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February 25, 2014

Delivery via E-Mail Only

Mr. Lawrence Friedman, CEO  
Palisair Homeowners Association  
PO Box 901  
Pacific Palisades, CA 90272

Dear Mr. Friedman:

Subject: 16163 Anoka

This is a response to your February 23, 2014 e-mail to Jerry Del Colliano. For the complete position of the Del Colliano family, this letter should be read together with the "Request For Resolution" which I filed on their behalf this past Friday.

It is well established under California that a Homeowners' Association may adopt rules to govern and control certain aspects of life in the community subject to its rules.

For example Homeowner's Associations may be entitled to enforce specific architectural restrictions. In order to do so, the HOA must have formally adopted those restrictions, along with reasonable standards for making architectural decisions and must follow reasonable enforcement procedures, with respect to any such restrictions.

Section 4250 of the California Civil Code establishes a Community Association's Authority to enforce architectural restrictions, but requires that those restrictions be contained in the Associations' governing documents.

The Third Modification of the Palisair Homeowners' Association CC&R's contains no such specific restrictions. Nor do those CC&R's contain any fair, reasonable and expeditious procedure for making architectural decisions. California Courts have upheld a wide variety of architectural decisions, but the California Courts have been uniform in requiring that the Association's governing documents contain reasonable standards for architectural review. The CC&R's of Palisair Homeowners' Association, not only do not contain reasonable standards, it contains no standards whatsoever with respect to architectural review.

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It was surprising therefore, to receive a copy of your (e-mail) letter to Jerry Del Colliano, dated February 23<sup>rd</sup>, in which a number of issues are raised. For example, we have not been made aware of any "...independent professional appraiser hired at the Board's expense ..." "...who has determined that the proposed addition will..." "...have a negative impact on property value." If you are referring to the one page letter dated January 25, 2014, submitted by Ken Kirschner in which he states that the proposed addition "... would in fact impact the property value..." and "Determining specific value impact requires considerable research and this task was beyond the scope of what I was asked to perform.", I would submit that you are citing Mr. Kirschner's letter for something which he specifically did not (could not) say. There is nothing in that language determining that the proposed addition will do anything other than have some undefined impact. In fact it appears as though the Board in hiring Mr. Kirschner instructed him not to do the work necessary to determine specific impact on property value of the proposed addition at 16163 Anoka. The mere fact that Mr. Kirschner is a professional does not automatically allow the Board to cite and rely upon his unsubstantiated opinions.

Next, however, and perhaps most egregious, is the fifth paragraph of your letter in which you indicate that "some" found the "...the appearance of the roof line to also be inconsistent with the neighborhood." "Specifically there was a feeling that it lacked conformity to the widely and commonly accepted appearances and design found in our neighborhood." Perhaps the most interesting sentence in your letter is the following: "Still the nature of the proposed structure which would loom over the adjacent back yard is not consistent with the ambiance which this small community has enjoyed."

After receipt of your letter, I spoke at some length with Mr. & Mrs. Del Colliano and asked Mr. Del Colliano to casually drive around to some of the Palisair homes to determine if he was able ascertain what the "ambiance", "commonly accepted appearance" and "design" are in this small community. Are they best evidenced by:

- a. 1060 El Medio – which appears to be a 1950's modern parcel with a butterfly roof
- b. 1020 El Medio – Georgian new construction
- c. 1035 Anoka Place – which appears also to be new construction
- d. 1061 Palisair Place – which is decidedly modern construction, flat roof
- e. 1080 El Medio – new colonial, traditional
- f. 1085 Palisair Place, which appears to be Star Wars contemporary
- g. 1090 El Medio – which appears to be new craftsman

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- h. Perhaps, is it 1109 El Medio, a new construction, featuring varying roof lines (a form of butterfly roof)
- i. 1111 Las Lomas - a traditional style – unrestored property
- j. 1119 Las Lomas – similarly a traditional 50's style property, but somewhat restored
- k. 1137 El Medio – which appears to be a new Mediterranean
- l. 1150 Orlon – a Two Story traditional style
- m. 1201 Las Lomas – which appears to be a traditional restored property
- n. 1220 El Medio – the prominent feature of which is a flat roof and very contemporary design
- o. 1239 Las Pulgas Road – which appears to be a modern concrete series of boxes, also with a flat roof
- p. 1243 Las Lomas – a restored Craftsman
- q. 1261 Las Lomas – which is difficult to define, but certainly contemporary
- r. 1366 Las Canoas – a 1950's style with some modern restoration
- s. 16043 Anoka – which is a 3 story property of some intriguing notion of design
- t. 16130 Anoka – a 2 story property of modern design, flat roof
- u. 16151 Anoka – apparently Cape Code restoration, consisting prominently of a 2 story addition, or
- v. Perhaps it is 16157 Anoka – a 2 story arguably Mediterranean style property, with a pad to roof height, well in excess of 30 ft. and which blocks the sun from 16163 Anoka
- w. Or perhaps it is the new contemporary at 16160 Anoka.

Since those 23 homes reflect widely varying styles of architecture and since many have flat roofs which alone violate the CC&R's, how does one determine which style best illustrates '... an exterior appearance and design which includes the widely or commonly accepted appearance and design...'?

Is it the butterfly roof which we discovered in 2 or 3 of the group of 23 homes? Is it the Star Wars architecture which was obviously approved and which is so obviously and completely different as to require no further inquiry? We are struggling with the concept and we have so far only reviewed 23 of the 139 other homes in the HOA.

In order to impose design restrictions, the HOA enabling documents (any such documents of which the Homeowner proposing an addition has been made aware) must contain specific

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provisions about the "architectural control" component of the CC&R's. The Palisair HOA CC&R's design criteria seems to consist of the last full paragraph of Article III, Section 1, which states as follows:

"The sole discretion of the Tract Committee must be exercised in good faith, non-arbitrarily and consistent with the restrictions and applicable governing laws. In exercising this discretion the Tract Committee shall consider factors including but not limited to how the structure may impact property values, statements from members of the Association, the precedential effect of the decision on the Association and how said structure would affect the character of the neighborhood." (emphasis added)

I would point out that Article III, Section 10 (roof requirements) Sub-Section(b) requires that roofs of any residence have a pitch of not less than 2 ½" to each 12'. Obviously the flat roofed properties, have been either approved or ignored by Palisair HOA. It just isn't clear to me precisely what character of the neighborhood or what ambiance it is that you are purporting to protect.

If there were a particular definable ambiance, if there were a particular definable type of structure which represented 140 homes, or more precisely if there was some uniformity throughout the additions, new constructions and modifications which have either been approved or ignored in the past, your reference to ambiance might be less confusing and more persuasive.

You do indicate however, on the second page of your letter, that with the "appropriate plans and a review by the Board, we feel you would have a significant chance of gaining approval." That really is tantamount to withdrawing any objections to the height of the project, but imposing your desire that the roof line be changed to conform to some "standard" or "ambiance" or "accepted appearance and design found in the neighborhood". In other words, something which you and Ms. Baumgartner like better.

There is no architectural control committee. There are no standards for considering a particular style of architecture (obviously) and the Palisair Homeowners' Board has now added one additional element to its patently unreasonable delay.

There is not a fair process in place for determining or for acting upon a proposed application, as I've indicated in the "Request For Resolution" which I filed with the HOA. The ad hoc process that you use is far from reasonable. As an example, I would cite the Architect, which the Board

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brought to the property for the very first time (he informed me personally of that before he came to the meeting) on February 17, 2014, one hour before the time of the meeting and nearly four months after the application was submitted. Not being present for the discussion with the Board and the Architect, one can only assume that some recommendation was made by your Architect which recommendation could just as easily have been made three months earlier and which should have been made if it was going to be made, three months earlier. The Code requires an expeditious resolution process and the Palisair HOA process is dismally lacking in that regard as well.

The butterfly roof design (which by the way exists in at least two and possibly three of the properties we've reviewed near by the 16163 property) is an accepted and important historical form of architectural design. To suggest that it is inconsistent with the design of the community and ambiance of the community is to ignore the homes to which I've made reference earlier in this letter. We have not reviewed all of the 140 homes in the Tract, but feel confident that we would find other prominent examples to refute your notions of ambiance and conformity.

Some comments from Bobby Rees, the project Architect:

1. *The overall difference in mass between a butterfly roof and a gable end roof would be negligible at best and might be greater with a gable-end roof. As such, the idea that this proposed change would mitigate any obstruction of natural light is just speculation. A detailed solar study would need to be done to determine the actual difference, and the result might show that a gable-end roof is actually more of an obstruction than a butterfly roof.*

2. *A gable-end roof would have to be approximately two feet higher than the proposed butterfly roof in order to maintain the current ceiling heights in both the master bedroom and master bath. As I mentioned at the HOA board meeting, the ceilings in both rooms would also slope downward into the views from these rooms rather than sloping upwards away from them. With the roof sloping downward, the extended eaves to the south and north would extend beyond the tops of the windows and further block the upper part of the views.*

3. *In order to keep the peak of the gable-end roof centered between the north and south walls of the house (to keep the two roof slopes symmetrical and make the roofline consistent with the existing rooflines of the house), the height of the roof would have to be at least three feet higher than the proposed height of the butterfly roof. (If the peak of the roof is placed along the north wall of the master bedroom the roof would only be about two feet higher than the butterfly roof, but the two roof slopes would be asymmetrical.*

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4. A reversal of the roof pitch would require that the chimney be 2' 8" taller in order to comply with the fire code.

5. I sense that there is a belief among those who have proposed that the roofline be changed to a gable-end roof that this would allow the second floor addition to blend in more completely with the existing house. However, simply matching the roofline will not achieve this. I have seen far too many homes remodeled in such a way and it is usually quite obvious where the addition is. Worse, the result is too often an addition that may match some of the details of the original house but which throws off the balance in massing achieved by the original design. Such designs too often lack subtlety, interest and creativity. Rather than creating an interesting dialog between old and new, they simply disguise what's new and in the end make the house look worse.

6. I also get the idea that a butterfly-roof would seem to the Board too foreign to the neighborhood and to the overall context of Los Angeles residential architecture. Other than Berlin and Chicago, no city in the world has such rich history of 20<sup>th</sup> century residential design as Southern California. This history was made because architects used the freedom found in the culture of our city and were also inspired by our remarkable climate. With this freedom and inspiration, these architects broke rules, played with traditional forms and created new and compelling design that in turn influenced architects and designers across the globe. The most influential architecture from the century wasn't even the Los Angeles work of Frank Lloyd Wright (or other 20<sup>th</sup> Century architects such as Irving Gill or Greene and Greene) but from the Case Study Program and other work of Mid-Century architects, much of which is an important part of the history of Pacific Palisades. The butterfly-roof was one of the architectural forms favored by Mid-Century architects and is therefore contextual with the architecture of the area.

7. The design that I came up with is an interplay between two prominent Mid-Century roof forms: the Ranch House roof, used by Cliff May and other important Southern California architects; and the Butterfly Roof, used by William Krisel and others. With the design, I have tried to pay tribute to past form while also creating something new. I believe it is in the spirit of the historic architecture of our city and fits nicely within the context of the eclectic (emphasis added) homes of the Palisair neighborhood.

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It is clear that the Palisair Homeowner's Board has routinely ignored the CC&R's when it is convenient to do so, and is giving Mr. & Mrs. Del Colliano special treatment, also when it chooses to do so. That by the way, defines discrimination and it is simply not clear to me why the Board would sanction or participate in such activity. A specific example from your letter is the last sentence of paragraph 2 on page 2. You are suggesting that any new view created would not be protected by the CC&R's. Mr. Del Colliano and I would ask that you explain where in the CC&R's or the law that caveat is found.

As to the fairness, reasonableness and expeditious handling required by Civil Code §5905, I do have a few questions:

1. How does treating Mr. Del Colliano's application differently because he chooses to have an attorney (which is what you told Mr. Del Colliano) comport with the notion of fairness?
2. How does substantially delaying the process to get an opinion of a professional regarding the effect on value and then instructing the professional not to perform that service comport with reasonable or expeditious?
3. How does denying approval of the Del Colliano's Butter-Flie'd roof line when other similar roof lines exist within the HOA member properties, comport with the idea of fairness?

I am making the assumption that the e-mail address (palisair@ gmail.com) gets copies of correspondence to all Board members. If it does not, we would appreciate your forwarding copies of this e-mail to them.


**My proposal is that the Board vote up or down on the proposed addition, that the vote occur on or by the close of business on February 26, 2014, and that Mr. Del Colliano and I be**

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**advised of the vote via e-mail by or before 10:00 am PST on February 27, 2014.**

Sincerely,  
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TPH:ee-j  
cc: Krista Del Colliano  
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Bobby Rees, Architect  
Palisair HOA Board Members  
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