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FW: 16163 Anoka Drive Project

1 message

Di Saia, Steven <Steven.DiSaia@sedgwicklaw.com>
To: Diana Ungerleider <dianaunger3@gmail.com>

Wed, Jan 22, 2014 at 10:40 PM

For file.

Steve

From: Di Saia, Steven
Sent: Wednesday, January 22, 2014 2:20 PM
To: Terrance Huber
Cc: Larry Friedman
Subject: Re: 16163 Anoka Drive Project

The consultant retained did visit the subject properties and, while I was not present, I understand that he has completed his review. Thank you, and to Mr. Del Colliano, for keeping the story poles in place. I will seek to confirm that they can now be removed, if desired.

We have not received the report yet which is the product of the evaluation done. Citing your client's request for prompt attention, I had asked that it be done ASAP, but can check on the status. I am copying Mr. Friedman on this note, as I am traveling at present for work and he was present for the review done.

Steve

On Jan 22, 2014, at 2:14 PM, "Terrance Huber" <terrancehuber@gmail.com> wrote:

Steve,

Your 1-13 email and our telephone conversation shortly after indicated that the appraiser located by Board members should have his or her appraisal completed within 10 days from the 13th.

Tomorrow is the 10th day and this is just a follow-up to determine where we are in the process. Jerry is working with his architects and engineers and they are constantly asking where we are.

A status report, however brief, would be very helpful.

Terry Huber

On Mon, Jan 13, 2014 at 4:37 PM, Di Saia, Steven <Steven.DiSaia@sedgwicklaw.com> wrote:

Mr. Huber:

The Board is in receipt of your electronic mail correspondence of January 10 with regard to the above-referenced project. Quite frankly, we take strong exception to the position set forth in your communication, proposing that we have not made any progress with regard to our evaluation and analysis of the proposed project.

As you are well aware, the Board is required to enforce the terms and parameters of the CC&Rs applicable to the Palisair Home Owners Association and derives its powers for review and enforcement from that document. With specific regard to the matter at hand, Article III, Section 1 of the CC&Rs sets forth that:

No structure of any kind shall exceed 15½ feet above the finished ground from the front of the building pad to the top of its ridge pole, nor more than 14 feet above the finished floor, except that the Tract Committee in its sole discretion and after consultation with the possibly affected neighbors may permit the erection of a structure higher than 15½ feet above the finished ground measured from the front of the building pad, provided it will not unreasonably obstruct or unreasonably diminish the quality and nature of the view from any other land of this or an adjoining tract.

The construction proposed at 16163 Anoka Drive would bring that structure substantially above 15½ feet. As such, the Board is required to consult with the potentially affected neighbors and make a determination as to the effect of that proposed structure. We have diligently done so, since the review of the submitted plans was completed.

As you are also aware, there are two possibly affected neighbors involved in the analysis of this Project, both of whom have voiced strong opposition to the new structure, as currently proposed. Further, they have asserted to the Board that the construction, based on the plans submitted, will diminish the quality and nature of their views. As such, the Board has had no choice, other than to conduct a complete investigation of the positions expressed.

This investigation has involved multiple visits by the Board to the subject property, to both properties for the possibly affected neighbors, and the residence of an additional neighbor who has become involved in this investigation (Dennis Mendel), as well as extensive additional work in this same regard. We have further conducted multiple discussions and analyses of the plans submitted, in an effort to resolve the issues presented by the possibly affected neighbors.

In addition, correspondence was submitted to the Board on behalf of one of the affected neighbors, Ms. Baumgartner, dated December 26, 2013, proposing a negative effect on the value of her residence posed by the project. This correspondence has been shared with you and your client. Article III, Section 1 of the CC&Rs provides that, in the exercise and sole discretion of the Tract Committee, the Committee shall consider, among other factors, "how the structure may impact property values" and "statements from members of the Association." In keeping with these requirements, we have thus listened to the assertions by all possibly affected neighbors and considered, among other things, the effect on valuation, if the structure is permitted to proceed.

We have also received and reviewed your correspondence, dated January 2, 2014, as submitted by electronic mail, in which you list your objections to the concept of bringing in real estate agents to look at value issues in connection with the properties potentially affected by the proposed construction. We have considered all these factors as well, including the potential bias on the part of Mr. Aberle, in providing his valuation assessment.

This is all work which has been necessitated on the part of the Board on a continual basis, most of which took place over the Holiday Season, because your client has proposed construction which would result in a structure substantially higher than the restrictions posed by the CC&Rs. Your suggestion that no progress has been made in the investigation conducted by the Board, in the face of these facts, is thus erroneous and contrary to the information you have already been provided.

The fact remains that, pursuant to the provisions of the CC&Rs, the Board is required to consider the possible impact of property values posed, among other factors. Given that we cannot be assured of the

impartiality of positions provided thus far, we have been required to seek an assessment from an independent third party. As provided in our communications, these efforts have been hampered, due to the involvement of counsel in this project. While you seem to have taken some exception to this fact, the Board has been specifically informed by multiple individuals we contacted to provide an impartial valuation. They have refused to become involved specifically due to the involvement of attorneys and thus their unwillingness to involve themselves. These circumstances have resulted in additional work on the part of the Board in an attempt to obtain impartial information on which to base its decision.

Despite these developments, the Board believes that it has identified a professional assessor, very familiar with the Palisades, to provide an unbiased assessment at our expense. The Board has requested that assessment be done as soon as possible, as we are quite cognizant of your client's desire to proceed promptly. We believe that this assessment will be conducted and completed within the next 10 days. We thus request that the story poles, which were previously erected, remain in place for that length of time. We will contact you and your client after that assessment is completed and the Board has had an opportunity to meet to discuss that assessment, as well as all other facts which we are required to consider in the exercise of our sole discretion, pursuant to the CC&Rs.

Steve Di Saia

Chairman, Plans Committee

Palisair Home Owners Association

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