

The Association of Angel Fire Property Owners, Inc.

Minutes of the October 29, 2020 Special 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 Special Board Meeting of the Association of Angel Fire Property Owners, Inc. was called to order by Vice President Davey at 5:34 pm MST on October 29, 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

Director Rennar was excused from the meeting due to a death in the family.

Director Hamons reported at 5:47PM (MST) that he did not start the recording of the meeting until after the roll call. It was an oversight on the system.

Mark Manley, Resort ex-officio Member of the board was present. After interrupting VP Davey multiple times, Mr. Manley was eventually muted by the host until he was allowed to have the floor.

Vice President Davey made a motion to change the Agenda. Director Ham seconded the motion. Discussion followed. Davey suggested we move the Guest Member Introduction and Comments to the end of the meeting agenda to allow the Legal Committee report to be discussed first. Davey asked for approval of the revised agenda. "All board members were in approval of the revised agenda saying aye and no board members were against." Motion carried.

1) Legal Committee Report

Penni Davey, Vice President

a) Vice President Davey stated that the AAFPO Board of Directors filed a legal complaint in the 8th Judicial District Court seeking full transparency from the Angel Fire Resort concerning how it is managing and spending the AAFPO Membership dues. The complaint covers the following:

- 1) Declaratory Judgment regarding lawful constitution of AAFPO's Board of Directors.
- 2) Declaratory Judgment regarding AAFPO's Right to Information.
- 3) Declaratory Judgment for AAFPO's right to collect assessments
- 4) Breach of Fiduciary Duty

5) Injunctive Relief

It was noted that Mark Manley interrupted VP Davey several times in her explanation to the members without having the floor or asking permission to speak, in violation of Robert's Rules of Order.

Davey then introduced Don Walcott of the law firm Walcott, Henry & Winston to further explain the charges, etc. to the AAFPO Members. Walcott addressed the email blast that the resort sent to the AAFPO Members without their knowledge. Attorney Walcott stated, *"The Resort attributes bad motives to our filing. However there is a very simple reason why we had to take this action. The Resort continues to state we are not a legal board and have no authority to act on behalf of its members."* Walcott went on to explain the position of the board and how the vacancies & appointments per the by-laws were legally followed. Don Walcott said he had corresponded with Dan Rakes by phone about these issues and Don mentioned *"that as you can see from the opening statements from the ex-officio member, and the email blast, the resort refuses to accept the plain language of the law and the language of the by-laws. It was noted that because the board cannot properly represent its members without the resorts cooperation, we had no option but to file suit Due to this, the first count covers the legitimacy of the board."*

Walcott stated the next counts involve cooperation from the resort. "Specifically, AAFPO is asking for Declaratory Judgment to have access to information maintained by the resort,

- (i) Including access to the member database
- (ii) Accounting for the use of AAFPO's 4% amenities budget
- (iii) Accounting for the use of the remaining assessments collected
- (iv) Information on collections and delinquencies of its members."

At this time, Don said he has not seen this information and the current board does not have all of this information. He stated the information is critical to the board to carry out its duties to represent its members and to account for how assessments paid by its members are used.

Mr. Walcott completed his explanation to the members, stating, "Third Count in the complaint is also for Declaratory Judgment that the association may choose to take the collection of the assessments from the resort. The association simply wants the right to do this as it seems the resort is refusing to provide this information on what is collected but also refusing to provide information on who is delinquent, to what extent and what is being done to collect on delinquent accounts. It is the board's duty to its members to ensure everyone is required to pay their assessments. Additionally at this time, the board is receiving less than 1% of the collected assessments despite being entitled to receive 5% pursuant to the bankruptcy plan. It is a great disadvantage to the board and its members to have little or no control over of how assessments are spent and accounted for. Because of the failure to pay the 5% and to provide the full accounting for the collection of the assessments, our fourth count against the resort is for breach of fiduciary duty. We are seeking to recover any damages resulting from this count. Finally, we have a count for injunctive relief in which we are asking that the Court order the Resort to pay 5% of the collected assessments on a monthly basis, potentially during the pendency of this suit and beyond. Again we believe that it is important that the Association makes sure that all assessments that are supposed to be paid to the association be paid to the association. The association is a non-profit corporation. It is run by volunteer board members. They have only one purpose which is to serve the interest of its members. The only

way we can do that going forward is to establish a legal board, establish the board's right to information from the resort and to establish the board's right to have control over the collection of and the distribution of its members assessments. That is what we intend to pursue in this litigation. I can understand that some from the resort might feel threatened by all of this. That is regrettable. There is no reason for the resort to be threatened by a request to simply do the things that were agreed to in the bankruptcy plan. Thank you."

VP Davey thanked Don Walcott for the explanation of the complaint to the members.

Mark Manley asked to speak. VP Davey agreed but requested that Mark follow the board's agenda. Mark said he needed to make a point of order to preserve the resort's ongoing objection regarding the legitimacy of the Board. He had questions on the cost of the lawsuit and VP Davey informed him that the Legal Committee and the board had approved this expenditure and the money is paid from the administrative budget just as it has been in the past.

b) Carpenter Case v AAFPO

VP Davey explained that Marty Carpenter, a homeowner in the resort, had filed a civil complaint against AAFPO for access to public documents (which AAFPO does not have from the resort) requested in late summer of 2019 from the previous AAFPO Board. These documents were to be provided in a 10-day time period. Don Walcott explained the response from the board. He said an answer has been filed on behalf of the association and there is a pretrial conference set up on November 12, 2020. Mark Manley requested a copy of the pleadings. VP Davey said they would be sent to him through Walcott, Henry & Winston.

c) Violation of Blue Aspen Signage (Brewers) and legal response to homeowner.

VP Davey stated that the legal team had made a decision on this violation and they do not believe the signage to be artwork. A letter was sent to the homeowner from the legal firm to remove the signage to comply with Covenants.

At 5:56 PM (MST), Don Walcott and Rachel Winston signed-off of the meeting to save the board members on legal expenses.

2) Minutes Approval:

VP Davey made motion to approve minutes of the September 10, 2020 Board Meeting. Mark Manley objected to the minutes even though he was not present at the September meeting. A discussion followed. Davey noted the objection and ask for an approval of the minutes from the voting board directors. All in favor. No objections from the voting board. Motion passed. Minutes therefore approved.

3) Membership and Resort Report

Mark Manley reported that the resort had opened all amenities and kept them open during this pandemic period until weather forced closure. He had no update on the Covid Ski policies for the ski season 2020-2021. There was no operating budget report or capital improvements report. Mark Manley said to submit questions on these two items and he will respond.

4) Member Issues Report

The secretary reported that due to the release of the Resort's email blast in relation to the complaint filed by the board, without their knowledge, many members contacted her for information. The secretary combined the information members were asking into a list of summary questions and went over these at the meeting to cover their major concerns. A discussion followed.

5) Officer Reports

a) Secretary - Director Trom

Secretary Trom reported that she had successfully move our registered agent over to High Desert Corporate Filings. There was a cost savings to the homeowner's association with this move.

Summary of items handled between meetings

Between meetings an item was 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 in 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:

One action was taken between meetings:

Written approval of complaint for Declaratory Judgment and breach of fiduciary duty 10132020-001.

b) Treasurer

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

Assets as of 10/29/2020:

Money Market Account - \$278,635.26
Checking Account - \$27,998.40
Total assets - \$306,633.66
Year to date 1% Collections - \$44,880.00

Treasurer Rupp explained the position of the Architectural Committee within the AAFPO structure. She stated they operate separately due to the nature of their business. There are two part time paid employees with weekly office hours.

AFE/ACC Assets of as 10/29/2020:

Money Market Account - \$300.00
ISB Checking Account - \$41,746.77
ISB Checking Account - \$91,568.15
Total Assets - \$133,614.92

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

6) Committee Reports

a) Amenities Committee – Director Trom for the **Chair - Director Trott** - due to audio issues

Director Trom read the Amenities Report given to her by Director Trott due to audio issues. Director Trott was online via phone and concurred with the report read by Director Trom. Director Trott, Chair of the Amenities Committee, was able to secure committee members for each amenity as listed below:

- (i) Monte Verde Lake – Brian Renegar
- (ii) Golf – Scott Johnson
- (iii) Tennis – Drew Maxwell
- (iv) Trails – Fonda Brown
- (v) Country Club – Peggy Trott

It was noted that the current amenities budget for 2020-2021 was already approved in March 2020 by the previous board but the Resort has not completed much of the approved work, as of August 2020. A list of these items was summarized. Director Trott has asked to meet with the resort on the new budget for 2021-2022 but the resort is saying the AAFPO Board is not legitimate so have refused all meetings. She has questions on how to move forward and how to get the Resort to account for the completion of these already approved amenities and expenditures.

Director Trott's biggest concern was the utilization of the ski mountain by members for the upcoming 2020-2021 ski season. She has been in contact with the mayor who informed her that the NM Ski Mountains are currently mandated to be at 25% capacity for the upcoming season and provided her a source for this mandate. It was noted that Red River, Taos and Santa Fe have all website-posted Covid 19 practices and how they will be operating, noting they will be operating at 25% capacity with a reservation system in place. Ski Apache has a notice on their website that they are temporarily closed in order to protect tribal and community members. Yet, as of this date our resort has nothing posted about winter plans and how this will affect our members. The resort continues to book reservations and sell season passes. Director Trott is concerned how this will affect the membership use of the mountain. Director Trott also expressed concerns regarding how the Board will notify our membership of the ski regulations for this winter season without a database.

Director Trom asked Mark Manley about the Ski Mountain and expectations for the members in the upcoming ski season. Mark said the resort hopes to make an announcement soon on the Covid Ski policy. The resort currently doesn't have a final release on this issue.

Director Hamons said he had a question from Director Trott (*whose audio was not working but had texted the question to him*). The question was for Mark Manley regarding the money already allotted to the amenities but not completed and the question on carryover on the money for those projects. Mark said he would check on this and get back to us.

Director Miller noted that he drafted the agenda to be comprehensive and transparent to all the members. After reviewing documents & responsibilities of the board, he found that the operating budget status and capital improvements on all the amenities was one an important and critical responsibility of the board. Director Miller recommended that these action items be added to the agenda. He suggested the Finance Committee and the Amenities Committee get together with the resort to clarify what we are covering at the meeting and get answers for our members. Mark Manley said he would be happy to meet with anyone from the board at anytime. Director Miller asked this to be logged as an action in the minutes.

Mark Manley stated that the ongoing objection and the board's ongoing complaint, we can agree we will move forward and that neither side is going to waive their objections in doing so. He would like this to be a blanket protection for both sides as we move forward.

b) Finance & Budget Review Committees – Chair - Director Ham

Director Ham restated that the Finance Committee has not received the information requested from the Resort on the following issues from several months ago:

- (i) Membership database access
- (ii) Access to more detail of how 99% of the funds of the annual dues collected by the resort on behalf of the AAFPO board is spent
- (iii) Collection and disbursement of the additional 4% to the AAFPO Board.

Director Ham reiterated that the AAFPO Board is the largest property association in New Mexico and collected approximately \$6 million in dues for the 2019 fiscal year. As finance chair and finance committee, Director Ham feels it is the Board's responsibility that we need to have full-accounting for the membership. In addition, Director Ham said the Budget and Review Committee has been reestablished. She stated that the Budget and Review Committee submitted a formal request to respectfully ask the resort to provide a preliminary budget four months before any final recommendations for the Board approval of the 2021-2022 budget. She then discussed the proposed schedule for reviewing the budget between AAFPO and the Angel Fire Resort.

c) AFE/ACC – Chair – Mike Stille

Mike stated the committee has been extremely busy for 2020. New build permits are up 70% and permits for additions are up 40%. Overall, 104 permits have been taken out which is the strongest the committee has seen in 15 years. Mike gave a summary of the background of the committee and purpose. He explained the AFE/ACC meets twice a month. Mike mentioned he would like the committee to take on the HOA Disclosures for AAFPO.

d) Covenants and Restrictions – Director Miller

Director Miller said the committee has been very busy reviewing the Covenants and Restrictions. They verified covenants that were valid and up to date and were in process of creating a template to help the Architectural Committee when needing to send violation letters, etc. to members/homeowners. Director Miller noted that there were 32 covenants of which 9 have expired, 3 expire in 2023, 19 renew automatically and 1 has no date or renews automatically (Valley of the Utes).

Director Miller said, "The committee is working with legal counsel to get all covenants current and in effect. However, to update an expired covenant, or make a change to any covenant, it requires contact and concurrence from 100% of the Property Owners covered by that covenant. The process has been slowed since the committee does not have access to the member database to contact the property owners on the expiration or approval of modified covenants. We will have to wait for the outcome of the legal complaint."

Director Miller stated the AAFPO Declaration is not invalidated by the expiration of any individual subdivision declaration. Therefore, the rights afforded AAFPO

to collect assessments and to undertake the duties assigned to it under AAFPO Declaration are not extinguished by the expiration of a particular subdivision declaration.

Director Miller noted the Valley of the Utes Subdivision Covenants and Restrictions were recently modified by the resort. They were allowed to do this because their covenant states that until 50% of the lots are sold, the document can be amended (currently only 45% have been sold).

7) Old Business – Dog Park

Mark Manley said the resort has never received an actual official request for the dog park. VP Davey explained the Friends of Angel Fire Dog Park made a presentation to the board in March of 2020. She believed they also had a meeting with Dan Rakes on adding the dog park as an amenity shortly after that. Mark said he would follow up with Dan Rakes and if there is a formal presentation on the table, he would move it forward. His understanding is there is no formal presentation on the table.

Director Trom asked Mark Manley what the resort needed to have the dog park move forward as a new amenity and she would speak with the Friends of Angel Fire Dog Park to see that send this to him. Mark said he would double check on this with Dan Rakes and get back to the board on this issue.

8) New Business – Secretary Trom

Facebook – Secretary Trom stated that she had opened a Facebook site to help direct members to the official website – aafpo.org and so far it was successful.

Newsletter – Secretary Trom stated they are putting together a newsletter to the members since consistent newsletters have not been in effect since 2009. The newsletter will be posted to the website.

Director Hamons explained that going forward, AAFPO would be switching to the *Zoom Platform* to make it easier for our homeowners to attend meetings. His suggestion is that we continue to do virtual meetings going forward so that all our members can be more involved, including those who do not live full-time in or near Angel Fire.

Director Miller stated that duties of the secretary are to respond to the questions coming in through the various channels and wanted clarification on that. VP Davey agreed that it is the Secretary's duty to respond and that she would pass on correspondence that needs to go to the various Committees or Directors as needed.

Mark Manley asked for a Point of Information relating to the Facebook page. Apparently, there is some confusion on several pages relating to AAFPO. Director Hamons opened a screen-sharing window to show the official AAFPO page. Conversation engaged with the board about the page.

9) Introduction of Guest and Comments

VP Davey explained the rules for guests and comments.

Director Hamons, through screen sharing, showed members how to access the aafpo.org website and how to open documents on the site so that they are enlarged and readable. He also encouraged our members to read the organizational documents to learn more about AAFPO and the history pertaining to the resort and AAFPO.

Comments from members online:

a) Call in User #27 – Doug Devlin, part time resident

Doug is an attorney from Texas. He asked when did the board last receive financials from the Resort?

Director Ham said she was Chair of the Finance Committee & the Budget Review Committee. She noted we get monthly reports from the resort on limited items. AAFPO receives a summary collections report, however, there are no details on expenses on dues collected. As finance chair, she is interested in the 95% report finances. At the moment, we don't have the details on the 95% report nor the 4% report. The resort is asking for a non-disclosure & confidentiality agreement to view the 95% report. In summary, we don't have the detailed finance reports needed to do our duty.

Doug said it makes sense for us to have this report. Mark Manley stated that he disagrees with many of the assertions that Director Ham has made. He said that the resort has provided budgets every year. Director Ham said she has not seen any budget in the last two decades of fiscal file, and requested that if Mr. Manley has any of these budgetary documents for the past five years (2015-2019), to please provide these. Status of this request should be reviewed at the next AAFPO Board meeting.

Doug stated that we should resolve this complaint. The resort should give the board & members what they need and move forward. Issue of quorum of board; suggested to have a special election to replace the directors who resigned. Mark Manley agreed the special election would be a good idea. Director Hamons said this would not work since we do not have a database to do this. VP Davey said she agreed. Discussion followed.

2) Call in user #38 – Mike (*could not understand the last name*); part time resident

While waiting for caller to identify himself or herself, Director Hamons asked Mark Manley, whoever sent out the email blast, send the board that list of members.

Mike asked what is the best way to reach board members or committee leads to volunteer to help? Email on AAFPO website is best way.

Executive-director@aafpo.org

Committee leads are on the website

Are you going to switch to Zoom in the future and will we be able to provide links? Yes, all members will be able to connect. We will publish the link on the meeting agenda.

3) Call in user #55 – Eric Stokes; full time resident

Eric said he just wanted to point out to the caller in users that to mute and unmute is *6.

4) Call in user – James Williams, part time resident
Asked about calendar on meeting schedule. Will there be a November meeting? VP Davey announced we have not scheduled anything at this time. Director Hamons said he thinks we should have a November meeting. If so, it will be posted with an agenda on the website.

- 6) Call in user – Derrell Fell; owns property in Angel Fire
Question on the ski hill? Will we be informed on the opening of the ski hill? Can you commit to letting us know before the ski hill opens?

Mark Manley said they are working on it and want to get the information out as quickly as possible. VP Davey asked Mark to send that information to the board also so we can post on our sites to keep members informed. Director Trom asked Mark Manley if members would have priorities over guests. Mark Manley said **yes**.

- 7) Call in user – Trevor Moore, part time resident
Corporate attorney. Trevor said that he wanted to confirm a board could fill vacancies without a quorum. He said this has been a function of corporate law as long as he has been serving so no doubt the board acted properly. Mark Manley said he disagreed with Trevor on the issue.

- 8) Call in user - James Williams
Question on resignations. Wants to see copies of resignation letters if any. VP Davey stated that the resignations happened at the Executive Session. Director Trom stated that there were only 2 resignations letters, all others were verbal and accepted by the board.

- 9) Call in user - Jerri Lynn; part time & full time resident depending on the time of the year
Jerri wanted to make a comment that moving forward she would like to see AAFPO have clear communication with the members. She stated that finding out about the lawsuit after the fact is hard. She wants to keep the communication open. Several board members agreed with Jerri and thanked her for her comment.

- 10) Female Homeowner did not identify herself
She questioned why we don't have the database for all the members of Angel Fire. She then asked about the website and the Facebook site. She was confused with the correct Facebook site to find AAFPO information. Apparently she was going to the wrong site and could not find any information on AAFPO. Director Hamons explained how to find the correct website and Facebook site. He stated the correct website is aafpo.org and the Facebook page would be linked to the website. It is Association of Angel Fire Property Owners, Inc.

Director Hamons stated that it seems our issue is not getting an email out to all the members. Director Hamons stated that is an issue listed in the complaint. Director Hamons said none of the current board members have a data list of members. We need access to the system to we can get information to our members. Mark Manley

states that we have this list. Secretary Trom stated if the resort has given us this list, then she requested he send this over to us in the morning. This would solve many of our issues on communication with the members.

VP Davey said any members that have questions that were not answered tonight, they can go to the website and send their questions to executive-director@aafpo.org.

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.

10) Adjournment

There being no further general business, VP Davey asked for a motion to adjourn. Director Hamons motioned to adjourn the October 29, 2020 AAFPO Board Meeting. Carol Rupp seconded. Vote was taken. Motion passed. No objections. The meeting adjourned at 7:43 pm MST.

Respectfully submitted, October 29, 2020

Sandra Trom, Secretary

Date

Penni Davey, Vice President

Date