

May 12, 2021

Dear Members of the AAFPO Board of Directors:

As you know, Art. VI, §5 of the Bylaws provides that, “[i]n 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.” On a plain reading of the language, this is in conflict with the New Mexico Nonprofit Corporation Act, which expressly provides at §53-8-19(B) that “[a] director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.” On May 9th, the board was advised by its legal counsel that the Nonprofit Corporation Code controls, following which the board roster was updated on the AAFPO website to align with the statutory requirement so that replacement directors (myself included) would serve the balance of their predecessor’s original term. Indeed, there appears to be a firm legal basis for the change, as §53-8-12(A) of the Nonprofit Corporation Act provides that “[t]he bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.” In other words, the law controls in the event of a conflict between the Bylaws and the Nonprofit Corporation Code. Acknowledging that to be the case, however, I am reluctant to read the Nonprofit Corporation Code in manner that would support the disenfranchisement of our members. After all, a corporation’s bylaws set forth the contractual relationship between the shareholders of the corporation (in this case, AAFPO members) and the corporation itself. In purporting to set aside the negotiated rights of members, the Nonprofit Corporation Code would lead us to an unsettling conclusion that actually diminishes one of the most fundamental rights of shareholders: the right to elect directors.

I volunteered to serve on the board, and accepted my appointment to fill the vacancy resulting from Ginger LaGasse’s resignation, because I support the pending litigation. The Resort has ignored the best interests of members for years, and the Board has a fiduciary obligation to members to hold the Resort accountable for complying with the plan of reorganization. That said, I also respect the members’ right to elect directors, and I want their voice to be heard when it comes to who serves on this Board. To that end, I intend to honor the Bylaws by serving only until the next election of directors—even if NM law would allow me to serve for the remainder of Ms. LaGasse’s term, and even if the Eighth Judicial District Court rules (assuming the issue is brought before it) that the Board is correct in its decision to have directors serve for the unexpired term of their predecessors. As such, I hereby provide notice of my resignation from the Board and the Legal Committee, effective June 26, 2021. I will gladly continue to serve the members of AAFPO, but only upon being duly elected at the annual meeting.

If I’m not elected in June, so be it. If members can’t be bothered to read the plan of reorganization and want to turn a blind eye to their rights and how their assessments are collected and spent, preferring to sit back and cower to the will of the Resort—though they appear to call that “cooperating”—so be it. If members are content relying on the opinion of attorney-members who are self-proclaimed experts on corporate law—the same “experts” who were so sure of themselves in challenging the right of the remaining directors, though less than a quorum, to fill vacancies last year—so be it. (I would no sooner rely on a trusts and estates attorney for advice on corporate law matters than I would rely on a dermatologist to perform open-heart surgery on me, should the need ever arise, but perhaps some members aren’t so picky.) Ultimately, if this is what the members want out of their Board and they’re able to fulfill their vision by packing the Board with directors who are willing to ignore their fiduciary duties, and who are happy to dismiss the lawsuit in favor of childish notions of “Can’t we all just get along?”, it’s their prerogative to do just that. Just like it’s their prerogative to point to the “incredible value” they get from the Resort as an excuse for preserving the status quo. They’ll only have themselves to blame when they discover, as I’m sure they eventually will, that they’ve been entitled to more, for less, this entire time.

Respectfully,
Trevor Moore