two of the guests, Rachel Winston and Don Walcott of the law firm Walcott, Henry & Winston, PC. She also noted that this firm had been selected to represent the Association of Angel Fire Property Owners, Inc.

Mark Manley, Angel Fire Resort General Counsel & Ex-Officio Member of the AAFPO Board, was present at the beginning minutes of the meeting. He interrupted Vice President Davey at 5:41 PM (MST) in her agenda process, stating "He does not wish to waive his objection to his belief in the lack of quorum of the board by further participation in the meeting and therefore will be leaving the meeting at this time." Penni Davey thanked Mark for his comments and moved on to the Guest Member Introduction and Comments. Director Miller asked if the absence of the Ex-Officio would affect his serving on the board. Vice President Davey said it was a good question for the legal counsel to address.

1) Guest Member Introduction and Comments

Penni Davey, Vice President

Due to COVID restrictions and the meeting being facilitated online, Penni did not have access to the guests online, she asked the Secretary to address the guests one by one. Sandra asked the phone in guests, one by one, if they had any comments or issues they wanted to discuss. Each guest was given two minutes.

Guests started at the top of the list:

- 1) Vitaly Pavlenko – no Comments
- 2) All other members on-line had no comments or did not acknowledge themselves.

2) Agenda Approval

Penni Davey, Vice President

Sandra Trom made a motion to approve the September 10, 2020 agenda. Peggy Trott seconded. Hearing no objections, the motion carried and the agenda was approved.

3) Minutes Approval for:

August 13, 2020 Board Meeting – motion by all Directors to approve; no objections. Minutes therefore approved.

4) Membership and Resort Report

Mark Manley exited the meeting early so no report was given.

5) Member Issues Report

Sandra reported there was one issue reported by a homeowner:

- a) *Signage Violation* – member reported two homes on Panorama Way North in the Chalets Unit Two Subdivision had signage that was in-excess of the one and one half (1 ½) square feet in area allowed by the covenants. The Environmental and Architectural Committee was aware of the violation and was handling the process of getting the signs under compliance. The board agreed to back the committee on legal help if needed.

6) Officer Reports

a) Vice President

Penni Davey stated that the Legal Committee members consisted of Hank Rennar, Spencer Hamons, Frank Wood and Penni Davey (Chair). She concluded that the committee made recommendations to the board on the different firms that were interviewed and the Board selected Walcott, Henry & Winston, PC. *She asked the new counsel to speak on behalf of AAFPO.*

Don Walcott introduced himself. He said the new AAFPO attorneys did send a letter to Dan Rakes, Executive General Counsel for the Angel Fire Resort, on the issue of proper constitution of the board. **He said it was important for the members to know that the board was properly and legally constituted and capable of acting on behalf of its members.** *A copy of this letter is attached to these minutes for review.*

Don stated in the letter sent to Dan Rakes, he pointed out that the New Mexico statute 53-8-20 states, in pertinent part:

- A. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the Nonprofit Corporation Act, the articles of incorporation or the bylaws.

AAFPO's Bylaws, Article VII, Section 3, however states that "a majority of the number of directors shall constitute a quorum for the transaction of business". With four Directors, a quorum is three. This is permitted under New Mexico 53-8-20, as it is not less than one-third of directors so fixed and stated in the Bylaws.

i) Officer Elections

Additionally, at the August 13, 2020 meeting of the Board, the four remaining Directors immediately appointed four new Directors before taking any other actions. This action was consistent with Bylaws, Article VI, Section 5:

Vacancies. In the event of death, **resignation** or removal of an elected director, his successor **shall be selected by the remaining elected directors** and shall serve until the next election of directors.

This is consistent with the N.M.S.A. 1978, 53-8-19 (1975), which states in pertinent part:

- A. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled **by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors**, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

The four remaining Directors unanimously appointed the four replacement Directors, who were immediately seated to the Board. After the new Directors were appointed, the Board has operated with eight Directors, which is clearly a quorum by any definition. All of this was done consistent with the Bylaws and statutory law.

Don said they provided this information to the resort and assumed they received this because the Resort sent a letter back to AAFPO saying they disagreed but didn't say why they disagreed or address any substance of the letter. He noted that the Angel Fire Resort is objecting despite a *legal opinion* that shows both statutory and presume to the Bylaws, that the Board *had the power* to appoint these new Directors and now has a quorum of directors to take any actions needed. Don said the law firm will continue to address these issues with both Mr. Rakes and Mr. Manley.

ii) Foreclosures

Don mentioned that they are wrapping up the three ongoing cases of foreclosure. He will be doing a substitution of counsel on these cases for Carol Neelley.

Holly Ham asked if she could address the attorneys. Don Walcott said Holly could ask the questions and he would address/research these outside the meeting. Holly said there were three formal requests from the Finance Committee to the Angel Fire Resort that she has **not** had a response to. She wants to share these with the members and forum. All questions are related to responsibilities of the AAFPO Board. Holly's Questions to Don Wolcott:

- 1) Assessment dues collected from our members that should be provided to the Resort and the remaining amount to be provided to the AAFPO Board. Holly said currently the Resort provides a check to AAFPO representing the 1% of monthly dues collected. She would like the 4% of discretionary fund dues collected to be provided to AAFPO also. Currently, the Resort holds this 5%.

- 2) Holly said all data and information pertaining to AAFPO members, including members' contact information, membership status, delinquencies, etc. are withheld from the Board. The Board would like access to this data per our bylaws so that we can communicate properly with our members.
- 3) Review of operating expenses and documentation of those expenses need to be provided to the Board on an ongoing basis. AAFPO wants to request monthly review of the 95% report, detailed data with PII and other personnel information. Holly said this is a fiduciary duty of the AAFPO Board to manage member dues and expenses and report them accordingly to AAFPO Members.

Holly said the Finance Committee is waiting on responses from the Resort to move forward on the handling of these requests.

Don Walcott said he has these issues on his list of items to handle. He stated he wanted to address the legal constitution of the board first and he will start to look at the other items soon. Holly stated the Finance Committee was prepared to support Don on the research if needed. Director Hamons reiterated how important it was for the Legal Committee to handle the legal constitution of the board before moving on to the other items.

b) Secretary

Summary of items handled between meetings

Between meetings, several items were presented and approved by the Board of Directors in accordance with Article VII, Section 5 which authorizes the directors to have the right to take any action in the absence of a meeting which they could take at a regular or special meeting by obtaining the written approval of the directors. These actions will have the same effect as though taken at a meeting and shall be reported as if a meeting had been held:

Four actions were taken between meetings:

1. Written approval for the retention of Legal Counsel for AAFPO.
 - a. Legal counsel will advise the Board of any pending legal matters such as foreclosure actions, challenges to AAFPO authority, and any civil suits
2. Written approval for the preparation of Federal Income Taxes for Reporting Year 2019
3. Written approval reaffirming the new Board of Director members that were approved and seated at the August 13th meeting
4. Written approval for the establishment, or re-affirmation of AAFPO working committees. The committees are as follows:

Legal Committee – Penni Davey, Chair

Amenities Committee – Peggy Trott, Chair

Finance Committee – Holly Ham, Chair

Covenants & Restrictions Committee – Jim Miller, Chair

By Laws Committee – Sandra Trom, Chair

Election Committee – Jay Mitchell, Chair

Annual Meeting Committee – Executive Directors, Chair

Director Ham suggested we add a new committee called the **Budget Review Committee** since the old committee has not been active in 20 years. Holly said the committee will review and make recommendations to the AAFPO board of the entire budget. She said there will be one budget, including 100% of all dues that are collected. Holly made a motion to add the Budget Review Committee and she offered to chair this committee. Jim Miller seconded the motion. Hearing no objections, the motion carried and the Budget Review Committee was approved.

c) Treasurer

Carol Rupp gave the report for Treasurer. A copy of the report is attached to these minutes for review.

Assets as of 09/08/2020:

Money Market Account - \$276,200.55

Checking Account - \$28,441.34

Total assets - \$304,641.89

Carol noted that all books are reconciled and up-to-date on both income and expenses.

Treasurer Rupp covered the following items:

Expenses:

- 1) Annual Corporate Report has been filed and paid.
- 2) Angel Fire Chamber of Commerce membership was due in January 2020 and has not been paid by the previous Treasurer. Carol made a motion to pay the \$225.00 in dues for the 2020 year. Director Trom seconded the motion. Carol asked for objections. Hearing no objections, the motion carried and the expense was approved.
- 3) 2019 Taxes are not filed. There were two extensions filed on the taxes. Carol stated that Monte R Barnes was retained to file the 2019 taxes and he has assured us these will be filed by the deadline of 10/15/20. Carol suggested we get back on schedule on our taxes. The 2018 taxes were not filed by the previous board until February 2020. She believes this is unacceptable and will work with the accountant to rectify this.

Director Trom asked to be recognized. She questioned Carol on the overdraft fee that was on the report she received. Carol reported that on 6/30/2020, there were six checks generated by the former executive director for almost \$30,000.00. Carol said she didn't have any access to the banking account or checkbook and had no idea these checks were written. As soon as Carol found out, she covered the amount from the Money Market account but we did incur a fee for this issue of \$35.00.

Don Walcott & Rachel Winston signed off at 6:03 PM to save on legal fees for the board.

7) Committee Reports

a) Finance Committee – Holly Ham

Holly Ham said the Resort cancelled the two collaborate workshops that were scheduled between the board and the resort. She said she was looking forward to having these rescheduled and would provide an update once this happens.

Questions on formal requests on 8/13/2020 from the Resort to AAFPO. Holly said the committee has not received any of the information and data dutifully requested of the resort. The individual requests are referenced above under "[Holly's questions to Don Walcott](#)".

Formal Budgeting process – Holly said she is providing to the Resort a formal budgetary process and schedule to review the budget. The last time a review committee did this was 1999-2000 as far as she knows. She has no records from her predecessor on a process. Holly's idea is to provide communication to the resort with ample time to allow a 3-3 ½ month process for the board to go through the budgetary process.

Holly stated the Finance Committee will be reviewing the audit process. She would like all finances, including the 95% and the 4% discretionary fund to be part of the audit. Holly reflected this has never happened in the past. A copy of the Audit Report is attached to these minutes.

b) Amenities Committee – Peggy Trott

Peggy said she has no report because she reached out to John Kitts via Christy Germsheid to say hello and tell them she was excited to work with them on the Amenities. Peggy received a response back from Christy that all communications regarding the resort and the AAFPO Board had to come through Dan Rakes.

**8) Old Business
PO Box Update**

Penni Davey reported that the postal box has been updated with all the new directors.

Dog park

Mark Manley was supposed to report on this but since he did not attend the meeting, we have no update on the park. Penni noted that AAFPO was supporting the dog park.

The next meeting is scheduled for Thursday, December 10, 2020 at 5:30 pm (MST). It will be a virtual meeting and the agenda and call in information will be posted on the AAFPO website.

9) Adjournment

There being no further general business, Jim Miller motioned to adjourn the September 10, 2020 AAFPO Board Meeting. Carol Rupp seconded. Vote was taken. Motion passed. No objections. The meeting adjourned at 6:23 pm MST.

Respectfully submitted, September 10, 2020

Sandra Trom, Secretary

Date

Penni Davey, Vice President

Date

DRAFT