16058 Anoka Landscape, Hardscape, and Lighting Issues

May 14, 2017

The purpose of this memo is to provide the PHOA Board with a roadmap to the complex issues regarding current landscape, hardscape, and lighting issues at 16058 Anoka Drive. I have tried to list the major items in a logical sequence, including both things that I think we know, and things (that will require Board decisions. I tried to be impartial and suspend judgement on all issues that will require Board decision. I highlighted questions that will require board decisions in **color**.

I will use the word "block" as a shorthand for "unreasonably obstruct or unreasonably diminish."

1. **Landscape, Hardscape, and Lighting Plans**. Ron has provided us with landscape, hardscape, and lighting plans that show a number of undesirable features, including potentially tall trees. However, he has indicated that many parts of the plan will not be followed. Kim marked up the plan accordingly, and Ron agreed to all the items verbally and by making an illegible mark in his own hand. These plans will be reviewed at the Monday board meeting with Richard present. Is the marked-up plan acceptable for approval?

   Are there any stipulations we need to add to the plans regarding specific issues? For example, should tree and hedge heights be called out on plans and language should be added to the approval letter along with view blockage restriction?.

   See also "Lights on the Driveway" below.

2. **Location of Gate**. At the board meeting on May 16, 2016, the PHOA board voted on a motion to send a letter to May stating that his unapproved and non-conforming fence must be lowered on the north side of the property. Shortly after that, during a verbal negotiation to lower Robert May's unapproved and installed side yard fence, David Schultz, as Palisair HOA VP negotiated an agreement between Ron, Francine, and Robert May, in which Gonen would pay to lower the entire fence along the property between Francine and the May property IF he could move his driveway gate and pilasters from its current approved location several yards below the crest of the driveway. David, who was Vice-President of the PHOA at the time, summarized the agreement in an e-mail on June 13, 2016 that he sent out. Francine agreed to the terms in writing on June 15, 2016. The adjustments agreed upon were made. The letter to Robert May voted on by the board on May 16, 2016 was not sent. The agreement between Schultz, Kirkpatrick, Gonen and May was not voted on by the Board or recorded in the minutes, nor was a letter sent by registered mail.

   Francine now in May 2017 stipulates that she agreed to this above agreement under duress. She has verbally stated the moved pilasters and driveway gate block a sunrise view but has not sent a formal complaint to the board in writing.

   Ron states that he has the agreement from Francine about the replacement of the driveway gate in writing and that she has had a year to challenge the decision. Now that he paid to protect her view between her house and the May property by paying to lower a fence he did not install, he feels that

neither Francine nor the board has jurisdiction to overrule this. He feels that is not his problem that the board did not formally approve this decision. Their inaction is proof of its acceptance

Do we want to require that the gate be moved?

3. **Direction That the Gate Swings.** The gate as currently built swings out (away from the house). Ron has indicated that the gate will be remotely controlled and should always be closed except when in use to let a vehicle pass, so there should be little impact from the direction the gates swings, except that swinging inward will require extra expense. Ron has indicated that he is willing to change the gate so it swings in, depending on Francine's preference.

   Do we want to make any stipulation about the direction that the gate swings?

4. **Lights On the Driveway**. A Board resolution in 2011 stated that the then-existing carriage lights on the top of a string of brick pilasters along the then-existing driveway were CC&R violations, and that, "given the close proximity of your driveway to the 16050 Anoka Drive residence and the well known significant diminishment of a city night view by lighting, the PHOA Board ruled in May of 1990 to prohibit lighting on the driveway." Ron has agreed not to install lighting along the driveway, but wants to install wiring to allow future landscape lighting, and also is proceeding with the installation of small fixtures that provide down-light only on the downhill side of each of the two gate pilasters. Ron states that the purpose of the lighting on the pilasters is to provide an indication to visitors at night that the house is occupied, and to satisfy Building and Safety requirements. Francine has accepted the current fixtures after viewing the view impact.

   Article III Section 9 includes the following:

   > Floodlights and other outside lights shall be so located, positioned, shielded, or maintained that they do not dazzle occupants of homes in the line of vision nor users of street and do not unreasonably obstruct or unreasonably diminish the quality and nature of the view from any other land in this or an adjoining tract.

   Several arguments can be made leading to different conclusions.

   On the one hand:

   - The Board resolutions perhaps should only apply to the driveway as it was at the time, before it was significantly regraded downward, and when the lights in question were dazzling carriage lights.
   - Lights on the gate pilasters perhaps are not "lights on the driveway."
   - The proposed lighting is minimal and not a violation of the CC&Rs.

   On the other hand:

   - The literal words of the resolutions should be followed – no lights at all should be allowed.
   - The gate is part of the driveway.

   Should the gate lights be approved, and should there be any stipulations?

5. **The "Pool Fence."** Ron has completed the first phase of construction of an extensive "pool fence." This fence satisfies the Building and Safety requirement for a required 5 ft. pool enclosure. The

Gonen proposed (and already partially constructed) fence is six feet 2 inches high. The first phase consists of a steel framework. The second phase will fill the openings in the framework with solid wood, making the fence opaque.

Parts of the fence diminish some hillside and possible sunrise views from parts of Francine's property, although whether any of this is "unreasonable" is to be determined. With the gate shut and at its current position, the gate itself blocks some of the same views, but not all. Francine has verbally expressed her concerns but not in a formal, written complaint to the board.

Ron is claiming that he may have created Francine's sunrise view by digging down 5 ft. He would like proof that this view existed prior to any construction on this property. LADBS requires the installation of a 5 ft. pool wall or fence prior to issuing a certificate of occupancy or a certificate for the use of the pool. LADBS does not require that this fence is shown on the plans prior to permitting of construction plans, however, so this fence was not on the preliminarily or final approved PHOA plans.

Construction of this fence was started without notifying the PHOA, and without submitting a plan for approval. Even if LADBS does not require plans, plans should have been submitted to PHOA. Article IV, Section 2(a) states

> No residence, garage, out-building, fence, wall, mast, aerial, clothes line pole, sidewalk, steps, or other structures, and no improvement, utility, swimming pool, parking area or driveway shall be erected, constructed, laid down, altered, installed, located, relocated or maintained and no cutting down, filling up or grading (except "fine grading" for landscaping) shall be done on, under or about any land of said tract unless complete grading and/or building plans (including elevations, and, if requested by the Tract Committee, a rendering) and specifications thereof showing the nature, kind, shape, height, type, material and color scheme thereof, together with the plot plan indicating the location on the lot or building site, shall have been submitted to and approved in writing by the Tract Committee and a copy of such plans, specifications and plot plan, as finally approved, permanently deposited with the Committee.

Until plans in an acceptable format are submitted and approved by the PHOA, the fence is in violation of the CC&Rs.

Whether the fence should be approved is complicated, because the fence is subject to two different sets of restrictions, on *fences* and on *structures*.

Article III Section 9 includes the following **restrictions on fences**:

> No fence, wall, hedge, or planting (with exception of trees), if exceeding 3 1/2 feet in height above finished surface (not counting any part used as retaining wall), shall be permitted or maintained on any land in this tract in the area between the established front line and the front set-back line; nor if exceeding six feet above finished surface (not counting any part used as retaining wall) anywhere to the rear of the front set-back line, unless a height variance is granted by the Tract Committee.
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> However, fences, etc., and trees 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 an adjoining tract.

Aside from the confusing wording of the first paragraph, this seems clear enough. Fences anywhere behind the front setback should be no taller than six feet unless variance is granted, and, no matter what, they must not block views. However, there is a problem in the current case because regrading has occurred. The CC&Rs do not address how to handle regrading.

One approach would be to ignore the regrading. However, this would have the potential of protecting newly created views, which is against our policy in other cases.

A presumably better approach would be to adopt a policy like the following:

> If grading has been carried out, and the current grade is below the original grade, possible view diminishment along sightlines that lie partly or entirely below the original grade shall be disregarded. In other words, a view that blocked originally by dirt that was later removed by regrading is not protected.

In this way we would not be protecting any views that were created by the grading.

It may be argued that without a plan that shows the fence with absolute heights indicated, along with the contours of the original grade, it would be difficult to assess whether the fence restriction is violated.

Restrictions on structures are contained in Article III, Section 1 and Article IV Section 2 (a).

Article III, Section 1 includes the following:

> No structure of any kind shall exceed 15 ½ 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 15 ½ 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.
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> As provided for in Article IV, Sec 2, subsection (a), if cutting, filling, or grading creates a new building pad at a lower elevation than, and separate from, the original pad, then the above referenced ground level at the front of this new pad shall be used for measuring the allowable height of the new building portion. If the elevation is greater than the original pad the allowable building height shall be measured from the elevation of the original pad.

Article IV Section 2 (a) includes the following:

> The erection, alteration, maintenance, location or relocation of any clothes line pole, fence, hedge, mast, aerial or antenna for radio or television, or other structure of a similar or dissimilar nature, whether separate or an integral part of the dwelling, such as a residence addition, shall be disapproved or desisted from whenever such structure, because of its kind, shape, color, height, material, or location, in the opinion of the Tract Committee would be unsightly, or detrimental to, or unreasonably obstruct or unreasonably diminish the nature or quality of the view from any other land in this or an adjoining tract, or otherwise tend to lower the value of any land of the tract.

A fence certainly may be regarded as a fence and arguably also may be regarded as a structure. However, in the case at hand, the restrictions on fences seem to be more important than the restrictions on structures. If the fence restrictions are not satisfied, there would seem to be no need to consider the structure restrictions. On the other hand, if the fence restrictions are satisfied (there is no unallowable view blockage), again the fence/structure should be allowable whether or not it satisfies the structure restrictions, because they allow for issuing a variance if no view is obstructed.

If, nevertheless, we want to consider the structure restrictions, a number of factors would have to be taken into account:

- The preliminary approval for the project was based on the view of the majority of the Board at that time that the restriction included in Article IV Section 2 (a) should be ignored, i.e. that any structure that is under 15 ½ feet below the original grade should be allowed whether or not it blocks views. Although the current Board probably would disagree with this view, it seems unfair to change ground rules in the course of a long project approval process.
- A significant part of the fence is built off-pad on the downhill side of the original pad, and therefore the reference altitude is the original grade on the downhill slope, vertically below each point in the fence.
- It may be argued that without a plan that shows the fence along with the contours of the original grade, it would be difficult to assess whether the entire fence lies under 15 ½ feet above the original grade.

Should a plan showing the fence, with elevations marked, superimposed on elevation contours of the original grade be required before approval?

Should the fence be approved as planned, approved subject to conditions, or rejected?