



August 24, 2020

Association of Angel Fire Property Owners, Inc.
Attn: Holly Ham
Post Office Box 21
Angel Fire, NM 87710

Re: Response to Request of AAFPO Finance Committee Chair

Dear Ms. Ham:

I am in receipt of your "Formal Request for Information and Access" provided to the Resort's Executive General Counsel on August 13, 2020, seeking additional information and access from the Resort related to the membership registry and JONAS login access, as well as your demands to transfer 4% of monthly association dues and for access to the budget and detail supporting the "95% Report" on a monthly basis.

As a preliminary matter and without waiving any of the Resort's objections regarding its legal concerns regarding whether a legitimate Board of Directors even exists, the Resort restates, reasserts and incorporates its position in the letter from Mark Manley, dated August 13, 2020 and his email response to you, dated August 21, 2020 (both attached hereto). A Committee can only exist through a legitimate organization and Board of Directors. The Resort challenges the AAFPO Board's ability to take any action for the reasons stated; however, in the spirit of cooperation and good faith, will respond to your questions and as always, remains committed to abide and comply with its duties and responsibilities as mandated by the governing documents.

The Resort and AAFPO have maintained an exceptional working relationship for the past 24 years. The Resort has always provided AAFPO the financial information/reports pursuant to the Amended Joint Plan of Reorganization (Case No. 11-93-12176 RA), filed on 9-27-95, in book 6 page 6754 in the Colfax County Records (the "AJP") and Supplemental Declaration of Restrictive Covenants and Easements filed on 9-27-95, book 6 page 6959 in the Colfax County Records (the "Supplemental Declaration," and with the AJP, the "Plan"). See Sections 4.16 (f) and (n)(vi). Over the years, the AAFPO Finance & Budget Committee and the Resort have developed an amenable process of reviewing and certifying that all membership money collected has been properly spent on the Amenities as mandated by the Plan. *Id.* The Plan encourages the Parties to agree upon process and procedures to carry out the intent of the AJP and Supplemental Declaration. *See Cf.*, Sections 4.16 (e),(f),(g),(i)(j)(k) & Supplemental Declaration, Sections 2, 3 C, 6, 9,10. Keep in mind both AAFPO and the Resort's finances are audited every year and to my knowledge, there has never been a irregularity or adverse finding with any of the reviewed and audited finances and have always been in full compliance with the Plan.

AAFPO and its attorneys developed a certification/check list outlining its duties and responsibilities under the Plan, which is attached hereto. See Exhibit A. It is my understanding, this check list was developed and drafted by AAFPO and its attorneys after the Bankruptcy. If you intend to disregard this check list, used by predecessor committees since 2000, please provide a draft of the alternative for review by the Resort. The Finance Committee certifies to the Board that the Resort is in compliance with the Plan and in turn, AAFPO certifies to the members at large, the same. This is one of AAFPO's major and primary responsibility under the terms and conditions of the Plan.

Regarding your request for members' information, you should already have what you are seeking. AAFPO recently communicated with the entire membership this past June prior to holding its election. AAFPO conducted the election using the database it maintains. The Resort would be happy assist AAFPO in updating its registry since the election, in the event the Board believes the departure of its Executive Director Linda Weir has contributed to disarray. If the Board believes its registry and notice to the membership was incomplete as of the date of the election, please provide the Resort with additional detail so we may more efficiently assist. I remind you of the Data Sharing Agreement between the Resort and AAFPO, attached hereto as Exhibit B.

Regarding your request to access to JONAS, the Resort will not comply with this request. The Resort has the responsibility to collect the membership dues. See Plan, Section 4.16(i)(iii); See also, Supplemental Declaration Section 3A ("Declarant [Resort] shall assess and the property owner of each homesite shall pay to Declarant a nonrefundable annual assessment..."). Under the Plan, "the Purchaser [Resort] shall have full authority to operate its business, retain professionals, buy and sell property, hire and fire employees, and otherwise operate to the fullest extent allowed by law, without further order of the Bankruptcy Court, and without Bankruptcy Court approval of compensation for any services rendered after the Effective Date." See Plan, Section 7.8. JONAS is a third-party billing and management software exclusively licensed to and paid for by the Resort, as part of its obligation under the Plan to collect the Annual Assessment. The JONAS database, developed by the Resort over years, at its sole expense, contains personally identifiable information of members, including without limitation, financial information subject to data protection, security and privacy laws, with which the Resort is solely responsible for complying. Therefore, the request to be added as an administrator or user in order to generate reports or eventually edit database entries is denied. Nevertheless, in the event the Board requires specific member information for a legitimate purpose, the Resort will endeavor to provide the same, as it has always done in the past.

Regarding transfer of 5% of the Annual Assessment to AAFPO directly no later than October 1, 2020, this demand violates the terms and conditions set forth in the plain language of the Plan and will not be provided. As set forth above, it is the Resort's responsibility to collect and manage the membership dues as mandated by the Plan. Even the current policy whereby the Resort pays to AAFPO 1% of monthly dues collected may also violate provisions of the Plan. As a result, the Resort is examining the continued viability of this policy. AAFPO has the right to designate the defined discretionary funds to the "[i]mprovement, maintenance or construction of any amenity or amenity related project as designated by the AAFPO board in its sole discretion." See Plan 4.16(j)(ii). This is a practice that has been followed by both the Resort and AAFPO since the bankruptcy. The Plan and its supporting documents simply do not provide for what you request.

In your August 12th email to the Resort's CFO Mark Seiter, you stated, "On an ongoing basis, AAFPO may request monthly review of the 95% report, detailed data with PII and other personnel information redacted. This is a fiduciary duty of the AAFPO Board to manage member dues and expenses and report them accordingly to AAFPO members." Your statement is both contrary to the plain language of the Plan and shows a fundamental misunderstanding of the governing documents. See Plan, Section 4.16 (h). Annual Assessment is defined in Section 1.8 of the Plan to mean "the required annual dues **payable to the Purchaser** by the Property Owners. Upon payment of the Annual Assessment, Property Owners will have the use of the Amenities as set forth in the Plan." The plain language of the Plan was affirmed by the New Mexico Court of Appeals in *Home and Land Owners, Inc. vs. Angel Fire Resort Operations LLC*, 2003-NMCA-070, 133 NM at 739-740. Other than discretionary projects it may designate, nowhere in the Plan does AAFPO have the right to "manage the member dues." Your request attempts to rewrite the plain language of the Plan. It is inappropriate, unacceptable, and not supported by law.

Finally, the Resort will provide the "95% Report" and budget on an annual basis, as it has historically, to Board members who have signed a confidentiality and non-disclosure agreement ("NDA") barring further dissemination. As you know, this report and budget contain proprietary information concerning the Resort's operations, the widespread distribution of which would place the Resort at a competitive disadvantage. AAFPO's attorney provided direction on these issues in the attached memo, which was posted on AAFPO's website for review of the membership, until it was removed after the recent election. Board members refusing to sign an NDA may have limited access to the report and budget upon written request to my office. To my knowledge, Penni Davey is the only board member to refuse signing the NDA.

I encourage AAFPO to retain competent legal counsel to consult with on these issues. Please do not hesitate to contact me with any questions or concerns related to your August 13th letter. My cell number is (505) 490-9207. Again, I look forward to working with you and a properly constituted Board in the near future.

Best regards,

ANGEL FIRE RESORT OPERATIONS, LLC



Daniel Rakes
Executive General Counsel

Cc: *John Kitts, CEO*
Mark Seiter, CFO
Mark Manley, General Counsel

EXHIBIT A

Amenities Budget Review Committee (ABRC)
2000-2001

AMENITIES BUDGET REVIEW COMMITTEE preliminary review plan for May 1, 2000-April 30, 2001 Preliminary Budget

Authority:

"Scope of Responsibilities & Activities" approved in AAFPO Board meeting of 14 January 98

Reviewers:

Betty Seilman
Phil White, Advisor
Gerald Ashmore
Bill Mason

Objective:

Review the data, assumptions and calculations underlying the Preliminary Budget provided to the AAFPO Board by the AFR to determine the budget's completeness and accuracy so the Board can provide feedback to the AFR of incorporation into the Final Proposed Budget.

Items included in Review:

- <AAFPO Discretionary Budget- determine that the \$100K+ amount has been included as a separate line item in the budget.
- <Prior Budget Year(s) Adjustments-review to determine that credit has been given for any prior year erroneous charges.
- <Basic Assumptions-review all cost and revenue assumptions made by AFR for expense and capital budget projection. Review AFR's definitions/guidelines for "capital vs. expense".
- <Cost Allocation-review all allocations of combined costs made between amenities and non-amenities for reasonableness and appropriateness.
- <Capital Budget Items-review individual capital budget items to determine projected related revenue contribution and /or cost reductions. Determine that all capital budget items meet the appropriate criteria for classification as capital budget items.
- <Depreciation Cost-review capital assets depreciation cost charged to amenities expense to determine that the cost and the rate of depreciation is appropriate.
- <Capital Asset Sales-review all capital asset sales to determine that appropriate credits have been made to amenities.
- <Other-conduct any other budget tests or reviews that appear necessary or appropriate during the course of this review.
 - Spending of Annual Assessments, Past Due Annual Assessments.
 - Increase Annual Assessment limited to CPI adjustment,
 - increase annual assessment related to Capital Improvements.

February 8, 2000

ITEMS REQUIRING REVIEW BY AMENITIES BUDGET REVIEW COMMITTEE

Plan-From Article IV, Section 4.16 of the Amended Joint Plan of Reorganization

ITEMS IN AMENDED JOINT PLAN OF REORGANIZATION

Plan-4.16c-Spending of the Required Annual Assessment.

Each year, the Purchaser shall prepare an annual report of the Annual Assessment collected for the prior year showing how the Annual Assessment was spent. The Purchaser may only spend the Annual Assessment on the upkeep, maintenance, operation and improvement of the Amenities.

Plan-4.16d-Spending of Past Due Annual Assessment

All amounts received for Annual Assessments that were past due on the Effective Date (of the Plan) shall be used for capital improvements or maintenance of the existing Amenities. Purchaser shall provide AAFPO with an accounting of how said collected late dues were actually spent on said capital improvements or maintenance of the existing Amenities.

Plan-4.16f-Required Annual Assessment

The AAFPO board will receive the annual amenities budget from the Resort prior to the Annual Assessment being spent showing the AAFPO board how the Purchaser will break out the Annual Assessment proportionally by amenity and showing that sufficient funds remain on hand to fund the operation of each amenity.

Plan-4.16f-Required Annual Assessment

The AAFPO board will get to review and comment on the budget for the use of the Annual Assessment.

Plan-4.16f-Required Annual Assessment

The Annual Assessment may be increased every year by no more than the CPI in effect on May 1. Refer to Article I, Section 1.36 for definition of CPI.

Plan-4.16g(i)-Capital Improvements Annual Assessment

The Annual Assessment may be increased when the purchaser makes capital improvements to existing Amenities. The Resort will limit the increase in the Annual Assessment to no more than 5% in any one year and 9% cumulative, and to no more than 3% per year increase on average.

Plan-4.16g(iii)-All increases in Annual Assessment related to capital improvements will be allocated annually to the members based upon their usage of the Amenities relative to usage by others including the general public for the preceding year.

Plan-4.16g(iv)

The IRS class life as set forth in the general depreciation system (MACRS) will be used for determining the amortization period over which Annual Assessment would be increased related to agreed upon improvements to the Amenities, so long as the class life was never greater than fifteen years.

Plan 4.16g(vi)

No Annual Assessment increase related to capital improvements will be assessed to multiple lot owners until the members have been phased into a full Annual Assessment paying category. (Note "Multiple lot owners have been fully phased in and will pay a Capital Improvement Assessment on the forthcoming billing." as per report of ABRC Review, June 2, 1999)

Plan-4.16g(vii)

No Annual Assessment increase related to capital improvements will be assessed until the capital improvement is fully in service.

Plan -4.16g(viii)

The limited Annual Assessment increase will terminate when the improvement has been amortized.

Plan-4.16i(i)

The Resort will not increase Annual Assessment for "commercial" facilities. e.g., a new restaurant. Property Owners will be able to use, and will be charged the same rates as the public, for use of these "commercial" facilities.

Plan-4.16j(ii)

The annual amenities budget provide to AAFPO each year shall include an AAFPO discretionary account category which shall be \$100,000.00 or 5% of the collected annual assessments each year, whichever is greater. "Collected annual assessments" shall include collected delinquent annual assessments with interest and penalties thereon for prior years, but only reaching back through the 1995/1996 year.

Plan-4.16j(ii)

The amount out of the discretionary account which may be used the AAFPO to defray its expenses shall be \$20,000.00 or 1% of the collected annual assessments every year, whichever is greater.

Plan-4.16j(ii)

The portion of the discretionary account not permitted to be used for AAFPO expenses shall be used for the improvement, maintenance or construction of any amenity or amenity related project as designated by the AAFPO board in its sole discretion.

Plan-4.16n(vi)

The AAFPO Board will have an advisory role on issues such as operating programs, annual budgets and capital improvements which fit within the limitation described herein. The Purchaser agrees to review the amenities operating and capital budget with the AAFPO Board prior to the fiscal year in which Annual Assessment monies are contemplated to be spent. Except as set forth herein with respect to Annual Assessment increases related to capital improvements, it is not contemplated that Annual Assessment money would be spent on capital improvements. The AAFPO Board will have veto power over any operating budget which proposes an increase of Annual Assessment over and above the CPI for normal operations and maintenance of the amenities.

ABRC/bmb
8 February 2000

June 2, 1999

ITEMS REQUIRING REVIEW BY AMENITIES BUDGET REVIEW COMMITTEE

(Check Yes if item was checked and is satisfactory; check No if
item was not checked or was checked and is not satisfactory)

Plan - From Article IV, Section 4.16 of the Amended Joint Plan of Reorganization

ITEMS IN AMENDED JOINT PLAN OF REORGANIZATION	YES	NO
Plan - 4.16c - Spending of the Required Annual Assessment. Each year, the Purchaser shall prepare an annual report of the Annual Assessment collected for the prior year showing how the Annual Assessment was spent. The Purchaser may only spend the Annual Assessment on the upkeep, maintenance, operation and improvement of the Amenities.	X	
Plan - 4.16d - Spending of Past Due Annual Assessment All amounts received for Annual Assessments that were past due on the Effective Date (of the Plan) shall be used for capital improvements or maintenance of the existing Amenities. Purchaser shall provide AAFPO with an accounting of how said collected late dues were actually spent on said capital improvements or maintenance of the existing Amenities.	X	
Plan - 4.16f - Required Annual Assessment The AAFPO board will receive the annual amenities budget from the Resort prior to the Annual Assessment being spent showing the AAFPO board how the Purchaser will break out the Annual Assessment proportionally by amenity and showing that sufficient funds remain on hand to fund the operation of each amenity. <i>(ABRC Comments - The committee was unable to confirm that sufficient funds were available to fund the operation of each amenity.)</i>	X	
Plan - 4.16f - Required Annual Assessment The AAFPO board will get to review and comment on the budget for the use of the Annual Assessment	X	
Plan - 4.16f - Required Annual Assessment The Annual Assessment may be increased every year by no more than the CPI in effect on May 1. Refer to Article I, Section 1.36 for definition of CPI.	X	
Plan - 4.16g(l) - Capital Improvements Annual Assessment The Annual Assessment may be increased when the purchaser makes capital improvements to existing Amenities. The Resort will limit the increase in the Annual Assessment to no more than 5% in any one year and 9% cumulative, and to no more than 3% per year increase on average.	X	

ITEMS IN AMENDED JOINT PLAN OF REORGANIZATION		YES	NO
Plan - 4.16g(iii) All increases in Annual Assessment related to capital improvements will be allocated annually to the members based upon their usage of the Amenities relative to usage by others including the general public for the preceding year.	X		
Plan - 4.16g(iv) The IRS class life as set forth in the general depreciation system (MACRS) will be used for determining the amortization period over which Annual Assessment would be increased related to agreed upon improvements to the Amenities, so long as the class life was never greater than fifteen years.	X		
Plan - 4.16g(vi) No Annual Assessment increase related to capital improvements will be assessed to multiple lot owners until the members have been phased into a full Annual Assessment paying category. <i>(ABRC Comments - Multiple lot owners have been fully phased in and will pay a Capital Improvement Assessment on the forthcoming billing.)</i>	X		
Plan - 4.16g(vii) No Annual Assessment increase related to capital improvements will be assessed until the capital improvement is fully in service.	X		
Plan - 4.16j(ii) The annual amenities budget provided to the AAFPO each year shall include an AAFPO <u>discretionary account category</u> which shall be \$100,000.00 or 5% of the collected annual assessments each year, whichever is greater. "Collected annual assessments" shall include collected delinquent annual assessments with interest and penalties thereon for prior years, but only reaching back through the 1995/1996 year.	X		
Plan - 4.16j(iii) The amount out of the discretionary account which may be used by the AAFPO to defray its expenses shall be \$20,000.00 or 1% of the collected annual assessments every year, whichever is greater.	X		
Plan - 4.16j(ii) The portion of the discretionary account not permitted to be used for AAFPO expenses shall be used for the improvement, maintenance or construction of any amenity or amenity related project as designated by the AAFPO board in its sole discretion.	X		
Plan - 4.16g(viii) The limited Annual Assessment increase will terminate when the improvement has been amortized.	X		


ITEMS IN AMENDED JOINT PLAN OR REORGANIZATION	YES	NO
<p>Plan - 4.16i(i) - New Amenities</p> <p>The Resort will not increase Annual Assessment for "commercial" facilities, e.g., a new restaurant. Property Owners will be able to use, and will be charged the same rates as the public, for use of these "commercial" facilities.</p>	X	
<p>Plan - 4.16n(v)</p> <p>All existing multiple Homesite Owners shall be converted to full Annual Assessment paying status. The conversion shall be graduated 25% per year over the time period commencing on October 1, 1995 and ending on September 30, 1999, at which time multiple Homesite Owners shall be required to pay each of the full Annual Assessments as billed.</p>	X	
<p>Plan - 4.16n(vi)</p> <p>The AAFPO Board will have an advisory role on issues such as operating programs, annual budgets and capital improvements which fit within the limitation described herein. The Purchaser agrees to review the amenities operating and capital budget with the AAFPO Board <u>prior to the fiscal year in which Annual Assessment monies are contemplated to be spent.</u> Except as set forth herein with respect to Annual Assessment increases related to capital improvements, it is not contemplated that Annual Assessment money would be spent on capital improvements. The AAFPO Board will have veto power over any operating budget which proposes an increase of Annual Assessment over and above the CPI for normal operations and maintenance of the amenities.</p>	X	

Respectfully submitted,

Gerald W. Ashmore, Committee member

William Gibson, Committee member

Paul Peppard, Committee member



Philip W. White, Committee member

EXHIBIT B

ASSOCIATION OF ANGEL FIRE PROPERTY OWNERS
MEMORANDUM OF AGREEMENT REGARDING MEMBERSHIP
MEMBERSHIP DATABASE SHARING AND COLLECTION

1. **THIS MEMORANDUM OF AGREEMENT** is entered into this _____ day of _____, 2008, by and between Angel Fire Resort Operations, LLC (“Resort”) and the Association of Angel Fire Property Owners (“AAFPO”). The parties hereto agree as follows: Pursuant to the the Amended Joint Plan of Reorganization (U.S. Bankruptcy Court Jointly Administered Case No. 11-93-12176 RA, filed of record on April 20, 1995 (“the Plan”) and its underlying documents (collectively, “the Governing Documents”), an annual membership assessment (“Annual Assessment”) is required to be paid by AAFPO members to the Resort, pursuant to specific guidelines and requirements. The Annual Assessment is to be collected by AAFPO and the Resort.

2. The Governing Documents define and control the relationship between the Resort and AAFPO.

3. Paragraph 4.16(j)(ii) of the Plan was clarified on February 21, 1995 to state, “The Purchaser agrees for itself and successors in interest that the AAFPO responsibilities for collection of assessments be contracted to (the Resort) or its successors in interest and that they will be performed for consideration of no more than \$1 chargeable to the AAFPO discretionary account as an expense of the AAFPO.”

4. AAFPO was involved in the development of and approved the collection process for the Annual Assessment.

5. With AAFPO Board approval, the Resort may sub-contract with a third- party for the collection of the Annual Assessment..

6.

- (a) AAFPO and the Resort are the owners of an electronic database compiled for the billing and collection of the Annual Assessment (“the Database”), which contains data concerning the members of AAFPO’s. Both parties agree not to distribute, disburse, or dispose of the Database, or any portion thereof, without the other’s written approval.
- (b) Through its Articles and Bylaws, AAFPO has the right to record and foreclose liens for failure of payment of Annual Assessments.
- (c) AAFPO may access the Database for those purposes consistent with the terms and conditions of the governing documents, provided, however, that the information on the Database may not be used for commercial or political mailings.

7.

*ASSOCIATION OF ANGEL
FIRE PROPERTY OWNERS*

By: _____
Jim LeBus
President

ANGEL FIRE RESORT OPERATIONS, LLC

By: _____
Daniel E. Rakes
General Counsel

E:\concord servicing\agreement with aaipo re third-party collection.doc



August 13, 2020

Association of Angel Fire Property Owners, Inc.
Attn: Secretary
Post Office Box 21
Angel Fire, NM 87710

Re: Board of Directors (the "Board") of Association of Angel Fire Property Owners, Inc. ("AAFPO") – Failure to Maintain Quorum

To the Board:

As you are aware, AAFPO's President Ginger Lagasse, sent her letter of resignation to the Board Friday afternoon, August 7, 2020. Ms. Lagasse's resignation was received and accepted in writing by Vice President Penni Davey ("Davey") later that evening. Davey assumed and immediately began her President's succession duties for AAFPO. Their correspondence is attached.

According to AAFPO's Bylaws and New Mexico law, the Board has failed to maintain its quorum of five (5) directors, necessary for the transaction of substantive business. *See AAFPO Bylaws – Article VI, Section 1.* The purpose of a quorum is to prevent an unrepresentative group from taking action in the name of the organization. Substantive actions taken without a quorum are void and unenforceable, and depending on circumstance, may be unlawful. The Board's ability to act under this unusual circumstance is specifically limited to calling a regular meeting to order, discussing topics informally, continuing the meeting and adjourning the meeting. The Board may not enter executive session, and even if it were permitted, could take no action there.

It is also my understanding that members of this Board have engaged in ex parte communications related to AAFPO matters, including without limitation, the resignation of Ms. Lagasse, while specifically excluding the Resort's representative on the AAFPO Board of Directors. Therefore, this letter shall serve as written demand for the preservation and production of all correspondence and communications between members of the Board related thereto, including without limitation, emails, details, notes and minutes containing such discussions and communications. You are advised under New Mexico law, the intentional destruction of evidence can result in an adverse evidentiary inference, and may otherwise be unlawful.

Finally, I remind the members of this Board of their ongoing fiduciary duty to the Association's membership. The Board has been placed on notice that actions taken without a quorum are void and unenforceable. Immunity from personal liability does not extend to damages caused by a director's willful failure to perform their duties, including without limitation, taking action they know to be void and unenforceable.

The Resort, and I personally, look forward to working with a properly constituted AAFPO Board in the near future. Thank you for your time and consideration.

Best regards,

ANGEL FIRE RESORT OPERATIONS, LLC



Mark E. Manley
General Counsel &
AAFPO ex-officio Board member

Cc: John Kitts, CEO
Daniel Rakes, Executive General Counsel

Attachments (2)

On Fri, Aug 7, 2020 at 1:17 PM Ginger Lagasse <glagasseaafpo.20@gmail.com> wrote:

I feel like the executive committee of our Board is spending way too much time and effort fighting amongst ourselves and that is detracting from our main goals of 1) having members pay the appropriate amount of dues, and 2) finding a way to allow AAFPO to take control of collecting dues and managing member policy. Accordingly, I am now resigning from the AAFPO board.

It's clear from the meeting Penni called last Thursday that none of us are happy with the way the board is operating. And since then I believe the operation has become totally chaotic and embarrassing because directors are ignoring common protocols and acting without discipline. There are fundamental divergences within our board that are causing the board, in my opinion, to look foolish and which I cannot further abide. For example:

- I respect roles and responsibilities which generate accountability. To me it is important to understand the difference between redundancy regarding tasks, versus operating with a group-think/group-authority mode which in my opinion undermines accountability and impedes progress.
- My view is that hiring the law firm that will produce the best outcome in the long run is vital – more important than meeting an arbitrary deadline or being driven by ego rather than logic and discipline. It's my nature to address retaining a law firm with a thoughtful approach that includes a planned, specific outcome.
- My view is that integrity requires knowledge and commitment to use that knowledge. I find it inappropriate for leaders with responsibilities to act or speak without full knowledge of verifiable facts, and when those leaders have the facts, I believe it is incumbent upon them to act in accordance with them. A **very few** examples:
 - Accepting and honoring the privileges and responsibilities of an Ex-officio member of the Board in accordance with Robert's Rules of Order
 - Providing 95% AFR budget in HOA certification packages in accordance with NM SB 150 requirements
 - Reporting verifiable savings from eliminating our Executive Director position rather than just choosing a dollar figure that will get members up in arms
 - Speaking to members about the expiration of AAFPO covenants based on actual knowledge rather than hearsay

I don't see a possibility that these basic differences can be corrected. I wish you all the very best. I've already transferred all of the files you might need. I won't bother you with my advice. I can leave all the AAFPO materials in the AAFPO office with the keys, or if you prefer you may pick them up from my home.

Ginger

From: Penni & Mike Davey <daveytmp@gmail.com>

Date: August 7, 2020 at 9:46:14 PM MDT

To: Ginger Lagasse <glagasseaafpo.20@gmail.com>

Cc: "Holly L. Ham" <holly.l.ham@gmail.com>, "carolruppartwork@gmail.com" <carolruppartwork@gmail.com>, Sandra Trom <strom427@gmail.com>, Dan Rakes <DanR@AngelFireResort.com>

Subject: Re: Resignation

Ginger,

We respect, acknowledge and accept your resignation from the AAFPO Board of Directors. We would like to thank you for your efforts while you have been on the board. It will be difficult in replacing hardworking and dedicated people such as yourself. We appreciate your commitment to turn over all files and keys to the AAFPO office and your assistance for a smooth transition.

We wish you the very best in your future endeavors.

Sincerely,

Penni Davey, Vice President AAFPO

Mark Manley

From: Mark Manley
Sent: Friday, August 21, 2020 11:02 AM
To: 'Holly L. Ham'
Cc: Sandra Trom; Carol Rupp; Penni & Mike Davey; Dan Rakes; Mark Seiter
Subject: RE: AAFPO board training

Dear Ms. Ham,

Thank you for your email. With respect, there was a miscommunication regarding scheduling, cancellation and re-scheduling of the training workshops. In the future, if it appears the Resort, or I personally, have failed to respond to an intended invitation from you or the Board, please reach out directly. It is our intent to work toward continued positive collaboration.

However, based on the current doubt and uncertainty regarding the lawful composition of the AAFPO Board, the Resort will not proceed with any training workshops. Clearly, such training is necessary based on the fundamental lack of understanding of the governing documents, which have guided and fostered a successful relationship between the Resort and AAFPO for the past 24 years.

Roll call at the August 13th Special Meeting revealed you, Mmes. Davey, Rupp and Trom. The Board's analysis consisted of Ms. Davey's cursory statement, "Therefore, we have established a quorum." By declaring a quorum where none existed, the Board misapplied its own Bylaws and ignored other sections compulsory to such determination, as well as written notice from the Board's own ex-officio member.

A quorum of directors is "[a] majority of the number of directors fixed by the bylaws[.]" N.M. S. A. § 53-8-20. A quorum is the number of members of a larger body that must participate for the valid transaction of business. See Black's Law Dictionary 1370 (9th ed. 2009) (defining "quorum" as the "minimum number of members ... who must be present for a deliberative assembly to legally transact business"); 13 Oxford English Dictionary 51 (2d ed. 1989) ("A fixed number of members of any body ... whose presence is necessary for the proper or valid transaction of business"); Webster's New International Dictionary 2046 (2d ed. 1954) ("Such a number of the officers or members of any body as is, when duly assembled, legally competent to transact business").

A quorum is calculated based on the number of members required by the Bylaws, not on the number of members remaining who have been duly elected or appointed. The contrary reading allows less than a majority of members to act as the Board ad infinitum, which dramatically undercuts the significance of the Board quorum requirement by allowing its permanent circumvention. See *New Process Steel, L. P. v. NLRB*, 560 U.S. 674, 679 (2010) (holding "the Board quorum requirement ... should not be read as easily surmounted technical obstacles of little to no import."). The quorum requirement "must be given practical effect rather than swept aside in the face of admittedly difficult circumstances." *Id.* at 688.

"The affairs of the Association shall be managed by a Board of nine (9) directors, each of whom must be a member of the Association in good standing." AAFPO Bylaws – Article VI, Section 1. When you complained the section "makes zero reference to Board quorum," you failed to grasp its importance setting the Board size at nine, thereby determining a quorum of no less than a majority of five. Your approach gives no meaningful effect to the command implicit in the Bylaw's Board quorum requirement that the Board's full power be vested in no fewer than five members. Your reading is structurally implausible, as it would render the provisions of Article VI, Section 1 functionally void.

This Board has long acknowledged its quorum requirement. In fact, only once in the past six years (on March 9, 2017) did the Board even convene with the minimum five members, as required. The Board averaged well over seven

members regularly participating, and eight or more nearly half the time. Convening without a quorum disregards their efforts.

I note in your response you did not address my request to produce correspondence related to the ex parte communications between you, Mmes. Davey, Rupp and Trom. I assume that production is forthcoming, and remind the Board of its duty under AAFPO Bylaws – Article XIV, Section 1(a) and New Mexico law to preserve such materials, the intentional destruction of which can result in an adverse evidentiary inference, and may otherwise be unlawful.

I also observe you failed to address my reminder to the Board of its ongoing fiduciary duty to the membership not to take actions that it has been advised are void and unenforceable. Personal immunity does not extend to damages caused by a Board Member's willful failure to perform their duties, which includes taking unsanctioned and invalid action. When considering a committee recommendation, a "director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted." N.M. S. A. § 53-8-25.1. By extension, this statutory mandate applies to a director acting contrary to or in disregard of knowledge concerning a matter, so as to be unwarranted.

Therefore, as soon as practical, please advise me and Dan Rakes the identity of and contact information for the attorney and/or firm the Board engaged to advise it prior to holding the August 13th Special Meeting, so the Resort may direct appropriate correspondence.

The Resort, and I personally, look forward to working with a properly constituted AAFPO Board in the near future.

Best regards,

Mark Manley

From: Holly L. Ham <holly.l.ham@gmail.com>
Sent: Wednesday, August 19, 2020 10:06 PM
To: Mark Manley <mmanley@AngelFireResort.com>
Cc: Sandra Trom <strom427@gmail.com>; Carol Rupp <carolruppartwork@gmail.com>; Penni & Mike Davey <daveytmp@gmail.com>; Dan Rakes <DanR@AngelFireResort.com>; Mark Seiter <marks@AngelFireResort.com>; Hank Rennar <hsrennar@yahoo.com>
Subject: Fwd: AAFPO board training

Mark M.,

With all due respect, you have incorrect information.

Based on a meeting that I had with Mark Seiter and Kelly Fletcher on July 23rd, Mark suggested training for AAFPO Board members regarding the bankruptcy from 1995, the amended joint plan for reorganization, and other pertinent documents and covenants directing the organization of AAFPO and our relationship with the Resort. Along with the rest of the AAFPO Board, we agreed to the training/workshop and scheduled two separate sessions. In fact, up until today, I was not aware of who would do the "training" - but simply looking forward to collaborating with the Resort.

Regarding your letter sent on August 13th, again, you have incorrect information, this time regarding quorum. You referenced AAFPO Bylaws - Article VI, Section 1, which makes zero reference to Board quorum. See AAFPO Bylaws - Article VII, Section 3 for Board Meeting quorums which state that "A majority of the number of directors shall constitute a quorum for the transaction of business."

At the last AAFPO Board of Directors meeting on August 13th, we had 100% participation - which meant we established a quorum as that is considered a majority of the number of directors. You will be pleased to learn that the

Board unanimously voted to add 4 new directors.

I'm honored to serve on the AAFPO Board of Directors and welcome the opportunity to work together with the Resort.

Regards,
Holly Ham

From: **Mark Manley** <mmanley@angelfireresort.com>
Date: Wed, Aug 19, 2020 at 10:59 AM
Subject: Re: AAFPO board training
To: Holly L. Ham <holly.l.ham@gmail.com>
Cc: strom427@gmail.com <strom427@gmail.com>, carolruppartwork@gmail.com <carolruppartwork@gmail.com>, daveytmp@gmail.com <daveytmp@gmail.com>, Dan Rakes <DanR@angelfireresort.com>

Ms. Ham,

Thank you for your email.

Based upon the cancellation notice sent to the main speaker, Dan Rakes, those involved here at the Resort assumed that AAFPO cancelled the workshops/training. There was no follow up email or invite to Mr. Rakes. Based upon his 23 years' experience with the Resort, AAFPO and the governing documents, clearly, he is the one who needs to present this to the Board. In fact, in the past, he regularly conducted annual governing document training to new and old AAFPO Board members. He agreed to continue this and participate based upon a request from then President, Ginger Lagasse.

As far as rescheduling the workshop in the future, the Resort has not determined whether it will participate in light of recent events. There are legitimate legal concerns. See the attached letter sent on August 13th.

Regards,

Mark

CAROL A. NEELLEY, P.C.

ATTORNEY AT LAW
233 Johnson Street
Santa Fe, New Mexico 87501
Telephone: (505) 982-9251
Facsimile: (505) 983-8317

Carol A. Neelley
Email: carol@neelleylaw.com

Taos Office
411 Camino de La Placita
Taos, New Mexico 87571
Telephone: (575) 751-4613
Facsimile: (505) 983-8317

March 4, 2020

Via email: rhooker1@ymail.com
 lfwier@gmail.com

Board of Directors
Association of Angel Fire Property Owners, Inc.
c/o Rick Hooker and Linda Wier
P.O. Box 21
Angel Fire, NM 87710

Re: Opinion Concerning Confidentiality of 95% Report

Dear Board Members:

I have been asked to provide an opinion concerning whether members have a right to access the “95% Report” which the Angel Fire Resort makes available to the AAFPO Board each year, with the proviso it be kept confidential by the Board. This year, for the first time, a Board member has refused to sign an agreement not to disclose the contents of this 95% Report, and members not on the Board have made requests for copies of the report.

Conclusion:

In my opinion AAFPO has no obligation to provide the information in this report to the members, and the Resort can refuse to disclose the 95% Report to a Board member who refuses to agree to keep it confidential.

Background:

AAFPO is a New Mexico non-profit corporation organized as a property owners association pursuant to the Amended Joint Plan of Reorganization (“Bankruptcy Plan”) confirmed in the Bankruptcy Case *In re Angel Fire Corporation*, Case No. 11-93-12176 RA, on May 31, 1995.

AAFPO is given responsibility under the Bankruptcy Plan to ensure the members’ use and rights of use of amenities are preserved, to serve in an advisory capacity on issues such as operating programs, annual budgets, and capital improvements performed by the Resort. In addition, AAFPO’s Board of Directors has limited and defined veto power of proposed budgets. The

AJP sets forth procedures, and authorizes the promulgation of rules and regulations, to govern the terms under which the property owners access and use the Amenities, the upper limits on annual assessments which can be collected by the Resort, the rules for increased annual assessments when the Resort has made capital improvements to existing Amenities, the limitations on the use by the Resort of the assessments collected, and the AAFPO Board's role in representing the property owners in all of the foregoing matters.

AAFPO is also a Homeowners Association under the New Mexico Homeowner Association Act. Under §47-16-5 of that Act, AAFPO must make its "financial and other records" available to members upon written request. "Financial and other records" is defined as:

- (1) the declaration of the association;
- (2) the name, address and telephone number of the association's designated agent;
- (3) the bylaws of the association;
- (4) the names and addresses of all association members;
- (5) minutes of all meetings of the association's lot owners and board for the previous five years, other than executive sessions, and records of all actions taken by a committee in place of the board or on behalf of the association for the previous five years;
- (6) the operating budget for the current fiscal year;
- (7) current assessments, including both regular and special assessments;
- (8) financial statements and accounts, including bank account statements, transaction registers, association-provided service or utility records and amounts held in reserve;
- (9) the most recent financial audit or review, if any;
- (10) all current contracts entered into by the association or the board on behalf of the association;
- (11) current insurance policies, including company names, policy limits, deductibles, additional named insureds and expiration dates for property, general liability and association director and officer professional liability, and fidelity policies; and
- (12) any electronic record of action taken by the board.

The New Mexico Public Records act, in NMSA 14-2-6 (G) defines "public records" as follows:

G. "public records" means all documents, papers, letters books, maps, tapes, photographs, recordings and other materials, regardless of physical form or

characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

The New Mexico Public Records act, in NMSA 14-2-6 (F) defines “public body” as follows:

F. “public body” means the executive, legislative, and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts and institutions of higher education.

The Resort’s Budget:

Paragraph 4.16 (f) of the AJP provides, in pertinent part:

The POA board will receive the annual amenities budget from the Purchaser prior to the Annual Assessment being spent showing the POA board how the Purchaser will break out the Annual Assessment proportionally by amenity and showing that sufficient funds remain on hand to fund the operation of each amenity.... The POA board will have veto power over the annual budget of any portion of the Annual Assessment contemplated by the Purchaser to be used for other than the amenities, prior to the sums being spent. ... The POA board will get to review and comment on the budget for the use of the Annual Assessment.

Pursuant to this paragraph, the Resort provides a proposed budget for the utilization of member assessments to AAFPO in the spring of each year. A copy of the budget for the upcoming fiscal year is attached. This budget is freely available to members upon request.

The 95% Report:

Each year the Resort provides an additional report pursuant to

Paragraph 4.16 (c) of the AJP provides, in pertinent part:

The required Annual Assessment shall be paid by the Property Owners to the Purchaser, its successors, assigns, or its agents. ***Each year, the Purchaser or its successors or assigns shall prepare an annual report of the Annual Assessment collected for the prior year showing how the Annual Assessment was spent.*** The Purchaser and its successors or assigns may only spend the Annual Assessment on the upkeep, maintenance, operation and improvement of the Amenities. The Purchaser shall be obligated to maintain the Amenities so long as it receives the Annual Assessment.

Each year of the operation of the Bankruptcy Plan, the Resort has provided a detailed financial report to the AAFPO Board which shows the total amount spent the previous year, broken

down by categories, and shows both the actual amount of the assessments allocated to each category, and the percentage contribution the assessments make to the expenditures in each category. As such it contains much proprietary information concerning the Resorts breakdown of its profits, percentages of re-investments of profits, and other information widespread distribution of which would put the Resort to competitive disadvantage.

For the 24 years since adoption of the Bankruptcy Plan, AAFPO has agreed to keep this “95% Report” confidential. In my opinion, the Resort is entitled to demand the report be released only to Board members who sign a confidentiality report, and AAFPO is not obligated to provide it upon request to members.

This is because the report is not an AAFPO record and is not included in the definition of “financial and other records” in the HAA.

As AAFPO is not a “public body,” it has no obligations under the New Mexico Public Records Act.

Very truly yours,

/s/

Carol A. Neelley

Enclosures