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Palisair HOA Board of Directors
c/o Mr. Marc Rohatiner, Esq.
(mrohatiner@wrslawyers.com)

VIA ELECTRONIC MAIL ONLY

Re: Afifi Reply Letter Brief

Dear Members of the Board:

I reply to Mr. Aldisert's letter of April 11, 2016. His position is best summed up as follows:

Please ignore provisions in the CC&Rs that hurt him, and please read differently other provisions in a way that could help him.

He asks you to not give an approval that has already been. Your own architect has verified that nothing in the final plans deviates from the preliminary approved plans justifying the denial of final approval. Yet, unbelievably, Mr. Aldisert then wants to appeal to your sympathies, trying to portray Mr. Ball as a victim. This is from the same person, Mr. Ball, who has threatened the board, individual board members, myself and my family, and made claims against the HOA in the hopes of getting \$200,000 from the insurance company, from us, or anyone else he can attack. Now, that person is somehow deserving of charity. Perhaps he can capitalize on all the goodwill he has developed by being the "good neighbor" that his attorney claims he has been!

Mr. Aldisert, contests our construction stating we began without "final approval." He is wrong. We have submitted exactly all of the final approved and permitted plans on July 11, 2014 to the head of the Construction committee. His written response raised no issues except neighbor questions about a phantom retaining wall. Copies of such plans were deposited with the committee as well. All elements of the CC&Rs were satisfied for final approval, which is why I explained in prior correspondence, we already had final approval. This construction commenced since August 2014 without any word or objection from the board suggesting otherwise.

Mr. Aldisert states our structure exceeds 15.5 feet in violation of the CC&Rs. He is

wrong again. The prior structure and this one, were permitted by the Committee as two stories above grade, well more than 15.5 feet. The reason is simple, the Committee observed that the structure does not unreasonably obstruct or unreasonably diminish views, nor can it. There are no homes behind us. No views are therefore impacted, much less *unreasonably obstructed*.

Knowing this, Mr. Aldisert raises the distance between the Ball property and the home on our lot. He also brings up issues of privacy again, even though neither the distance nor privacy are mentioned in the CC&Rs. Ironically, he talks of bad precedent, ignoring the fact that his own positions are indeed the worst precedent possible. His positions are not terms in the CC&Rs, but these newly concocted rights of privacy and distance which will turn the entire association upside down. If Mr. Ball can argue privacy or distance from neighbors as a basis to stop previously approved plans, there is no limit to what every neighbor of every home could argue against anything.

Then again, Mr. Aldisert falsely claims our house is three stories, which it is not. The prior home was two stories, and so is our home, all within the height envelopes of the City. We have simply added a basement, **below grade**, which the permits clearly and unquestionably define. A basement has never been considered a separate story in any Building and Safety directives that we are aware of. The basement has not affected the grade level nor the height of the structure at all.

Mr. Aldisert does concede that the only view of our house is from the Ball's "backyard," although he states that the Balls can see the Afifi *property* (not just the structure) from there. They always could. But according to the Balls position in this dispute, our views from other areas of our property should be given no value, and he can plant trees to block them. However, he should be able to see none of our property from his backyard. The hypocrisy is self-evident.

Mr. Aldisert also states that in my first meeting with Mr. Ball, he did not review the plans, nor could he understand them. That is just flat wrong. I took the entire set of permitted plans with me *because* Mr. Ball said he wanted to review them. We spent approximately 45 minutes to an hour together looking through them. He never said he did not understand the plans. He never said he did not want to review them. To the contrary, he looked at them with a keen eye to seeing whether he would be looking at a retaining wall. That's what *he* was looking for, not me. Mr. Aldisert is engaging in revisionist history and that too is typical.

He then concludes, that this Board, which according to him will likely issue final approval, should in turn approve a landscaping plan that there is no basis under the CC&Rs for the Board to approve in the first place. That plan, as explained, actually directly obstructs our views, yet he wants the plan sanctified. It is incredible the dexterity with which Mr. Ball asks the board to either completely ignore, or randomly expand and enforce provisions in the CC&Rs. Either way, this is not a tit-for-tat situation. All we have done is follow every course of action commanded by the CC&Rs and the board. In return, why should we have to give up our views?

We have spent a significant amount of money on our home to enjoy its views and to capture them from various locations. There is no logic that commands our having to sacrifice our views. We have done nothing wrong.

I am sorry you have had to wrangle with these legal issues and briefs from attorneys. I don't know if any of you can appreciate what my family and I have gone through, nor will I pander to your sympathies by reciting all of them here. It is time that we close this chapter by following the CC&Rs, not by changing them or selectively applying them as Mr. Ball would like.

I ask the Board to simply act within the powers and provisions in the CC&Rs. Our construction received preliminary approval in March 2014, *and* final approval in July 2014. That is why construction began without objection and has continued since. The final approval needs to be confirmed at this point. Please do so. Mr. Ball's request for landscaping plan approval is found nowhere in the CC&Rs, it blocks views and should not be granted, and cannot be given.

Very Truly Yours,
AFIFI LAW GROUP,

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