

SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF CATRON
STATE OF NEW MEXICO

FILED
7th JUDICIAL DISTRICT COURT
Catron County
7/26/2024 2:08 PM
RACHEL GONZALES
CLERK OF THE COURT
/s/ Jerome Adam

JESSE CHILDERS, INDIVIDUALLY AND ON
BEHALF OF WILD HORSE RANCH LAND
OWNERS ASSOCIATION, CHAIRMAN OF BOARD,

Plaintiff,

v.

No. D-728-CV-2024-00026

ALLEN DUGAN, EX-PRESIDENT;
JIM FEEHAN, EX- SECRETARY AND EX-DIRECTOR;
CARMEN BRONOWSKI, EX-TREASURER;
JERRY FOWLER, EX-DIRECTOR;
GREG BRONOWSKI, EX-DIRECTOR;
RON RACICOT, EX-DIRECTOR;
MITZY LADRON-NICHOLS, EX-DIRECTOR;
STEVE MALVITZ, EX-DIRECTOR;
RACHEL PONDER, EX-DIRECTOR;
ANDY RHOMBERG, EX-DIRECTOR;
RON RACICOT, EX-DIRECTOR;

Defendants.

**MOTION TO DISMISS FOR LACK OF STANDING; MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM; MOTION TO STRIKE; AND COMPLAINT FOR
DECLARATORY JUDGMENT AND DEFAMATION**

COME NOW, Defendants, ALLEN DUGAN, JIM FEEHAN, CARMEN BRONOWSKI,
JERRY FOWLER, GREG BRONOWSKI, RON RACICOT, STEVE MALVITZ, RACHEL
PONDER, and ANDY RHOMBERG, by and through their counsel, McKADE R. LOE,
Rosebrough, Fowles, & Foutz, P.C., and for their Motion to Dismiss for Lack of Standing; Motion
to Dismiss for Failure to State a Claim; Motion to Strike; and Complaint for Declaratory Judgment
and Defamation, state as follows:

VENUE AND JURISDICTION

1. Plaintiff, Mr. Childers, filed his Verified Complaint and Application for Temporary Restraining Order on July 17, 2024, (the “Complaint”).
2. Upon information and belief, Plaintiff is a resident of Catron County, New Mexico.
3. Defendants make up the Board of Directors for the Wild Horse Ranch Landowners’ Association, Inc. (the “Association”).
4. The Association is New Mexico Nonprofit with its principal place of business in Catron County, New Mexico.
5. Jurisdiction is proper in this Court.
6. Venue is Proper in this Court.

GENERAL ALLEGATIONS

7. On July 5, 2024, the Association had planned to meet for their annual members meeting.
8. Prior to the meeting, Defendant Allen Dugan (“Mr. Dugan”), President of the Association, noticed that there were a group of individuals meeting with a sheriff deputy for Catron County.
9. He then realized that the group of people that were arguing with others and contentions began to rise.
10. At that point, Mr. Dugan was approached by one of the individuals in the group and was told that he was not recognized by the group to be the President and thus did not have the authority to call the meeting to order.

11. Rather than trying to control a chaotic scene, the Board of Directors determined it was best to reschedule the meeting for a later date, wishing to reschedule when contentions were lowered.

12. Nevertheless, the group of individuals continued their gathering wherein they attempted to remove the members of the Board of Directors by making a motion to remove the Board of Directors for the Association, then proceeding to “elect” a new board of directors.

13. In order for a Board Member to be removed, there are steps in the governing documents that must be followed. *See* Resolution for the Removal of Board Members, hereto attached as **Exhibit “1”**.

14. The steps in the resolution for removal of Board Members were not followed.

15. Further, New Mexico provides a remedy to remove a member of a board of directors in the Homeowners Association Act. *See* NMSA 1978, §47-16-8.1.

16. There was no quorum present at the meeting on July 5, 2024.

17. In order for proxies to be counted, they “shall be in writing and filed with the Secretary” of the Association. *See* Bylaws at Art. III, Sec. 5, hereto attached as **Exhibit “2”**.

18. There were no proxies filed with the Secretary for the annual members meeting held on July 5, 2024.

19. In order to elect a new member to the Board of Directors, there are steps that must be taken. *See* Resolution for Election of Board of Directors, hereto attached as **Exhibit “3”**.

20. None of these steps were followed to “elect” Mr. Childers as a member of the Board of Directors.

21. Nonetheless, upon information and belief, Mr. Childers filed a “Certificate of Election” with the Catron County Clerk on July 8, 2024. *See* Certificate of Election, hereto attached as **Exhibit “4”**.

22. It should be noted that the Certificate of Election names four (4) individuals as the new board of directors, yet in the Complaint Mr. Childers states he is the only newly elected board member. *See* **Exhibit “4”**, *see also* Complaint at ¶5.

23. Mr. Childers has since been attempting to force the Board of Directors to turn over the Association’s assets.

24. The Board of Directors have been damaged by the actions of Mr. Childers.

LACK OF STANDING

25. Defendants bring this Motion to Dismiss pursuant to NMRA 1-012(b)(1).

26. To bring a lawsuit a plaintiff must satisfy justiciability requirements. *See Am. Fed’n of State v. Bd. of Cnty. Com’rs of Bernalillo Cnty.*, 2016-NMSC-017, ¶ 15, 373 P.3d 989, 993.

27. Standing is a jurisdictional prerequisite. *See Id.*

28. New Mexico has adopted a three-part test to address standing in general. *See Nass-Romero v. Visa U.S.A. Inc.*, 2012-NMCA-058, ¶ 10, 279 P.3d 772, 777.

29. To acquire standing to litigate a particular issue, a party must demonstrate (1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision. *See Id.*

30. Injury-in-fact requires that a plaintiff is actually injured because of the actions of the defendant which they seek to challenge in court. *See Am. Fed’n of State v. Bd. of Cnty. Com’rs of Bernalillo Cnty.*, 2016-NMSC-017, ¶ 15, 373 P.3d 989, 993.

31. Courts have defined the term “injury in fact” as an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, not ‘conjectural’ or ‘hypothetical.’ *See Forest Guardians v. Powell*, 2001-NMCA-028, ¶ 24, 130 N.M. 368, 377, 24 P.3d 803, 812.

32. Here, Mr. Childers has not been injured, nor has the Association been injured by any of the listed Defendants.

33. Mr. Childers argues that the injury is a result of the Defendant’s refusal to turn over the assets of the Association to himself and the Board of Directors. *See Complaint at ¶10*.

34. However, Defendants are the legit members of the Board of Directors, thus the Board of Directors already have control of the assets of the Association. The Association has not suffered any injury.

35. Further, Mr. Childers, who resigned his position of Director in August, 2023, is no longer serving as a director of the Association and therefore is not entitled to have control or access to the assets of the Association. *See Minutes from the August 10, 2023 Board of Directors Meeting*, hereto attached as **Exhibit “5”**.

36. Thus, there has been no injury and the matter should be dismissed.

37. Further, Mr. Childers does not have the authorization to bring a lawsuit on behalf of the Association.

38. The Association has the capability to sue and be sued. *See NMSA 1978, §53-8-5*.

39. The Bylaws of the Association allow the Board of Directors to “exercise all powers, duties and authority vested or delegated to the Association.” *See Exhibit “2” at Art. IV, Sec 8*.

40. Thus, only the Board of Directors can bring a lawsuit on behalf of the Association.

41. Mr. Childers is not a member of the Board of Directors.

42. Even if Mr. Childers was a member of the Board of Directors, he did not bring this on behalf of the Board of Directors, but rather individually and as “chairman.” Only the Board of Directors, collectively, can bring file a lawsuit on behalf of the Association.

43. As a Result, Mr. Childers’ Complaint should be dismissed for lack of standing as there has been no injury to Mr. Childers of the Association nor does Mr. Childers have the authority to act on behalf of the Association.

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

44. Defendants bring this Motion to Dismiss pursuant to NMRA 1-012(B)(6).

45. Dismissal under Rule 1–012(B)(6) is appropriate only where the non-moving party is not entitled to recover under any theory of the facts alleged in their complaint. *See Richey v. Hammond Conservancy Dist.*, 2015-NMCA-043, ¶ 25, 346 P.3d 1183, 1189.

46. A motion to dismiss for failure to state a claim tests the sufficiency of the complaint, not the facts that support it. *See Quarrie v. New Mexico Inst. of Mining & Tech.*, 2021-NMCA-044, ¶ 5, 495 P.3d 645, 649.

47. A compliant must list the claims for the complaint as separate counts. *See NMRA Rule 1-010.*

48. The Complaint filed by Mr. Childers literally does not state a single claim to which relief can be granted and should therefore be dismissed.

49. In the Relief Requested, Mr. Childers is requesting a Temporary Restraining Order.

50. Even if we assume that is the claim to which relief is requested, Mr. Childers’ Complaint will still fail.

51. A TRO is a species of injunctive relief, similar to a preliminary injunction but for its expiration after a limited period of time and, under particular circumstances, its issuance

without notice to the adverse party. *See Grisham v. Romero*, 2021-NMSC-009, ¶ 19, 483 P.3d 545, 553.

52. To obtain a Temporary Restraining Order, Mr. Childers must show: (1) he will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the Association; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood he will prevail on the merits. *See Id.*

53. Mr. Childers does not show how he will suffer irreparable injury if the Temporary Restraining Order is not granted. As previously mentioned, Mr. Childers is not on the Board of Directors and does not have the authority to act for the Association, thus he should not be entitled to receive control of the Association's assets.

54. Mr. Childers does not show how his threatened injury outweighs any damage the injunction will cause the Association. In reality, the injunctive relief requested will cause irreparable damage to the Association. Mr. Childers is requesting that the Court defy the Association's Bylaws, Resolutions, and the New Mexico Homeowners Association Act, allowing Mr. Childers to appoint himself as the "chairman" of the Association through illegitimate measures. There is a procedure in place to remove and elect board members, Mr. Childers did not follow this process, but nonetheless asks the Court and County to approve his actions.

55. Mr. Childers failed to show that the requested injunction is not adverse to the public's interest. In the alternative, granting the requested relief would be against the public interest. Homeowners' Associations generally govern themselves through their governing documents. The Homeowners Association supplements their governing documents when needed. It is important for Homeowners' Associations to abide by their governing documents and the

Homeowners Association Act. *See* NMSA 1978, §47-16-18. As mentioned, Mr. Childers did not follow the procedures in place for the removal and election of members of the Board of Directors. Allowing Mr. Childers to defy the governing documents while attempting to appoint himself and then use an injunction to gain control through the court system is against public policy. Granting the request by Mr. Childers would set a precedent allowing disgruntled landowners in an association to declare themselves leader of the association through illegitimate means and use the courts to condone their actions.

56. Lastly, Mr. Childers did not detail his likelihood of success on the merits. As mentioned, Mr. Childers will not prevail. He did not follow the procedures in place.

57. Therefore, the Complaint should be dismissed for failure to state a claim.

MOTION TO STRIKE

58. Defendants bring this Motion to Strike pursuant to NMRA 1-012(F).

59. The Association is a nonprofit organization.

60. A nonprofit organization can both sue and be sued in the State of New Mexico. *See* NMSA 1978, §53-8-5.

61. A non-attorney may not represent another person or corporation in a legal proceeding. *See Chisholm v. Rueckhaus*, 1997-NMCA-112, ¶ 5, 124 N.M. 255, 257, 948 P.2d 707, 709, *see also Two Old Hippies, LLC v. Catch the Bus, LLC*, 784 F. Supp. 2d 1221, 1224 (D.N.M. 2011).

62. New Mexico statutes provide that No Person shall practice law in a court of this state, except a magistrate court, nor shall a person commence, conduct or defend an action or proceeding unless he has been granted certificate of admission to the bar. *See* NMSA 1978 §36-2-27.

63. Upon information and Belief, Mr. Childers has not been admitted to practice law in this State and therefore cannot bring an action on behalf of the Association. For that reason alone, the Complaint should be stricken as he cannot file a lawsuit “on behalf of Wild Horse Ranch Landowners Association.”

64. Additionally, the complaint is fraught with inadequacies.

65. Rule 1-010 requires that each claim shall be stated in a separate count. *See* NMRA Rule 1-010(B).

66. Here, there are no claims listed in any counts.

67. Rule 1-010 requires that each averment of the complaint be made is numbered paragraphs. *See* NMRA Rule 1-010.

68. Rule 1-008(F) requires that all pleadings shall be so construed as to do substantial justice. *See* NMRA Rule 1-008(F).

69. Here, it is difficult to respond to the Complaint filed by Mr. Childers as there are multiple paragraphs with the same number and some averments that are not numbered.

70. Lastly, this Complaint is filed as a “Verified Complaint,” however, no verification page was signed by Jesse Childers nor attached to the Complaint.

71. This Complaint is difficult to respond to as the named defendants should appear only in their capacities as members of the Board of Directors, rather than individually. It may be necessary for the Association, via the Board of Directors, to file an Interpleader Claim to assert the Association into this litigation or to file a Motion for Substitution of Parties to drop the named Defendants and add the Wild Horse Ranch Landowners Association, Inc.

72. Therefore, Defendants ask that the Court strike out Mr. Childers Complaint, or in the alternative allow for the substitution of parties so that the Defendants may be named in their capacity as members of the Board of Directors of the Association.

COUNTERCLAIMS

COUNT 1: COMPLAINT FOR DECLARATORY JUDGMENT

73. Defendants re-allege and re-incorporate the preceding paragraphs as if fully alleged herein.

74. As previously mentioned, in order for a member of the Board of Directors to be removed there are procedures in place. *See Exhibit “1”*.

75. This measure was voted and adopted by the Board of Directors of the Association in February, 2024. *See Exhibit “1”*.

76. This process was not followed by Mr. Childers in attempting to remove the members of the Board of Directors.

77. Even if there was no process for removal in the governing documents for the Association, the Homeowners Association has a process for removal of board of directors.

78. This statute states: “Unless a process for removal of board members is provided for in the community documents, the lot owners, by a two-thirds’ vote of all lot owners present and entitled to vote at a lot owner meeting at which a quorum is present, may remove a member of the board.” *See NMSA §47-16-8.1*.

79. Because of the disruptive behavior of Mr. Childers and other individuals prior to the July 5, 2024 meeting, the annual meeting of the members was not held, nor called to order.

80. Even if the July 5, 2024 meeting was held, there was no quorum present.

81. The bylaws of the Association state that a quorum is present when “the presence of members or proxies of members entitled to cast 20% of all votes shall constitute a quorum.” *See Exhibit “2”*.

82. In order for proxies to be counted, they “shall be in writing and filed with the Secretary” of the Association. *See Exhibit “2”*.

83. There were no proxies in writing or filed with the Secretary.

84. Thus, even if there was a meeting held, there was no quorum present, nor were any proxies recorded with the Secretary.

85. Thus, under either the governing documents or the Homeowners Association Act Mr. Childers did not follow the proper procedures in removing a member of the Board of Directors, thus no member of the Board of Directors was removed at the July 5, 2024 meeting.

86. Further, to elect a member of the Board of Directors, there is also a process that must be followed. *See Exhibit “3”*.

87. This process was voted on, approved and adopted by the Board of Directors in February, 2024.

88. This process was not followed by Mr. Childers, the “one newly elected director” when being elected, thus Mr. Childers is not a member of the Board of Directors.

89. Therefore, Defendants request a that the Court issue a Declaratory Judgment stating: (1) no member of the Board of Directors was removed at the July 5, 2024, gathering; (2) Mr. Childers has not been elected to the board of Directors; and, (3) the Certificate of Election filed with the Catron County Clerk on July 8, 2024, must be revoked.

COUNT 2: DEFAMATION

90. Defendants re-allege and re-incorporate the preceding paragraphs as if fully alleged herein.

91. Under New Mexico law, a prima-facie case for the tort of defamation includes: (1) a published communication by the defendant; (2) the communication includes an asserted statement of fact; (3) the communication was concerning the plaintiff; (4) the statement of fact is false; (5) the communication was defamatory; (6) the persons receiving the communication understood it to be defamatory; (7) the defendant knew the communication was false or negligently failed to recognize that it was false, or acted with malice; (8) the communication caused actual injury to the plaintiff's reputation; and (9) the defendant abused its privilege to publish the communication. *See Young v. Wilham*, 2017-NMCA-087, ¶ 55, 406 P.3d 988, 1007.

92. Upon information and belief, Mr. Childers has made untrue statements about the Board of Directors both verbally to other landowners and by posting statements for members to see.

93. Upon information and belief, these statements have been construed by Mr. Childers to be fact.

94. Upon information and belief, these statements have been untrue and defamatory towards the Board of Directors.

95. Upon information and belief, Mr. Childers knew these statements are untrue.

96. These statements have cause actual injury to the members of the Board of Directors and the Association.

REQUEST FOR RELIEF

WHEREFORE, Defendants request that the Court:

A. Issue a Declaratory Judgment stating: (1) no member of the Board of Directors was removed at the July 5, 2024, gathering; (2) the Certificate of Election filed with the Catron County Clerk on July 8, 2024, must be revoked; (3) Mr. Childers has not been elected to the board of Directors

B. Awards punitive damages for circumventing the governing documents and recording an untrue certificate of election with the Catron County Clerk's Office;

C. Award attorney fees and costs associated with this action pursuant to NMSA 1978, §47-16-14;

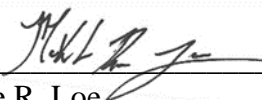
D. Grant a permanent injunction prohibiting Jesse Childers from further acting as a member of the Board of Directors and trying to assert control over the Association's assets.

E. Award pre- and post-judgment interest;

F. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

ROSEBROUGH, FOWLES, & FOUTZ P.C.

By: 
McKade R. Loe
Attorney for Defendants/Counter Claimants
101 West Aztec Ave., Suite A
P. O. Box 1027
Gallup, New Mexico 87305-1027
(505) 722-9121
mckade@rf-lawfirm.com

CERTIFICATE OF SERVICE

I certify that on July 26, 2024, a true and correct copy of the foregoing was electronically filed through the Odyssey File & Serve system and served on Plaintiff by mail.


McKade R. Loe

EXHIBIT “1”

WHRLA Resolution to Establish Procedures for the Removal of Directors

WHEREAS the board of directors recognizes the need to establish procedures with which to comply with the WHRLA bylaws Article IV, Section 5, concerning the removal of directors,

WHEREAS the board of directors recognizes the need to establish procedures to comply with the standing Code of Ethics,

RESOLVED, the WHRLA board of directors approves the procedures for the removal of directors as found on page two of this document.

We, the undersigned, hereby certify that WHRLA is comprised of seven members, of whom 6 were present at a meeting duly and regularly called, noticed, convened and held this day Tuesday February 6th 2014 and that the foregoing Resolution was duly adopted at said meeting by the affirmative vote of 5 members, and opposed by 1 members, and that said resolution has been duly recorded in the Minutes and is in full force and effect.

Director

Director

Director

Director

Director

Director

Director

WHRLA Rules for the Removal of Directors

In order for a director to be removed from the WHRLA board, with or without cause, by a vote of a majority of the total number of votes of all members voting on the issue, as per the WHRLA Bylaws, Article IV, Section 5, the following procedures apply. A landowner must initiate a petition that must be signed by the landowners of 20 or more separate lots to request the removal of a director. The petition must subsequently be presented to the board of directors. The board of directors must have the issue placed on a ballot to be distributed to all landowners. Thirty days after the ballots are distributed, all returned ballots will be tallied by a committee of volunteers selected in a fair manner by the president. The results will be presented at the next regular board meeting scheduled after the return deadline. An affirmative vote by a majority of the total number of votes of all members voting on the issue will result in immediate termination.

In order for a director to be removed from the board if accused of violating of the Code of Ethics, as per the WHRLA Bylaws, Article IV, Section 5, the following procedures apply: The president of the association shall be notified via email of the intent to motion for the removal of a director, along with a short synopsis of the alleged infraction(s). The director in question shall be notified by the president via email explaining the alleged infraction(s) and indicating the intent to place the removal of the said director on the agenda for the next board meeting. Once placed on the agenda, during the next board meeting, a board member will motion that the said director be removed, followed by a five minute, uninterrupted presentation justifying the removal. Five minutes is allowed for questions from board members followed by five minutes for an uninterrupted rebuttal from the director being considered for removal. A vote by the board of directors is then taken by secret ballot and the president will announce the results. An affirmative vote by 2/3 of the directors present, providing there is a quorum, results in immediate removal.

EXHIBIT “2”

**BY-LAWS
OF
WILD HORSE RANCH
LANDOWNERS' ASSOCIATION, INC.**

ARTICLE I

NAME AND LOCATION

The name of the corporation is Wild Horse Ranch Landowners' Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located initially on the York Ranch in Pie Town, New Mexico at the office of The Ranch Associates, Ltd., Co. until such time as the Board of Directors designates such other location as it may deem appropriate for such purposes.

ARTICLE II

DEFINITIONS

Terms used in these By-laws having initial capital letters but not otherwise defined in these By-laws shall have the meanings specified below.

"Activate", "Activated" and "Activation" shall refer to the recordation in the office of the County Clerk of Catron County, New Mexico of a notice executed by the Declarant to the effect that a particular Phase which has been acquired by the Declarant has been subjected by the Declarant to the Declaration. The real property referred to as "Phase 1" on the Subdivision plat shall be Activated by the recordation of the Declaration.

"Association" shall mean Wild Horse Ranch Landowners' Association, Inc., its successors and assigns.

"Board" shall mean the Board of Directors of the Association.

"Declarant" shall mean Wild Horse Ranch L.L.C. and the successors and assigns of its rights and powers hereunder.

"Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for the Subdivision, as amended from time to time.

"Default Rate" shall mean a rate of interest equal to the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law.

"Lot" shall mean any numbered lot as shown on the Subdivision plat of a Phase which has been Activated.

"Majority of the Members" means Members owning a majority of the Lots.

"Member" shall mean a member of the Association, including the Declarant so long as the Declarant is the Owner of one or more Lots.

"Owner" shall mean a record holder of beneficial or equitable title and legal title if legal title has merged with the beneficial or equitable title, to the fee simple interest in any Lot. Owner shall not include: (a) a Person having an interest in a Lot merely as security for the performance of an obligation; or (b) a tenant of a Lot.

"Person" shall mean a natural person or a corporation, limited liability company, partnership, joint venture, trust, or any other legal entity.

"Phase" shall mean a portion of the Subdivision indicated as a "phase" on the plat for the Subdivision.

"Property" shall mean the real property comprising the Subdivision.

"Subdivision" shall mean that portion which has been Activated of Wild Horse Ranch Subdivision, a subdivision located in Catron County, New Mexico and developed by Declarant, including the roads and any common areas shown on the Subdivision plat.

ARTICLE III

MEETINGS OF MEMBERS

Section 1. **Annual Meetings:** Annual meetings of Members for the election of Directors and for such other business as may be stated in the notice of the meeting, or as may properly come before the meeting, shall be held at such places, within or without the State of New Mexico, and at such times and dates as the Board may designate. If the Board fails to so determine the time, date and place of the meeting, the annual meeting of Members shall be held at the principal office of the Association on the first Saturday of May at 2:00 p.m. each year.

Section 2. **Special Meetings:** Special meetings of the Members may be called at any time by the Declarant, the President or by a majority of the Board or by a Majority of the Members.

Section 3. **Notice of Meetings:** Written notice stating the place, date and time of the meeting and the general nature of the business to be considered shall be given to each Member by mail at his address as it appears on the records of the Association, not less than 10 days nor more than 50 days before the meeting.

- Section 4. Quorum: The presence of Members or proxies of Members entitle to cast 50% of all votes shall constitute a quorum. If the required quorum is not present another meeting may be called and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Upon the holding of the meeting at which a quorum is present, the quorum for the next succeeding meeting shall be Members or proxies of Members entitled to cast 50% of all votes.
- Section 5. Proxies: At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary.
- Section 6. Delinquent Members: A Member who has not paid all assessments owing the Association together with interest, if any, and costs of collection of the Association, including attorneys' fees, or who is the subject of an uncured notice from the Declarant to the Association informing the Association that such Member is then in default under his real estate contract with the Declarant, shall not be entitled to vote on any matter. The determination of a Majority of the Members and the existence of a quorum for any meeting of Members shall be made without reference to such a Member or the Lot or Lots owned by him.

ARTICLE IV

DIRECTORS

- Section 1. Number: The number of Directors shall be no fewer than three and no more than ten. The Directors shall be elected at the annual meeting of Members and each Director shall be elected to serve until his successor shall be elected and is qualified to serve on the Board. Unless otherwise prohibited by law, Directors may also serve as Officers of the Association.
- Section 2. Meetings: Meetings of the Board may be held within or without the state of New Mexico and upon three days' notice. A majority of Directors must be present to constitute a quorum at any meeting of the Board. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if, prior to such action, a written consent thereto is signed by all Members of the Board, and such written consent is filed with the minutes of the proceedings of the Board.
- Section 3. Increase in Number: The number of Directors may be increased within the limits provided in Section 1 of this Article by the affirmative vote of a majority of the Directors or by the affirmative vote of a majority of the total number of votes of all Members voting on the issue at the annual meeting or at a special meeting called for that purpose, and by like vote the additional Directors may be chosen at such meeting to hold office until the next annual election or until their successors

are elected and qualified, whichever occurs first. The number of Directors may be increased above ten by amendment of the By-laws.

Section 4. Compensation: No Director shall receive compensation for any service he may render as such to the Association. Any Director may be reimbursed for his actual expenses incurred in the performance of his duties as Director.

Section 5. Removal: Any Director may be removed from the Board, with or without cause, by a vote of a majority of the total number of votes of all Members voting on the issue. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining Directors and shall serve until their successors are elected and qualified.

Section 6. Resignation: Any Director, member of a committee or other officer may resign at any time. Such resignation shall be in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective.

Section 7. Vacancies: If the office of any Director, member of a committee or other office becomes vacant, the remaining Directors in office, though less than a quorum, may by majority vote appoint any qualified person to fill such vacancy and to hold office for the unexpired term of his predecessor and until his successor shall be duly chosen.

Section 8. Powers off the Board: In addition to all powers expressed or implied elsewhere herein, in the Articles of Incorporation of the Association, in the Declaration or by law, the Board shall have the power to:

- A. Exercise for the Association all powers, duties and authority vested or delegated to the Association.
- B. Employ a manager, an independent contractor, or such other employees as the Board of Directors deems necessary and to prescribe their duties.
- C. Enforce the provisions of the Declaration; provided, however that nothing herein shall be construed as prohibiting any Owner from pursuing whatever independent enforcement actions such Owner may have.

Section 9. Duties of the Board of Directors: It shall be the duty of the Board of Directors to:

- A. Cause to be kept a complete record of all its acts and corporate affairs and present a statement thereof to the Members at the annual meeting of the Members.
- B. Supervise all officers, agents and employees of the Association, and see that their duties are properly performed.

- C. Fix the amount of the regular annual assessment and change such amount if the Board deems such action necessary, and levy special assessments upon the affirmative vote of a majority of the total number of votes of all Members voting on the issue (a regular or special assessment is hereinafter referred to as an "Assessment").
- D. Send written notice of each Assessment to every Member.
- E. Enforce the lien referred to in Article VI against the Lots owned by any Member who owns a Lot for which any Assessment is unpaid and is overdue.
- F. Enforce the provisions of the Declaration; provided, however, that nothing herein shall be construed as prohibiting any Owner from pursuing whatever individual independent enforcement actions such Owner may have.

ARTICLE V

OFFICERS AND THEIR DUTIES

- Section 1. Enumeration of Officers:** The Officers of this Association shall be a President, Secretary and Treasurer and such other officers as the Board may from time to time by resolution create. Unless otherwise prohibited by law, Officers may also serve as Directors of the Association.
- Section 2. Election of Officers:** The officers of this Association shall be elected by the Directors. The election of Officers shall take place at the first meeting of the Board of Directors following the annual meeting of the Members.
- Section 3. Term:** The Officers of the Association shall be elected annually by the board and each shall hold office for one year unless such officer shall resign, be removed or otherwise be disqualified to serve.
- Section 4. Resignation and Removal:** Any Officer may be removed from office, with or without cause, by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- Section 5. Vacancies:** A vacancy in any office may be filled by appointment by the board. The Officer appointed to such a vacancy shall serve for the remainder of the term of the Officer he or she replaces.

Section 6. Duties: The duties of the Officers are as follows:

President: The President shall preside at all meeting of the Board, shall see that orders and resolutions of the Board are carried out, shall sign all approved leases, mortgages, deeds and other written instruments and perform such other duties as may be required by the Board.

Vice-President: The Vice-President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and perform such other duties as may be required by the Board.

Secretary: The Secretary shall record the votes and keep the minutes of meetings and proceedings of the Board and of the Association. The Secretary shall also serve notice of meetings of the Board and of the Members, keep appropriate current records showing the Members of the Association together with their addresses and shall perform such other duties as may be required by the Board.

Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association, disburse such funds as directed by resolution of the Board, keep proper books of account, and perform other duties as may be required by the Board.

ARTICLE VI

ASSESSMENTS

Each Owner is obligated to pay all Assessments levied with respect to the Lot or Lots of such Owner. All regular Assessments shall be due 30 days, and all special Assessments shall be due 45 days, following the date an Owner is sent notice thereof or at such later date as the Board shall declare. If an Assessment is not paid on the due date, all of the Lots owned by the Owner of the Lot on which such Assessment is unpaid shall be subject to a lien (an "Assessment Lien") against such Lots for the amounts specified below. If any Assessment on any Lot is not paid within 30 days immediately following the due date, the Assessment shall bear interest from the date due until paid at the Default Rate. The Association may, at its option, bring a legal action to foreclose the Assessment Lien against the Member's Lot or Lots in accordance with the then prevailing law of the State of New Mexico for the foreclosure of mortgages. The amount owed, which shall be secured by the Assessment Lien, shall be the delinquent Assessment together with interest at the Default Rate from the due date and all collection costs, including attorneys' fees, relating to such action. Each Member vests in the Association, or its agents, the right and power to bring all actions at law or equity against such Member for the collection of the delinquent Assessments and other sums just specified. The regular annual initial Assessment is to be **one hundred twenty-five dollars (\$125.00)** per Lot.

ARTICLE VII

AMENDMENTS

These By-laws may be amended by action of the Board in accordance with applicable law. In case of any conflict between the Articles of Incorporation and these By-laws, the Articles shall prevail, and in the case of any conflict between the Declaration and these By-laws, the Declaration shall prevail.

ARTICLE VIII

FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of the incorporation of the Association.

IN WITNESS WHEREOF, we being all of the Directors of Wild Horse Ranch Landowners' Association, Inc. have hereunto set our hands this 15 day of March, 1998.

James Leslie, Director and President
James Leslie

Janet Leslie, Director
Janet Leslie

Louis L. Christensen, Director
Louis L. Christensen

EXHIBIT “3”

BOARD RESOLUTION OF THE WHRLA FOR ESTABLISHING VOTING RULES

WHEREAS, the WHRLA board of directors recognizes the need for establishing standing voting rules and procedures that provide transparency, equality, and standardization for the election of WHRLA directors to serve on the WHRLA board;

RESOLVED, the WHRLA board of directors approves the WHRLA Voting Rules and Procedures as found on pages two and three of this document.

We, the undersigned, hereby certify that the WHRLA board is comprised of seven (7) members, of whom 6 were present at a meeting duly and regularly called, noticed, convened and held this day Tuesday February 6th 2024, and that the foregoing Resolution was duly adopted at said meeting by the affirmative vote of 6 members, and opposed by 0 members, and that said resolution has been duly recorded in the minutes and is in full force and effect.

Director

Director

Director

Director

Director

Director

Director

WHRLA RULES & PROCEDURES FOR THE ELECTION OF DIRECTORS

- The nomination letter for open board of director positions shall be presented to the board by the secretary at the March board meeting for review and approval by the directors prior to mailing.
- Requests for nominees shall be mailed to landowners no later than March 15th.
- Response to the nomination request to be received no later than April 15th.
- Eligible nominees shall not have an outstanding assessment balance due to the WHRLA.
- All nominees will be contacted by the secretary to either accept or decline the nomination no later than April 22nd.
- For nominees to be added to the ballot, nominees must present a one paragraph biography to be included with the ballot and shall be received no later than April 30th.
- The election ballot shall be presented to the board by the secretary for review and approval at the May board meeting, prior to mailing.
- Anyone purchasing property after May 1st will not be eligible to vote in the current year election. The names and addresses of eligible voters will be taken from the Catron County Tax Records. It is the responsibility of landowners to ensure the data with the Catron County Assessor office is current.
- For landowners to qualify to vote, all regular or special assessments shall be paid no later than March 15th.
- Ballots shall be mailed no later than May 15th.
- The ballots will be printed on watermarked paper and will be numbered in red ink on the bottom right corner. (Number will not correspond with owner name or lot #.) Return by date shall be printed on the ballot. Nominees shall be listed in alphabetical order on the ballot. Only original ballots will be counted.
- Each landowner will receive one ballot per lot owned.
- The deadline for returning mailed ballots shall be no later than June 30th.
- The deadline for returning ballots in person shall be no later than 10 a.m. on the morning of the Annual Meeting of Members. Ballots delivered in person shall be delivered to the president or the secretary. Only original ballots will be accepted.
- Each Member may vote in person or by proxy. All proxies shall be in writing, signed by the landowner and filed with the secretary. Proxies shall be delivered to the secretary or president no later than 10 a.m. on the morning of the Annual Meeting of Members. Only original ballots will be accepted.
- Per the New Mexico Homeowner's Association Act, 47-16-9(f) election ballots shall be counted by a neutral third party or by a committee of volunteers. The volunteers shall be selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting. The volunteers shall not be board members and, in the case of a contested election for a board position, shall not be candidates.
- The total number of election ballots mailed and received shall be recorded by the secretary.

- The election ballots shall be counted on the day of the Annual Meeting of Members so the new board members can be introduced at the business meeting.
- Any landowner may observe the counting process but may not comment or interfere with the counting process.
- The ballot committee shall have the authority to remove disruptive individuals.
- The election results shall be posted on the WHRLA website.

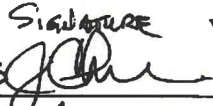


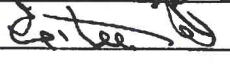
EXHIBIT “4”

Certificate of Election

Statement of Ballots Cast

July 5, 2024, Landowners' Meeting

BOARD CANDIDATES

Candidate Name	Signature	Votes Cast	Proxy Votes
Jesse Childers		24	25
Ron Allen		23	25
Michael Steele		16	25
Eileen Wright		5	25

WE, THE UNDERSIGNED LANDOWNERS OF THE ELECTION RESULTS OF AN ELECTION HELD IN WILD HORSE RANCH LANDOWNERS ASSOCIATION (aka:WHLRA), IN THE STATE OF NEW MEXICO, ON FRIDAY 5TH OF JULY, 2024 FOR THE ELECTION OF THE BOARD OF DIRECTORS DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND CORRECT ABSTRACT OF THE VOTES CAST AT SAID ELECTION, AS SHOWN BY THE RETURNS FROM WHLRA IN SAID COUNTY OF CATRON.


Landowner Witness

7/5/24
Date


Landowner Witness

7/5/24
Date


Landowner Witness

7/5/2024
Date

Signed this 5th day of July, 2024

2024-00699 07/08/2024 08:13:15 AM
Pages: 1 Fees: 25.00
Sharon Armijo, County Clerk, Catron County NM
CERTIFICATION



EXHIBIT “5”

Wild Horse Ranch Landowners' Association Meeting Minutes

Board of Directors Regular Board Meeting

Thursday, August 10, 2023

6:00 p.m. – 7:00 p.m. (New Mexico Time MST)

Call to Order and Roll Call: 6:00 p.m.

In Attendance: Allen Dugan (P) via Zoom, Carmen Bronowski (T) via Zoom, Vera Gastineau (D1), Steve Malvitz (D4), Mitch Henderson (D5), Ron Racicot (D6) and Jim Feehan (D7).

Absent: Lila Zurzolo (S), Jesse Childers (D2) and Dale Koelfgen (D3).

Landowners attending: Zina Day McGuire, Pam Feehan and Becky Shepherd,

Via Zoom: Petr Ifka, Michael and Sarah Mier, Michael Greathouse, Fred Miller, Rachel Ponder, Greg Bronowski, Sarah & Saxon.

Quorum Present: Yes

The Board addressed the Resignation letter received from Lila Zurzolo, Jesse Childers & Dale Koelfgen. Since there is no Secretary at the moment Becky Shepherd was asked by Allen to record the minutes. Becky agreed.

Approval of Amended Agenda: A motion to approve the Amended Agenda was made by Jim, seconded by Mitch. Motion was unanimously approved.

Approval of Regular Business Meeting Minutes from: July 29, 2023. A motion to approve the minutes was made by Mitch, seconded by Steve. Motion was unanimously approved.

A resignation letter was received by Vera and read aloud by Steve. A motion to accept the resignations of Lila, Jesse and Dale was made by Jim, seconded by Ron. No discussion. Motion was unanimously approved.

- Election of Secretary
 - Becky Shepherd was nominated by Mitch, seconded by Jim. No other nominees presented.

By unanimous vote Becky Shepherd was appointed as the Secretary.

- Treasurer's Report – Carmen Bronowski
 - Income Statement reviewed.
 - Insurance is being bound. Have not receive the bill yet. Will contact them on Monday to see if it can be paid over the phone. Insurance has increased to approximately \$6,200 this year versus last year. It would have been \$6,300 which included terrorism which we don't need so it was dropped.

A motion to increase the line item on the budget from \$5,000 to \$6,200 was made by Steve, seconded by Vera. No discussion. Motion was unanimously approved.

- The approved 2023 Budget shows a deficit of \$11,000 but due to weather last year there weren't as many road maintenance expenses. We should be able to cover the deficit for the next 2 years.

- Secretary Report – Vera Gastineau
 - None
- Appoint Interim Directors – Should be offered to nominees with the next highest votes which would be Rachel Ponder and Mitzy Nichols. Mitch asked if the board had to accept the next two nominees on the ballot or could the board appoint whomever they wanted. Jim stated in the past the offer has always been extended to the nominees with the next highest votes. Jim stated he had personally heard both Mitzy and Lefty say the association needs to be dissolved. He feels that should disqualify both of them from being on the board. Allen asked Rachel if she would accept the appointment as Director, Rachel said yes.

A motion to appoint Rachel as Director was made by Steve, seconded by Mitch. Rachel Ponder to fill the vacant position of Director was unanimously approved. She will fill the Director 3 position which expires in 2025

- Greg Bronowski was nominated to fill the vacant position for Director by Jim, seconded by Steve. No other nominations were offered. Allen asked Greg if he would accept the nomination, Greg said yes. The motion to appoint Greg Bronowski to fill the vacancy of Director was unanimously approved. He will fill the Director 2 position which expires in 2024.
- Maintenance Committee Appointments – Required to have at least 2 Directors on the committee. Volunteers were Rachel, Jim, Steve, Ron and Greg. Need to schedule a meeting to decide who the Chairperson will be.

Old Business:

- Roads Committee Charter and Resolution need to be rewritten. Jim will provide a revised copy by the next meeting to be approved by the board.
- Fire house well – Steve stated the well is operational at this time. He has working with the Fire Department. They want to put a pressurized hydrant in but he is trying to get them to pay for it. Allen talked to Megan, the Fire Chief about tapping in through the wall instead of using the overhead. We need to get a price for it and the Fire Department will buy the parts. Steve and Allen to figure out what is need for the Fire Department when Allen arrives in a few weeks.
- Steve stated the Buck well is up and running with no leaks. He will test and put the heaters back in the pump house. The LP tank is missing from the pump. It was missing prior to the door being left open so it could dry. He removed everything from the building before he left. Steve suggested that Allen talk to Megan about getting a fire hydrant for the Buck well also. Allen suggested removing the old hydrant and replace it with 2 ½” - 3” pipe from the T valve below. Then install a drain valve inside the building that way the water can be drained back into the drain which would prevent freezing. Steve agreed that would work.

New Business:

- Website – Jim has been working on the new website. It is up and running. It’s not very populated yet but with Becky’s help we’ll populate as many old document as we can find. Jim requested that if anyone in the community has copies of any documents to please forward them to him. He has been working trying to gain access to our old website which they claim was shut down to nonpayment which is incorrect. Carmen tried numerous times to pay but they kept kicking it back with an error. Carmen even mailed a check but still they won’t reactivate the account. Jim stated he tried using his personal card but it was still kicked back with an error. As mentioned in past meetings the owner passed away back in February. He was the only administrator. No one is maintaining the website. He has tried to get the old URL, whrtalk.net, to automatically direct anyone trying to use it to the new web address which is whrla.com. It

was discussed that the LOA is required to maintain records (i.e. minutes, agendas, financial records, by-laws, etc.) for 5 years.

- Mailbox purchase was forgotten. Steve reported Sam has no more boxes available. Landowner has put up his own box. Leaving up to Maintenance Committee to get prices and present to the board for a vote.

Public Comments – Limited to 5 minutes per Person. Action to be Taken by Board - None

- Zina McGuire – Advise the Wild Horse Ranch Subdivision was created by the developer in March 25, 1998. First Election was held at the York Ranch on July 3, 1999. Richard McGuire was elected to that board. Between them they have spent 24 years serving on the board. 1st she wanted to know why on May 5, 2022, the “initial interim” board voted to restore the original by-laws and end 6 amendments which were created by elected boards over the past 22 years. She stated they had a lot of landowners input and discussion before they came into play. Requested a copy of the justification documentation used by the interim board to dissolve those 6 amendments going back to the original by-law with a few updates. We have been using the NM Non Profit Act as our guiding document. Need to follow NM HOA Act of 2013 & 2019 as presented by Attorney Steve O’Brien. 2nd she stated on January 31st, three landowners went to the Turner law firm to discuss the validity of Jerry Fowlers appointment to the board on December 17, 2021. The attorney was not provided with the minutes of October 5, 2019, or September 13, 2020 showing the proper documents had been signed. The BOD filed the required notice of homeowners association act. Because the lawyer was not given proper documentation deemed the whole board was suspended. She referred to contracts that are still in place that are still legal. She stated Jerry was removed illegally. Allen informed her that her 5 minutes were up but asked if the board would allow her to finish. The board agreed. She wanted to know who approved the \$4,000 that was spent on the attorney. Becky stated it was money that was donated. Pam corrected stating the money reimburse came from the association. Even though it had been donated it was association money. Zina stated the contract signed with Painted Canyon Dirt Works is still in effect for roadwork. They are also filing a lawsuit against the board for a contract that has not been honored. Motion and unanimous approval of the board to increase the dues to \$625 was approved by the whole board not just her. Four items present to the board. The board chose the \$625 special assessment for 2 years for road work that needed to be done. She states we were under an emergency resolution by the county who applied for funds and Wild Horse was included to fix the county roads within the subdivision. Claims the board planned to mail a letter to the landowners explaining the increase but because Jen Swenson, the then Secretary/Treasurer posted it on the website. Zina speaks about the owner of the Painted Pony Dirt Work having COVID when he graded our roads and how she followed him for two weeks. She spoke of how none of the 109 culverts were delineated. He hit three culverts because there were no delineations. She spoke of how we almost lost our fire department when she resigned. She stated one of the landowners, Mr. Hanneman’s insurance had increased by 48%. She stated she and Wade Dixon have retained attorneys and have filed suits against the board.
- No other public comments were offered in person or via zoom.

Next Meeting Date and Time: Wednesday, September 6, 2023 at 10 a.m.

A motion was made by Steve to adjourn the meeting, seconded by Rachel. Motion was unanimously approved.

Adjourn Meeting Time: 7:00 p.m.