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## Fwd: Delay from appraise

2 messages

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**Di Saia, Steven** <Steven.DiSaia@sedgwicklaw.com>

Tue, Jan 28, 2014 at 4:55 PM

To: Diana Ungerleider <dianaunger3@gmail.com>

In case Larry does not forward for the cloud.

Steve

Begin forwarded message:

**From:** Larry Friedman <lpfriedman1@gmail.com>

**Date:** January 28, 2014 at 4:52:07 PM PST

**To:** Terrance Huber <terrancehuber@gmail.com>

**Cc:** Steven Di Saia <steven.disaia@sedgwicklaw.com>, Hal Erdley <halerdley@gmail.com>

**Subject: Re: Delay from appraise**

Dear Mr. Huber,

I was really surprised by the tone of your last e-mail correspondence of Friday, January 24. I was simply standing in for Steve, while he was traveling, and trying to give you an update on an unforeseen delay, which was, quite frankly, very reasonable under the circumstances presented.

I am not an attorney, with the broad legal and business experience you must have, but, if I may, I would like to correct you on a few things.

First of all, you have the date wrong on when we were provided the plans – I believe it was October 22, 2013 and not 2012. I'm sure that was just a typo.

Let me respond to the various points you made in your email.

1. I assume you are getting at the notion that the CC&Rs haven't changed, since you dropped off the plans and we should have answered the question of impact on value at that point. Frankly, the question of value was raised by one of the effected neighbors after the story poles were erected, several weeks into our review, investigation, and the process of your work on your client's behalf. We, as a Board, have a responsibility to validate independently that claim as best we can. Given the holidays and holiday travel, that continues to take time.

2. I think you are proposing that the change in future property values is, at best, a guess, as the variables to consider are constantly changing. While I agree that the variables can change, I'm sure you will agree that the proposed remodel and addition by Mr. Del Colliano, adding a nice second story view of the ocean, will substantially increase the property value of the current structure. We are trying to ascertain independently, if that change will have a negative effect on the property values of the neighboring residences.

3. I agree that there are lots of different styles of homes in the neighborhood and I don't see the relevance of that point.

4. I totally fail to see the relevance of your point 4. I'm not aware of anyone speaking of a "utopian norm" – simply the language of good taste and design as pointed out in the CC&Rs. I'm not aware at this point that your client plans to stray from that in the design of the home. Again I don't understand your point on the difficulty of predicting market values in the future – no one

has suggested that to my knowledge.

5. I think you do your client a disservice by suggesting the process should have been completed in 10 days. If you have any experience working in this area, you should know that it takes longer than that. If this were a simple variance, easily decided, we would not have asked for story poles, had multiple meetings with concerned neighbors, and had to contract with an independent appraiser to complete our knowledge of the variables involved. As an attorney, you should know that we, as a Board, must complete all steps necessary to insure that our fiduciary responsibilities to all of the homeowners in the community are met.

You are correct that there will be additional steps involved subsequent to receiving the report from the appraiser. We will involve you in those steps and try to move the process along as quickly as possible. I assume Mr. Del Colliano told you that, prior to the purchase of this property, a number of Board Members, including me, were asked if a second story could be built on the property. Mr. Del Colliano's agents were instructed "to read the CC&Rs, in that a variance to our 15.5 foot limit would have to be granted for that to happen. Plans would be needed and a review would be conducted by the Board prior to any such approval."

May I simply remind you that you are the ones requesting a variance, which has necessarily compelled the Board to complete its full due diligence prior to any approval or disapproval. In this process, we represent your client, as well as the affected neighbors. This entire process should come as no surprise, and, despite your best efforts, we will not be bullied by unrealistic demands into a premature decision on the requested variance.

On Fri, Jan 24, 2014 at 12:48 PM, Terrance Huber <[terrancehuber@gmail.com](mailto:terrancehuber@gmail.com)> wrote:

Mr Friedman,

I am compelled to respond to this further delay, not because of the appraiser's current circumstances, as to which I will take your word, but because we are still involved in pursuing what Mr Del Colliano and I have long believed is a pointless exercise.

I do understand that what the CC&R's say about value, and as a lawyer, I am sympathetic to the idea of pursuing all **reasonable** avenues **necessary** to pursue. The real problem in this instance is multifaceted:

1) The CC&R's haven't changed since October 22, 2012, when the plans were given to the Board, and this particular question of value, to the extent that the pursuit of it is reasonable, necessary and relevant, existed then

2) Appraisers value property based upon current criteria. The notion of predicting what might happen to valuation multiple years from now is not the basis of any formulas of which I am aware, so such opinions are, at best, a guess from a credentialed guesser. Still a guess, notwithstanding the credentials. Moreover, the forces which influence real property value are constantly changing.

3) That the types, sizes, and varieties of additions, remodels and rebuilds in the Palisair group of homes is varied, is not subject to dispute. Accordingly, there is no one type of structure or architecture which is required. A cursory review of the neighborhood would quickly lay any such notion to rest.

4) We are therefore involved in seeking to establish some utopian norm to serve as the basis of a benchmark which this proposed structure may or may not have an effect upon. While that norm may have existed in 1955, it does not exist today. Market value is necessarily an objective value created by collective patterns of the market, and those patterns are necessarily current patterns. Predicting those patterns more than a few months ahead is problematic at best, and since surrounding properties are not for sale, even those values are difficult to pinpoint.

5) Most importantly, we are now three months into a process which should have taken a little more than 10 days (that was the prediction, once a suitable appraiser was located) with no firm date upon which it might be completed. That this particular delay is unavoidable is in fact the subject of some question, mainly because it (the appraisal) should long ago have been completed. The real issue, however, is whether we should be subject to this (or any) kind of a delay, more than three months into a relatively simple determination.

As I mentioned above, "reasonable avenues" and "necessary" ought to be the guiding principles, in a

question of this nature. The guiding principles here seem to somehow have morphed into whatever might even remotely apply should be done. Obviously, obtaining the appraisers report is not going to terminate the process. Once that has been obtained, I am sure that there are internal procedures which the Board will apply before any result is made public. More delay.

Mr Del Colliano has not been a patient observer of this three month process for the reasons stated above. He is not made more patient by this latest development, as his costs continue unabated while this process inches its way along.

What should Mr Del Colliano tell his various professionals who also have been impatient observers of this process?

I am sure that it will come as no surprise to you that Mr Del Colliano is evaluating his various options at this time.

Since I don't have the emails for all of the Board members, I would appreciate your passing this communication along to them.

Thank You

Terrance Huber

On Thu, Jan 23, 2014 at 1:37 PM, Larry Friedman <[lpfriedman1@gmail.com](mailto:lpfriedman1@gmail.com)> wrote:

Steve Di Saia had copied me with your most recent note on when we might hear from the appraiser that we used on your project. I did hear from our appraiser and thought I should let you know given Steve's absence. Unfortunately one of his close friends passed away unexpectedly and that is going to delay his getting back to us by at least a week.

Sorry for the delay, but the circumstances make it unavoidable.

Larry Friedman

Sent from my iPad

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Larry Friedman

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**Larry Friedman** <lpfriedman1@gmail.com>

Tue, Jan 28, 2014 at 6:05 PM

To: Francine Kirkpatrick <DrFKirk@verizon.net>, Patti Gallagher <p.gallagher2@verizon.net>, Syd Vinnedge <syd.vinnedge@gmail.com>, Vi Walquist <viwalquist@gmail.com>, Diana Ungerleider <dianaunger3@gmail.com>, Karen Olan <karenolan@beckarmed.com>

Cc: "Di Saia, Steven" <Steven.DiSaia@sedgwicklaw.com>, Hal Erdley <halerdley@gmail.com>

Late last week we learned that our appraisal was going to be delayed due to the death of a friend of the appraiser. Steve was traveling and asked me to give the attorney for Del Colliano a heads up which I did.

Attached is his response. I will send you our response under in a separate email.

----- Forwarded message -----

From: **Terrance Huber** <terrancehuber@gmail.com>

Date: Fri, Jan 24, 2014 at 12:48 PM

Subject: Re: Delay from appraise

[Quoted text hidden]

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Larry Friedman