

April 20, 2016

VIA E-MAIL

Palisair HOA
Board of Directors
c/o Marc E. Rohatiner
Wolf Rifkin Shapiro Schulman & Rabkin, LLP
11400 West Olympic Blvd., Ninth Floor
Los Angeles, CA 90064

Re: Response to Afifi Request For Final Approval

Dear Board Members:

This letter is our Reply to Mr. Afifi's opposition letter dated April 11, 2016 which we did not receive until the night of April 14, 2016.

First, the HOA has the authority to approve the Balls' landscaping plan. Article III, Section 9 states: "However, fences, etc. and tress shall not be placed, permitted or maintained on any land of this tract in such a location that they unreasonably obstruct or unreasonably diminish the quality and nature of the view from any other land in this or adjoining tract." This provision (quoted by Mr. Afifi) gives the HOA authority to approve landscaping plans. The HOA clearly shares this view. Francine Kirkpatrick's letter dated January 24, 2015 to Chris Ball states as follows:

"We have been notified that you are intending to plan trees on your property. It is quite possible that you did not know of *the PHOA requirement that a landscaping plan be submitted to us for approval prior to any landscaping*. Our CC&R's prohibit the planting of trees that unreasonably obstruct neighbors views. We need to know the location where the trees are proposed to be planted, the tree names, both common and botanical, size of container, and size of vegetation at maturity. If possible, provide photos and plot maps showing the planting location."

A copy of the letter is attached. And that is precisely what the Balls did one year ago by letter dated April 10, 2015. They submitted a landscaping plan with a plot map and photos of the types of trees with height limits and the location for each planting.

After informing the Balls a year ago that they had to submit landscape plan and not taking action for a year on the proposal, the HOA cannot reasonably accept Mr. Afifi's ill-informed opinion that it has no authority to consider the Ball's landscape plan. Mr. Afifi's own text message from Spring 2015, (which he submitted on April 11, 2016) also acknowledges the authority of the HOA on landscape issues: "The tree committee specifically handles these things. They should be included."

The HOA should encourage homeowners to submit landscaping plans where there are potential issues with neighbors in order to promote solving problems before they become bigger problems if the homeowner simply moves forward with a landscaping plan. In this case, the HOA should consider Ball's landscaping plan before any trees are planted, particularly given the estimated cost for the Balls' landscaping plan. The good news is that the HOA has the benefit of the landscape modeling work by Naomi Langer Studios, so that it can make an informed decision about the Balls' landscaping plan. The Balls' landscaping plan includes height limits on the trees, which the landscaping model took into account. While trees obviously grow, the height limits can be monitored.

Second, the landscaping plan will not block Mr. Afifi's views from virtually any vantage point from his property. Mr. Afifi argues that his views from over 40% of his property will be "absolutely" blocked (page 3) and later argues that the views from 20% of his property will be obstructed "almost entirely" and another 20% will be obstructed "partially" (page 5). Mr. Afifi does not explain how he arrived at these percentages or why he thinks the yellow and pink highlighted areas on his property map will be obstructed. The HOA should not accept as meaningful evidence Mr. Afifi's arbitrary yellow and pink highlighted portions as the area where his view will be impaired. Mr. Afifi complains that the proposed tree height will be above his property line, which ignores the fact that the property line is on the hillside and his house, decks and pool sit well above the property line. Mr. Afifi repeatedly stated that the Balls do not see his house while they are in their house. By the same token, Mr. Afifi would not be able to see any of the new trees from inside his house.

An independent expert in landscape modeling (Naomi Langer Studios) created a model based on photographs from various vantage points of both properties and used the height limits and type of trees proposed by the Balls to create the landscape model. The HOA's counsel selected Naomi Langer Studios and the HOA's insurance company approved and paid for the work. It is telling that Mr. Afifi does not want the HOA to consider the landscape modeling work. The reason is obvious. The model shows that there is virtually no impairment to Mr. Afifi's views and contradicts his assertions of obstruction.

Third, the request for approval of the Balls' landscaping plan is solely about the plan itself. The Balls have submitted a claim to Chubb, the *former* insurance company for the HOA, and do not expect the HOA or its members to pay for the landscaping.

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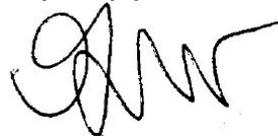
Fourth, the HOA letter dated March 25, 2014 makes clear that there is no view protection for the expanded portion of Mr. Afifi's new house, decks, and pool. Mr. Afifi dramatically expanded the footprint of his new house and re-graded the backyard so that the house, decks, and pool sit in much closer proximity to the Balls' property. If the HOA is inclined to approve his final construction plan, it should make clear that Mr. Afifi has no view protection from beyond the foot print of the old house.

Fifth, Mr. Afifi objects to our assertion that he has refused to compromise, but he has refused to compromise at all. He has consistently taken the position that 1) he will not agree to any landscaping plan that blocks any portion of his view from any vantage point on his entire property, and 2) he will not pay for any portion of the Balls' landscaping plan. Mr. Afifi has also threatened the Balls with litigation if they plant trees that impair his views in any way from any vantage point on his property. If your upslope neighbor tore down his house, re-graded the backyard and built out his property to the virtual edge of his backyard property line with a three-story house (the basement is not underground and is visible from the Balls' property), we are confident that you would feel victimized in the same way that the Balls have been.

Sixth, the agreement was for the *Balls* not to use the Naomi Langer Studios' work in *litigation*. Notwithstanding Mr. Afifi's invective, there is no litigation. Accordingly, there is no bar to the HOA considering the landscape modeling work, which was performed on behalf of the HOA. Mr. Afifi's position that the HOA cannot consider the work in deciding whether to approve the landscaping plan is plainly wrong and makes no sense.

Finally, I will not respond to the personal attacks throughout Mr. Afifi's letter, and do not agree with any of his assertions. As for the Balls' March 18, 2016 submission of the landscaping plan for approval by the HOA, it was up to the HOA and its counsel to address the procedure for allowing Mr. Afifi to respond to the submission. The HOA did so and he has obviously had a full airing of his views on this matter.

Very truly yours,



Gregory J. Aldisert

GJA:LKR

cc: Faryan Afifi (by email)
David Schultz (by email)