

# **Palisair Home Owners Association**

A NON-PROFIT CORPORATION

P.O. Box 901

Pacific Palisades, CA 90272

[www.palisair.org](http://www.palisair.org)

[palisair@gmail.com](mailto:palisair@gmail.com)

The association itself is a "Tract Committee" under the Declaration of Restrictions covering Tracts 15944, 15948 and 19890, and operates as such through its Board of directors and its Officers

## **PHOA ANNUAL MEETING**

**FEBRUARY 5, 2018**

### **MINUTES**

**I. President Howard Weisberg called the meeting to order at 7:10 p.m.** at the Palisades Presbyterian Church at 15823 Sunset Blvd. Board members present: Howard Weisberg, Suzanne Weisberg, Chuck Emerick, Miriam Schulman, Diana Ungerleider, Kathy Wedeking, Roger Broderick, Brian Bradford and Dawn Hill. Also present: Kim Bantle, Jeff Edelstein and about 26 home owners.

Howard reported on 2017 accomplishments and read a report he wrote titled "2018 Highlights for the Year" (see addendum).

### **II. Election Report for 2018 Board of Directors**

Howard reported on the results of the 2018 election, in which Miriam Schulman, Dawn Hill and Kathy Wedeking were elected to the Board. The results were:

|                  |          |
|------------------|----------|
| Miriam Schulman: | 56 votes |
| Dawn Hill:       | 45 votes |
| Kathy Wedeking:  | 52 votes |
| Michael Cohen:   | 26 votes |
| Abstentions:     | 5        |

### **III. Guest Speaker**

Jeff Edelstein of SOS Survival products gave a presentation on disaster preparedness, displayed products available in his store, and answered questions from home owners.

### **IV. Treasurer's Annual Report**

Chuck distributed copies of PHOA's 2017 Profit and Loss/ Budget to Actual Statement and reviewed. He also described ongoing efforts to collect unpaid assessments.

### **V. Landscape Committee Report**

Suzanne reported on activities of the Committee of the past year. She described the new system of holding violation hearings to assess view problems, and she also explained the new fine policy.

### **VI. Plans Committee Report**

Kim reported on the Plans Committee activities and described changes in the process for getting plans approved, including neighborhood meetings, evaluation of potential view blockages, and site visits by the Board.

### **VII. CC&R Rewrite Update**

Howard reported that the first draft of the rewrite is complete and has been reviewed by the Board. Progress has been delayed due to other pressing issues and the change in presidency (Francine Kirkpatrick resigned in late 2017). All home owners will receive a voting packet later this year.

The meeting was adjourned at 9:10 p.m.

Respectfully submitted,

Diana Ungerleider, PHOA Secretary

### **ADDENDUM:**

## **HIGHLIGHTS FOR THE YEAR**

### **Howard Weisberg**

Welcome to the fifty-eighth annual meeting of the Palisair Home Owners Association. I am Howard Weisberg, President of the Association. Tonight, I will take about twenty minutes to give an overview of the accomplishments of the Association since the previous meeting, and of our plans for the future. Then, we will enjoy a twenty to thirty-minute presentation by Jeff Edelstein of SOS Survival Products on disaster survival, a topic that should be of interest to all homeowners in today's

world. After that, there will be five to ten-minute presentations by our Treasurer, Chuck Emerick, our Trees Committee chairperson, Suzanne Weisberg, our Plans Administrator, Kim Bantle, and again by me on the CC&R restatement.

**Administration.** There have been a number of administrative changes. Our previous President, Francine Kirkpatrick has moved to Oregon and is selling her house. Francine spearheaded the transition in 2011 to conformance with the Davis-Stirling Act governing California homeowner associations, and the concomitant change from optional dues to mandatory dues, with the strong ability to enforce collection. Francine led the Association to a great recovery after the dark days just a few annual meetings ago when it was announced that a significant fraction of the Board was resigning, new Board members were needed, but that no one on the Board could recommend serving because of the thanklessness. Since then, under Francine's leadership, we introduced transparency and regularized procedures that now make membership on the Board a doable commitment.

I am happy to say that we now have a full contingent of nine Board members including four officers. Recently added are Chuck Emerick, Dawn Hill, and Kathy Wedeking. Chuck took on the job of Treasurer early in the year. We expect Dawn to take over as Secretary, starting with the next monthly meeting, with our current Secretary, Diana Ungerleider, staying on to provide continuity. Kathy is our newest Board member, and brings impressive experience to the Board.

**Election results** are as follows: Ballots submitted, 78, Miriam Schulman 56, Dawn Hill 45, Kathy Wedeking 52, Michael Cohen 26, Abstentions 5. The Board-nominated candidates were reelected by a significant margin. This election reminds us of what we already have found out in past elections, surveys, and other feedback, namely that, among the Members that are interested enough to vote, support for keeping the Association strong, and diligently enforcing the CC&Rs, especially regarding view protection involving trees and remodels, runs anywhere from two to one to six to one. However, as we also already knew, there are some Members that are strongly oppositional, and we are obligated to respect their opinions and requests for information.

**Treasury and assessment collection.** Our new Treasurer has probably contributed more than anyone else in the past year to helping regularize our operations. He has spent countless unsung hours improving our QuickBooks database and reports so that our financial operations can now be routine and assessment collection can be fully tracked and invoiced. We will now have monthly General Ledger reports and quarterly Budget vs Actual reports. These will provide additional transparency, and will help the Board carry out its duty to review the Association's financial records. In addition, Chuck and I have put in many hours on working to collect past-due assessments and to create an environment in which, going forward, all Members will pay promptly.

You can find much more detail about the topic of collections in the Minutes of recent Board meetings, and I will not go further over this here.

I do remind the small remaining number of Members that have still not responded to our requests to pay past due amounts that in the near future we will be turning your files over to a law firm that specializes in collecting unpaid HOA assessments and that you will be responsible not only for past due assessments, penalties, and interest, but also for the legal fees of collection.

Thanks to the groundwork by Chuck, we will soon be able to train a paid assistant or bookkeeper on carrying out most of the detailed workload that currently falls on the Treasurer. This will mean that the Association will no longer depend on always being able to find a volunteer Treasurer that is an expert in QuickBooks and is willing to spend large amounts of unpaid time each month on responsibilities beyond those of an ordinary Board member.

**Legal counsel support.** A big benefit of collecting all 140 assessment amounts due each year is that we are now able cover our legal expenses without running a deficit or requiring a further increase in the annual assessment.

We now have a General Counsel, provided under retainer with a law firm that provides General Counsel service for hundreds of California homeowner associations. The General Counsel knows our Association and is on call for brief telephone consultations with our Board at no cost. The firm provides us with information any changes in the law with which we must comply, provides free annual training for directors, and provides additional legal assistance at low discounted rates. They also build and



maintain the very useful website [Davis-Stirling.com](http://Davis-Stirling.com). I recommend that you visit this website if you are interested in homeowner association law.

The Davis-Stirling Act provides many hoops that a homeowner association must jump thru, and new ones are added each year. These include holding the proper insurance, observing specified time limits for various responses to homeowner requests, following requirements for annual reporting, and following proper procedure leading up to rulings on possible CC&R violation by overgrown trees and by proposed remodeling projects. With the help of advice from our General Counsel, we can comply with these requirements and many others. By doing so, we greatly minimize our risk of legal action against us and the significant expense that comes along with it. I strongly believe this modest amount of legal support that we now receive is essential to the success of our efforts to keep the Association strong, enforce our CC&Rs effectively, and minimize our expenses.

**Plans committee.** This year, plans for three major remodeling projects were submitted, and, ultimately, approved. Construction has not started on any of the three projects yet but as far as we know construction of each will start soon.

In each case, the entire Board membership, acting as the "Tract Committee," views the proposed project from adjacent properties and hears comments from possibly affected neighbors. Where issues of view obstruction exist, we require the erection of "story poles" to help us visualize the potential obstruction. In each case the Board then deliberates and votes on whether the project "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." As usual, the primary emphasis in the three projects this year was on view obstruction.

In the first project, the owners presented a remodeling plan that would add height and extend the existing residence. After story poles were erected, it was seen that the proposal would create new obstructions of the view from several neighboring properties. The Board, after a contentious deliberation, voted to reject the plan. We asked the owners and architect to come up with a new plan that stayed closer to the existing grade and exploited the downslope at the rear of the property, building down. A new plan was submitted and it was approved.

In the second project, , the owners submitted plans to demolish the existing residence on the property, one of the largest lots in the Association, and to construct a new, very large residence, including a second story. Story poles revealed view blockages from several neighboring properties, and various other view obstructions were found. The owners and their architect, responding to preliminary finding by the Board, eliminated the second story and made various other changes to mitigate possible view obstructions. The revised plans were approved, subject to various restrictions including the choice of a non-glaring material for the flat roof.

In the third project, the new owner submitted plans for a remodel of the existing residence that kept the same roof outline but extended the residence, which is built at the top of an uphill slope from the street, out toward the street. Story poles were erected. There were no neighbor complaints. The project was approved.

**Trees committee.** Early in the year, the Board resolved to take vigorous steps to enforce the CC&Rs regarding view obstruction by trees, including addressing violations where homeowners have been advised by past Boards that a violation exists, but have not taken action.

As a first step, we followed the procedure provided by the Davis-Stirling Act to adopt operating rules permitting fines for violations of the Governing Documents.

Since our fines rules have been adopted, we have held two Enforcement Hearings. These are meetings of the full Board in Executive Session where both the tree owner and the affected neighbors may attend. Preferably, they are held on site so all members of the board can view the alleged violation. The Board then deliberates and, if a violation is found, may impose monthly fines that continue until the violation is cured.

In the hearing, all tree-owning neighbors in attendance agreed to trim or cut down their trees and no action was taken about them. In the second, the Board voted that a large tree unreasonably obstructs the view from two neighboring properties and that trimming or pruning the tree would not cure the violation. If the violation is not cured, within thirty days, the Board will start levying a monthly fine.

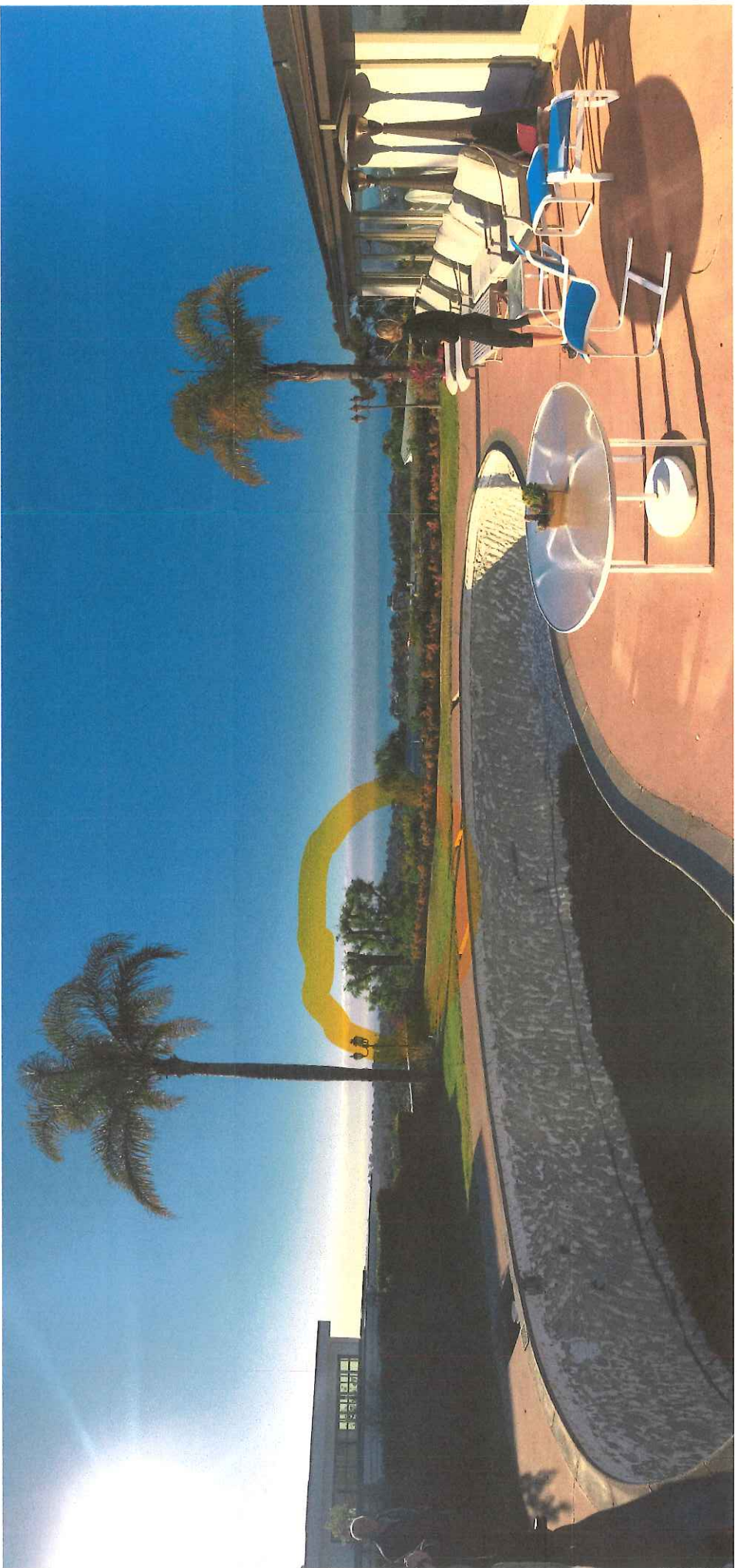
**CC&R restatement.** We have received first draft of our CC&R restatement from the attorney. Since then, the Board has reviewed it and put together an extensive list of changes. Further work has been on hold because of the

diversion of effort to the initiatives in 2017 regarding assessments and trees. I hope the effort will get back on track very soon.

The next step will be that members will receive a voting packet and the final draft. The voting process is somewhat similar to the process we have just completed for our annual elections, but with tougher voting requirements. To adopt the restatement, more than half the membership of 140 homeowners must submit valid ballots and vote Yes, meaning at least 71 Yes votes. For comparison, in the 2011 vote, 106 ballots were submitted, with 80 Yes, 24 No and 2 abstentions. The ratio of Yes to No was 3.3 to 1.

**Conclusion.** Everyone that has not already done so, please fill out and return an email permission form, giving us your latest e-mail address and giving us permission to send routine Association notifications by email rather than US mail. This saves us money on printing and postage. The law now requires us to renew this information every year, even if nothing has changed.

Also, if you would like to volunteer to help out with a board responsibility and eventually, perhaps, eventually serve a term on the Board, please fill out the sign-up sheet. Thank you.



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The association itself is a "Tract Committee"  
under the Declaration of Restrictions covering Tracts  
15944, 15948 and 19890, and operates as such  
through its Board of directors and its Officers

**NOTICE OF HEARING**

Deborah Strieber  
1000 Las Lomas Avenue  
Pacific Palisades, CA90272

Via Certified, U.S. Mail, RRR, and Email (debsaqt@gmail.com)

September 18, 2018

Via Certified, U.S. Mail, RRR, and Email (debsaqt@gmail.com)

Re: Notice of Hearing

Dear Ms. Strieber:

As you know, members of the Palisair Home Owners Association are  
subject to restrictions found in the governing documents. The documents  
also describe the board's responsibilities. One such responsibility is the

enforcement of the governing documents. Sometimes this requires the imposition of fines and penalties against those who violate the association's restrictions. The board always regrets taking such measures and would prefer to minimize them whenever possible.

In this case, you are alleged to have maintained a large tree that impairs the protected views of neighbors at 1031 Anoka Place and at 1020 Las Lomas Avenue in violation of Article III, Section 9 of the CC&Rs.

On January 15, 2018, the Board held a hearing to consider this issue and ultimately found you to be in violation of the CC&Rs. The Board then agreed to vacate that decision as a gesture of good faith and, as part of its commitment to reaching an amicable resolution to the matter, invited you to participate in the Association's Internal Dispute Resolution ("IDR") program. Unfortunately, you declined our invitation and the tree in question remains in substantially the same condition it was in at the time of the January hearing.

Accordingly, a new hearing is being set so that we may consider whether your tree currently impairs your neighbors' views in violation of the CC&Rs and to give you an opportunity to appear before the board to discuss the matter and/or contest the evidence. If the board determines that a violation has occurred, it may impose a fine against you in the amount of \$250 each month for the first two months and \$500 each month thereafter and/or suspend privileges until the violation is corrected.

The hearing will be held as indicated below:

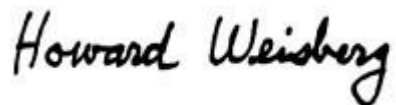
***Date:*** October 15, 2018

***Time:*** Our monthly Board Meeting will start at the special time of 6:30 PM. The hearing will be held in executive session immediately after the open session. It will start at approximately 8 pm.

***Location:*** Faculty Cafeteria at Palisades High School, 15777 Bowdoin Street.

You may appear in person or submit a written response. Upon timely written request and for worthy cause, you may be granted a short continuance to a new hearing date. At least five (5) days prior to the hearing date, please provide us with the names of anybody who will be attending the hearing with you and a brief description of the reason for their attendance. If you bring anybody to the hearing without providing us with proper notice or the people you attempt to bring are not allowed at the hearing under the law or the governing documents, we reserve the right to either request they leave and proceed with the hearing without them or continue the hearing to a later date. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Howard Weisberg". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Howard Weisberg, PHOA President

**From:** [Aaron Schwarzkopf](#)  
**To:** ["David Krause-Leemon"](#)  
**Cc:** ["Mark Abramson"](#)  
**Subject:** RE: Palisair HOA re Deborah Streiber  
**Date:** Monday, January 21, 2019 4:32:00 PM

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David,

One thing I forgot to mention was that prior to the start of the hearing, the parties customarily exchange evidence for the other to review (similar to the manner in which small claims hearings are conducted). As a result, please bring a few copies of the evidence you are planning on presenting for the Gabayans and the Board to review. The Board and the Gabayans will do the same for you. Thank you and let me know if you have any questions.

Best regards,



**Aaron Schwarzkopf, Esq.**



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**From:** Aaron Schwarzkopf  
**Sent:** Monday, January 21, 2019 3:03 PM  
**To:** 'David Krause-Leemon' <David@bk-llaw.com>  
**Cc:** 'Mark Abramson' <mark@markalaw.com>  
**Subject:** RE: Palisair HOA re Deborah Streiber

Mr. Krause-Leemon,

Thank you for the email. I apologize for the delay in response to your January 14, 2019 letter to me (the "Letter") but for whatever reason, I did not receive the email version of the Letter so I did not become aware of it until the version sent by mail arrived a few days later. In any case, the purpose of this email is twofold. First, it is to address a few preliminary matters regarding the hearing currently scheduled for tomorrow, including the request for clarification contained in your Letter. Second, it is to address your position regarding access to records raised in both the Letter and your email to me dated December 14, 2018. Any items you raised in the Letter which I do not address in this email will be addressed at the hearing currently scheduled for January 22, 2019 (the "Hearing").



With respect to your requests for clarification, you are correct that the hearing is scheduled to take place tomorrow. The reason why it is not on the agenda is likely because it is slated to be held in executive session, not open session. However, I wanted to let you know that the Board will be holding an open session meeting before the executive session meeting and I will only be present for the latter. While Ms. Streiber is of course free to attend both the open and executive session meeting, you will only be permitted to attend the executive session meeting (as the Board is a represented party) which is slated to begin at approximately 7:30. Thank you for your anticipated cooperation. As for Mr. McCall's presence at the hearing tomorrow as a witness in support of Ms. Streiber's position, thank you for letting me know.

Additionally, the only items to be discussed during the Hearing will be those mentioned in the notice for the Hearing dated September 18, 2018. More specifically, the Board will consider whether the view impairment by a certain silver oak tree located on Ms. Streiber's property constitutes a violation of Article III, Section 9 of the Association's CC&Rs. I also wanted to let you know that on Friday, the Board informed me that Ms. Silverton cannot attend the Hearing. As a result, it will be continuing the portion of the Hearing intended to address the impairment of her view by the silver oak tree in question to a later date. Consequently, the Board will only consider whether the view obstruction from *Mr. and Mrs. Gabayan's property* caused by Ms. Streiber's silver oak tree constitutes a violation of Article III, Section 9 of the CC&Rs at the Hearing.

With respect to your outstanding records requests, you originally asked for copies of "any written interpretive documents created by the HOA to interpret any portion of Article III, Section 9 of the Palisair HOA CC&Rs." After looking through past correspondence, it does not appear as if I responded to that request. I confirmed with the Board that no such documents exist. I also thought I sent you copies of all the minutes you requested. After looking through them, however, I noticed that I did not include copies of the minutes from the Association's annual meetings (only its open board meetings). Please find them attached. I apologize for the oversight.

With respect to your position that Ms. Streiber is legally entitled to review (in advance of the hearing) noncompliance forms regarding her tree, supporting documentation submitted with those forms, notices to her regarding the tree that will be the subject of the upcoming hearing, correspondence with her regarding the tree that will be the subject of the upcoming hearing, copies of the Tree Maintenance Parameters, and any evidence that Ms. Streiber has failed to comply with those parameters, the Board respectfully disagrees. With respect to your request for notices to Ms. Streiber regarding the tree that will be the subject of the Hearing, Civil Code §4525 (as incorporated by Civil Code §5200(a)(2)) does require the Association to produce notices of hearings for violations that are unresolved at the time of the request. However, the only such notice is the one for the Hearing dated September 18, 2018 and there has never been a reason to think that Ms. Streiber did not already have a copy of it (a fact which you confirmed in the Letter). Additionally, the only correspondence regarding the tree in question since April other than the aforementioned hearing notice have been between me and either you or Mr. Abramson (which you should also have as well). This being the case, producing these records would constitute an idle act, which the law does not require. Civil Code §3532. As a result, the Association is not required to disclose these documents.

With respect to the remaining documents Ms. Streiber is seeking, there is nothing in any of the provisions of Civil Code §5200 et seq. (or any of the sections it incorporates) which could reasonably be construed to mean that her inspection rights as a member extend to noncompliance forms regarding her tree, supporting documentation submitted with those forms, correspondence with her regarding the tree that will be the subject of the upcoming hearing, copies of the Tree Maintenance Parameters, and any evidence that she failed to comply with those parameters. While I appreciate the statements in your December 14, 2018 email to me that the law is broad enough to include these documents and that you “have had sufficient success in past matters with judges who agree” with your position, my firm represents thousands of HOAs across the state so I can confidently say that my position is standard and totally defensible from a legal standpoint. That said, I encourage you to provide me with any legal basis for your interpretation and will gladly reconsider my position if merited.

I also appreciate your interpretation of Article IV, Section 1 of the CC&Rs to mean that members have the right to inspect not just those they are entitled to under Civil Code §5200, but “all files kept by the HOA.” However, such an interpretation would mean that Ms. Streiber (or any other member) could review everything from executive session minutes and members’ phone numbers/email addresses to the Association’s credit card numbers. On this basis alone, such an interpretation of Article IV, Section 1 of the CC&Rs is simply not tenable.

Additionally, the principle of interpretation known as *expressio unius est exclusio alterius* states that when a statute specifically mentions it applies to certain things, there is a presumption that it does not apply to anything it does not mention. See, e.g., *Goudelock v. Sixty-01 Association of Apartment Owners* (2018) 895 F.3d 633, 640. According to Civil Code §5205(a), the Association has a duty to make “association records” available for inspection and copying by the membership. Under Civil Code §5200, the term “association records” refers to 13 categories of documents. Taken together, this means the Association does not have a duty to make documents available for inspection and copying by the membership if they do fall into one of these 13 categories.

As previously noted, the noncompliance forms regarding Ms. Streiber’s tree, supporting documentation submitted with those forms, notices to Ms. Streiber regarding the tree that will be the subject of the upcoming hearing (other than the formal notice of that hearing), correspondence with Ms. Streiber regarding the tree that will be the subject of the upcoming hearing, copies of the Tree Maintenance Parameters, and any evidence that Ms. Streiber has failed to comply with those parameters are not considered “association records” for the purpose of Civil Code §5200. Additionally, Civil Code §4205(a) explicitly states that in the event of a conflict between the CC&Rs and the law, the law prevails. As a result, even if Article IV, Section 1 of the CC&Rs *could* be interpreted to give members the right to inspect more than what is covered under Civil Code §5200, such a right would be unenforceable. With this in mind, there is no legal basis for the idea that Ms. Streiber has the right to inspect all of the Association’s files.

That said, I spoke with the Board and they agreed to provide you with copies of the notice for the Hearing and all correspondence regarding between myself and either you or Mr. Abramson. It also has agreed to disclose copies of its photos of the tree’s impact on the views from Mr. and Mrs. Gabayans’ property (as you provided it with a copy of the photo you took). Please find those

documents attached hereto for your convenience and reference. The Board is also willing to let you review copies of the noncompliance forms (as well as any other evidence it has related to the tree's obstruction of Mr. and Mrs. Gabayan's property) at the Hearing itself. That said, the Tree Maintenance Parameters are only applicable to the impact Ms. Streiber's tree has on the views from Ms. Silverton's property. As this will not be discussed at the Hearing, the Tree Maintenance Parameters (as well as any document related to them) are not relevant and will thus not be made available at this time.

Finally, please be advised that the Association is (and has been) acting under a reservation of rights. Nothing contained herein should be construed as an admission of wrongdoing, acceptance of liability, or release of claims. Thank you very much and I look forward to meeting you tomorrow. As always, please do not hesitate to let me know if you have any questions.

Best regards,



**Aaron Schwarzkopf, Esq.**



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**From:** David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)>

**Sent:** Monday, January 21, 2019 8:59 AM

**To:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>

**Cc:** 'Mark Abramson' <[mark@markalaw.com](mailto:mark@markalaw.com)>

**Subject:** RE: Palisair HOA re Deborah Streiber

Hi Aaron,

Following up on the below. I haven't heard anything from you in response to my letter and I do not see anything relating to Ms. Streiber on the agenda for the Palisair HOA Board meeting tomorrow evening, but I am operating under the assumption that the Palisair HOA Board intends to proceed tomorrow evening with a hearing regarding Ms. Streiber's tree. Please advise me immediately if that is not the case. Also, please add Michael McCall as someone who will attend the meeting for Ms. Streiber and who may speak on her behalf as a witness regarding the tree's condition.

Cordially,

David R. Krause-Leemon

Beaudoin | Krause-Leemon, LLP

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**From:** David Krause-Leemon [<mailto:David@bk-llaw.com>]

**Sent:** Monday, January 14, 2019 12:06 PM

**To:** 'Aaron Schwarzkopf' <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>

**Cc:** 'Mark Abramson' <[mark@markalaw.com](mailto:mark@markalaw.com)>

**Subject:** Palisair HOA re Deborah Streiber

Please see attached.

David R. Krause-Leemon

Beaudoin | Krause-Leemon, LLP

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1061 Palisair Place  
Gabayan backyard  
Left of pool





1061 PP  
North View  
Gabayan back







1061 Palisair Pl

Panoramic



1061 Palisair Place  
Gabayan  
Backyard  
Right of pool





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818.205.2809

January 14, 2019

Via Email & U.S. Mail

Aaron Schwarzkopf  
ADAMS STIRLING PLC  
2566 Overland Avenue, Suite 730  
Los Angeles, CA 90064

Re: *Palisair HOA v. Deborah Streiber (1000 Las Lomas Ave.)*

Dear Mr. Schwarzkopf:

As you know, I represent Deborah Streiber, a member of the Palisair Homeowners Association (the "HOA") and the owner of 1000 Las Lomas Avenue. I will be attending the January 22, 2019 meeting at which the height of the Silver Oak tree on Ms. Streiber's property will be addressed. As I understand it, the height of the tree has been placed in issue by the Gabayans, who reside at 1031 Anoka Place and the Silvertons, who own 1020 Las Lomas. Please be advised that Ms. Streiber will also be attending that hearing, as will Arturo Gonzalez, Ms. Streiber's property maintenance manager.

On January 10, 2019 I had an opportunity to observe the view from the Gabayan property located at 1031 Anoka Place. I must say that, after observing the view from the Gabayan property, I am at a loss as to what the issue is and I request that you clarify for me, in advance of the January 22, 2019 hearing, exactly what it is that is being addressed.

It is my understanding, based on the September 18, 2018 "Notice of Hearing" provided to Ms. Streiber, that the hearing is to "consider whether [Ms. Streiber's] tree currently impairs [her] neighbors' views in violation of the CC&Rs" and to provide Ms. Streiber with an opportunity to address the HOA Board to "discuss the matter and/or contest the evidence." I have not seen any correspondence or notice since that date to the contrary.

If the hearing is intended to address anything other than the items identified in the September 18, 2018 "Notice of Hearing" can you please clarify for me what, exactly, the hearing on January 22, 2019 will be addressing with respect to Ms. Streiber and provide me with copies of any additional notice(s) to her (or any attorney representing her) that identifies any provision of the CC&Rs that Ms. Streiber is charged with violating?

Assuming that the hearing is to address the issues identified in the September 18, 2018 "Notice of Hearing" (the "Notice"), I provide below some items for consideration by you and the HOA Board in advance of the hearing. By providing this letter, I am not waiving any of Ms. Streiber's rights to address the HOA Board at the hearing or to contest any evidence that might be presented at the hearing and I expressly reserve all such rights as well as any rights that Ms. Streiber may have to address any charged violation of the CC&Rs that might be duly raised by the HOA. I provide the information below only so that you and the HOA Board do not have to consider it for the first time at the hearing on January 22.

As I understand it, the issue in dispute is whether the Silver Oak tree on Ms. Streiber's property unreasonably obstructs the view from either the Silverton property (at 1020 Las Lomas) or the Gabayan property (at 1031 Anoka Place). As explained below, the answer is "no," and, even if it did, it is too late for the HOA to take any action.

First, however, I take issue procedurally with the Notice and the lack of due process that has been afforded to Ms. Streiber in advance of the hearing. The Notice states that the hearing will address the "current" status of the tree and that it will allow Ms. Streiber to "contest the evidence." However, we are now only eight (8) days out from the hearing and Ms. Streiber has not been provided with any evidence that will be introduced at the hearing to support any allegation that she is in violation of the CC&Rs. Although I have requested such evidence from you, none has been provided (no pictures, no letters, no complaints, no "Tree and Landscape Non-compliance form"). Moreover, I was informed that January 10 would be the day to access the back yard of one of the neighbors, the Gabayans, to inspect the alleged view obstruction. I participated in that viewing, but only one board member, Howard Weisberg, was present. Have the other board members viewed the current condition of the view? If so, when? And, if so, why wasn't Ms. Streiber notified and provided an opportunity to inspect the view at the same time and under the same conditions?

Additionally, the HOA's "Fine Policy" states that any notice of an alleged violation for which a fine is sought to be imposed will issue only after the Board has "initially determin[e]d that a homeowner violated" the CC&Rs and that the notice will "include a time frame for compliance." When did the Board initially determine that the *current* condition of Ms. Streiber's tree was in violation of the CC&Rs? I was provided with minutes from all Board meetings in 2018 and I see no agenda item at which it appears any initial determination that the current condition of the tree was addressed. If it was, why wasn't Ms. Streiber provided with a "time frame for compliance" after that determination? No time frame for compliance is set out in the Notice.

Turning to the merits of the dispute involving Ms. Silverton's tree:

First, as to the Silverton property, the HOA Board determined on August 20, 2014 that the tree did not unreasonably obstruct the view from the Silverton property. (*See*, Board Minutes dated 8-20-14.) That determination is binding on the HOA Board. While the HOA Board could argue, perhaps, that a significant change in circumstances would allow it to revisit the issue in the future, the only change in circumstances since that determination was made is that the tree

has been significantly trimmed back, such that any obstruction that existed before is lessened, not increased. There is no basis on which the HOA Board could determine that a reduced obstruction by the tree is unreasonable when it has already determined that the tree in a fuller, more robust condition did not unreasonably obstruct the Silverton's view.

Second, as to the Gabayan property, the tree does not unreasonably obstruct the view from the Gabayan property. I have enclosed / attached a photo taken on January 10, 2019 which provides a panoramic view from the Gabayan property. Since there is no obvious view obstruction in the photo, I have circled Ms. Streiber's tree to draw attention to it. The tree does not obstruct the view at all, in my opinion. To the extent one were to argue that it does obstruct the view, the obstruction is certainly not unreasonable.

It is important that the HOA Board keep in mind that no homeowner in the HOA is entitled to an unobstructed tree-free view. This seems to be a point that the Notice ignores completely, as the assertion in the Notice is that Ms. Streiber is alleged to have "maintained a large tree that impairs the protected views" of her neighbors. That a tree merely "impairs" a view is inadequate. The CC&Rs do not give any homeowner a right to an unimpaired view. Homeowners, including the Gabayans, are entitled only to views that are not *unreasonably* obstructed by trees. As set forth in the CC&Rs: "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." (Article III, Section 9.) Thus, by limiting tree-obstructed views only to "*unreasonable*" obstructions, the drafters of the CC&Rs expressly contemplated that there would undoubtedly be some view obstruction by trees within the HOA. Otherwise, the CC&Rs would prohibit the planting or maintenance of any trees that obstructed the views from any neighboring property. They do not.

The only issue for review, then, is not whether an obstruction or impairment exists (because an obstruction or view impairment alone would be inactionable), but whether any existing obstruction is *unreasonable*. As demonstrated by the enclosed photograph, Ms. Streiber's tree poses no unreasonable obstruction of the view from the Gabayan property. The Gabayan property enjoys an almost 160 degree view. That Ms. Streiber's tree may insert itself into a few degrees of that view is not unreasonable and indeed, should be expected in any neighborhood where tree planting is permitted.

Third, while I do not think there is any basis that would support a determination by the HOA Board that Ms. Streiber's tree unreasonably obstructs the view, it does not matter. It is too late for the Board to do anything other than require Ms. Streiber to trim the tree back to the condition it was in three (3) years ago – something she has already done (notwithstanding the fact that she was not provided any time frame for compliance in the Notice).

An unreasonable view obstruction in violation of CC&Rs would be treated as a nuisance. The statute of limitations on nuisance is 3 years. (Code Civ. Proc. § 338.) Ms. Streiber's tree is more than 55 years old. It was planted before Ms. Streiber purchased her home in 1963 from the original developer and it reached its present height and size *at least 15 years ago*. Because no

Mr. Aaron Schwarzkopf  
January 14, 2019  
Page 4

action was taken against Ms. Streiber until recently, it is far too late. It is certainly too late to require that the tree be removed. At best, the HOA Board could require that Ms. Streiber trim the tree so that it return to the size and shape it was in three years ago. But, she has already done that. As of today, the tree has been trimmed significantly, such that it is well under the size it was three years ago. Indeed, the tree today is shorter and thinner than it was more than five years ago.

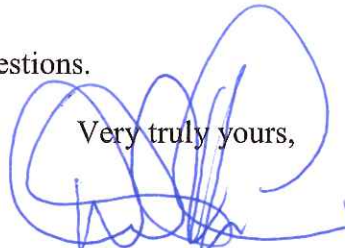
So, it seems to me, there is nothing that the HOA Board can or should do with respect to Ms. Streiber's tree. It does not unreasonably obstruct the view from either the Gabayan or Silverton properties and, even if it did, the time to act was years ago, not now. However, notwithstanding the above, Ms. Streiber has trimmed the tree back significantly, and she is willing to continue maintaining the tree at approximately its current height for as long as she owns the property by having it trimmed semi-annually.

If the Gabayans or the Silvertons are not satisfied with this solution and wish to pursue claims against Ms. Streiber, she would welcome the opportunity to litigate this issue and recover her attorneys' fees from them when she prevails. However, it seems to me that this is a dispute that the HOA Board should not pursue, given that no legal basis exists to support it.

I look forward to meeting with you on January 22 and addressing this issue with the HOA Board in further detail.

Please let me know if you have any questions.

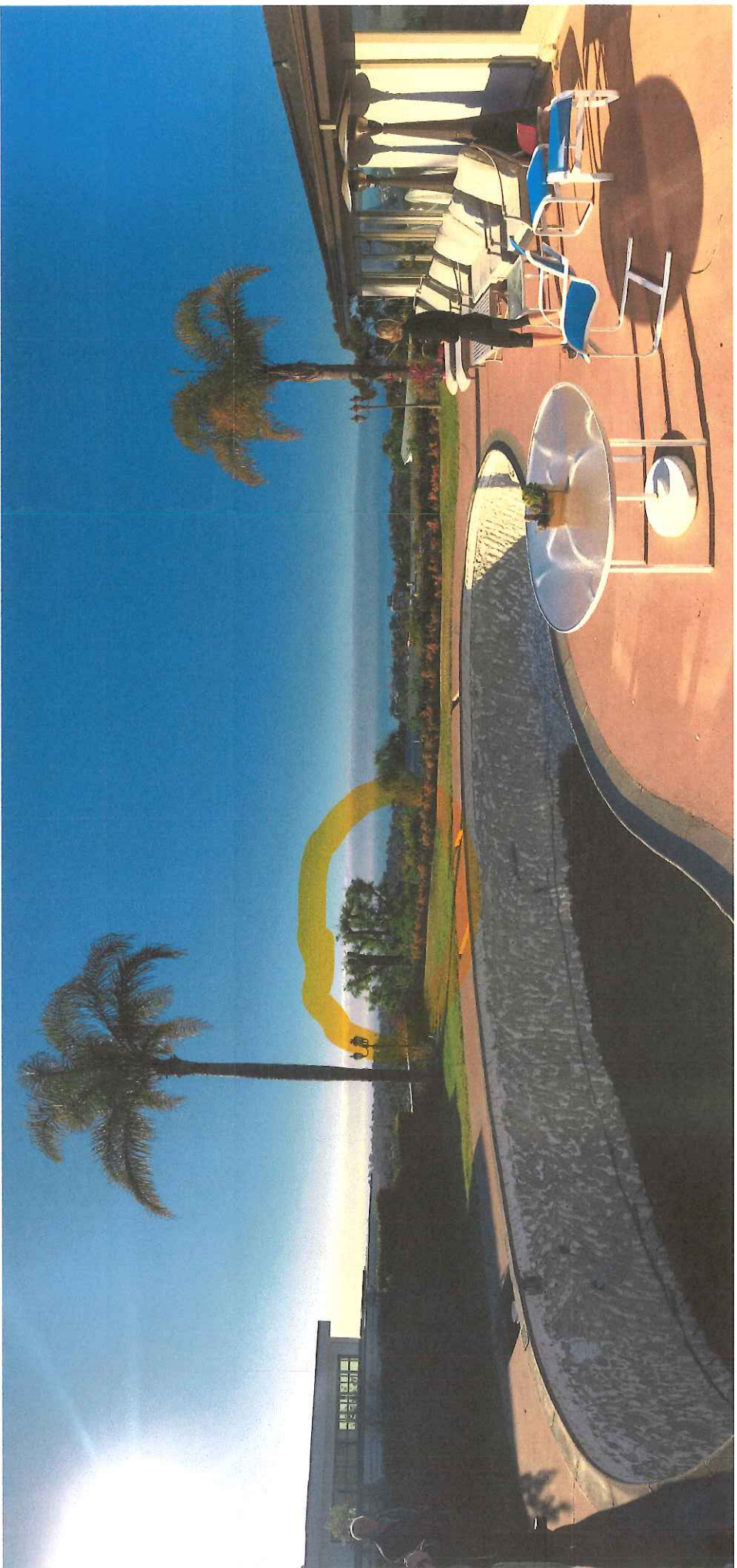
Very truly yours,



David R. Krause-Leemon

Encl.





BEAUDOIN / KRAUSE-LEEMON LLP

15165 Ventura Boulevard, Suite 400  
Sherman Oaks, CA 91403

SANTA CLARITA

CA 913

14 JAN '19

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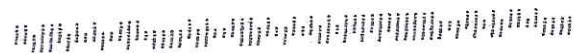


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Aaron Schwarzkopf  
ADAMS STIRLING PLC  
2566 Overland Avenue, Suite 730  
Los Angeles, CA 90064



90064-550380



LAW OFFICES OF  
**ROBERT P. FRIEDMAN**  
827 MORAGA DRIVE  
BEL AIR, CALIFORNIA 90049  
TELEPHONE: (310) 471-3413  
FAX: (310) 471-8613  
E-MAIL: robert@rpfesq.com

April 11, 2018

Via Certified Mail –  
Return Receipt Requested

Board of Directors  
Palisair Home Owners Association  
P.O. Box 901  
Pacific Palisades, CA 90272

Re: Hearing Regarding Alleged CC&R Violation (Trees)

Ladies and Gentlemen:

This firm represents Deborah Streiber, the owner of 1000 Las Lomas Ave. and a member of the Palisair Home Owners Association (the “PHOA”).

The Board of Directors (the “Board”) of the PHOA purported to conduct a “hearing” on January 15, 2018 (the “Hearing”) concerning complaints submitted by the residents living at 1020 Las Lomas and 1031 Anoka Place (the “Complaining Members”) alleging view obstruction by a tree located on Ms. Streiber’s property. By letter dated January 24, 2018 (the “Notice”), the President of the Board notified Ms. Streiber of the following:

- The tree unreasonably obstructs or unreasonably diminishes the quality and nature of the view from adjoining properties;
- Pruning the tree is not a satisfactory solution because it will continue to diminish the quality and nature of the view even in a pruned condition;
- That Ms. Streiber is required to cut down the tree within thirty (30) days of receipt of the Notice; and
- If the tree is not cut down within such thirty (30) day period, the PHOA will impose a fine of \$250.00 per month until the tree is cut down, as provided in the PHOA’s rules and regulations.

Thereafter, the HOA delivered a statement to Ms. Streiber dated March 8, 2018 assessing a monthly charge of \$250 for the month of March, 2018 for a “Landscape Violation.”

The Board's actions, including the imposition of the fine, are void and unenforceable for the reasons set forth herein.

First, there is no authority in the PHOA's governing documents authorizing the Board or the PHOA to impose fines. Neither the PHOA's Third Modification of Restrictions (the "CC&Rs") or the PHOA's Bylaws (the "Bylaws") authorize fines. While the Board purported to enact a fine policy (the "Fine Policy") as set forth in an Annual Policy Statement dated November 1, 2017 (the "Policy Statement"), any such policy would constitute rulemaking. California Civil Code Section 4350 states that an operating rule is valid and enforceable only if the rule is within the authority of the board conferred in the governing documents or by law. Nowhere in the CC&Rs or the Bylaws is the Board given the authority to engage in rulemaking, nor is any right to do so in this context conferred by law. Accordingly, the Board has no authority to impose fines and its purported attempt to do so as set forth in the Notice is void and unenforceable.

Second, even if the Fine Policy is valid, the Board violated the express provisions of this policy. The Policy Statement advises the members that the full details of the Fine Policy are contained in Application Process, Rules & Fees for Alterations or Construction available on the website. That document provides that at any hearing in which a fine is imposed:

"The homeowner's attorney may attend and participate in the hearing, in which case the Board's attorney will also attend. If the homeowner's attorney will attend, the homeowner must provide advance written notice to the Board."

Unfortunately, the Board violated this policy by refusing to allow Ms. Streiber to be represented by an attorney at the Hearing. By email dated September 16, 2017 to the HOA, Ms. Streiber advised the Board that her attorney (myself) would attend the meeting. By email dated September 18, 2017, Howard Weisberg on behalf of the Board wrote that Ms. Streiber's attorney may not attend. Following postponement of the hearing, Suzanne Weisberg on behalf of the Board sent an email on November 20, 2017 to Ms. Streiber stating that Ms. Streiber's attorney was not welcome to attend. Following another postponement, by email to Ms. Streiber dated November 26, 2017, Suzanne Weisberg on behalf of the Board again instructed Ms. Streiber that Ms. Streiber's attorney could not attend. I should further note that I appeared with Ms. Streiber at the first inspection of the purported obstruction in August 2017, but was approached by Mr. Weisberg and informed that Ms. Streiber was not allowed to have her attorney present and was instructed to leave.

Clearly, the actions of the Weisbergs on behalf of the Board are in direct conflict with the Fine Policy. The Board cannot impose a fine without following the requirements it adopted. But what is particularly galling is that one or more members of the Board, including Suzanne



Board of Directors  
Palisair Home Owners Association  
April 11, 2018  
Page 3


Weisberg, are themselves attorneys or former attorneys, and the Gabayans' son, who spoke on their behalf, is also an attorney. Accordingly, this appears to be an attempt to set up a rigged process to steamroll a homeowner.

Third, the Board effectively sandbagged Ms. Streiber by allowing extraneous and inflammatory material to be presented at the Hearing. Specifically, one of the Complaining Members submitted a letter from Dan Urbach, a broker with The Agency suggesting the tree caused a reduction in value of between \$500,000 to \$600,000 to the Complaining Member. There was also a second letter concerning the impact on value that was summarized but not reviewed by the Board. This material is not only speculative, but it has nothing to do with whether a tree unreasonably obstructs a view or unreasonably diminishes the nature and quality of the view. There is nothing in the CC&Rs about the impact of value caused by a tree – the standard is purely visual. The speculation posed by brokers is designed to inflame passions and scare homeowners. It is particularly unfair since Ms. Streiber had no notice that this would be introduced and, having been told she could not have an attorney present, had no ability to respond or challenge such information. Allowing such information was manifestly unfair to Ms. Streiber.

Finally, as all of you know, Ms. Streiber prunes the tree in question regularly twice a year – once in early October and again in March. The inspection that took place occurred in August when the tree's height and growth was at its fullest, and was subsequently pruned in October. The Notice claims that a second inspection was conducted after the October pruning. However, Ms. Streiber was not informed of any such inspection and therefore was not present. She has no way of knowing what the view impact was or what was communicated between the Board and the Complaining Members. This is yet another example of the Board (or certain members) rigging the process.

In summary, the Board's actions are in breach of its governing documents, applicable law and have denied Ms. Streiber her substantive and procedural due process rights. The Hearing was invalid and the Board's actions arising therefrom, including the imposition of a fine, are void and unenforceable. As a result, there is no need to address the substance of the Board's conclusions at this time.

Very truly yours,

  
Mark E. Abramson, Esq.

cc: Deborah Streiber (via E-Mail)



December 17, 2018

Mr. & Mrs. Alex & Victoria Gabayan  
1031 Anoka Place.  
Pacific Palisades, CA 90272

***Re: 1031 Anoka Place, Pacific Palisades, CA 90272***

Dear Mr. & Mrs. Gabayan,

I am writing to confirm my opinion on value of the view obstruction caused by the downslope neighbor's tree at 1031 Anoka Place (single-family residence) after revisiting the property on December 17, 2018.

Based on my over 20 years of experience selling properties in Pacific Palisades, and an in-depth knowledge and understanding of market activity in the subject property neighborhood, I would estimate that the view obstruction caused by the downslope neighbor's tree in the middle of the 1031 Anoka Place view corridor, after being trimmed, adversely affects value by \$500,000.

Should you have any questions or if I can be of further service, please don't hesitate to contact me at 310.360.5096.

Sincerely,

Dan Urbach  
*BRE # 01147391*

**Photos of Tree at 1000 Las Lomas as Seen from 1031 Anoka Place  
(Taken on October 14, 2018)**



**Palisair Home Owners Association**  
A NON-PROFIT CORPORATION

P.O. Box 901  
Pacific Palisades, CA 90272  
www.palisair.org  
palisair@gmail.com

The association itself is a "Tract Committee"  
under the Declaration of Restrictions covering  
Tracts 15944, 15948 and 19890, and operates as  
such through its Board of directors and its Officers

**Tree and Landscape Non-compliance form**

Submittal Date 8/23/2017

Applicant Alex & Victoria Gabayan Phone [REDACTED]  
Address [REDACTED]

Owner of property with trees/shrubs:  
Phone # 310-454-6435  
Address 1000 Las Lomas, Pacific Palisades, CA 90272

Location of trees/shrubs that affect your view. If possible provide  
photos and plot map showing location.  
Huge tree in back yard of 1000 Las Lomas larger than any tree around.  
Photos attached.

Explain in detail how the vegetation issue affects your view.  
Huge obstruction directly in the middle of our view line.

Please list all efforts to resolve the problem with your neighbor. Attach  
copies of all correspondence.

We have communicated with Ms. Steiber many times about this over the course of last  
38 years and have had no success. She just periodically trims it but the tree is  
still there and a huge obstruction (even after trimming). Trimming is no good. The

**Please mail Application to:**

**Palisair Home Owners Association**  
**Tree Committee Chairperson**  
**P.O. Box 901**  
**Pacific Palisades, CA 90272**

tree has to be  
removed.





Reply to: 2566 Overland Ave., Suite 730  
Los Angeles, CA 90064  
(800) 464-2817

May 3, 2018

Via Certified, U.S. Mail, RRR, and Email (mark@rpfesq.com)

Mark E. Abramson, Esq.  
Law Offices of Robert P. Friedman  
827 Moraga Drive  
Bel Air, California 90049

RE: Palisair Home Owners Association  
- Response to April 11, 2018 Letter

Mr. Abramson,

My name is Aaron Schwarzkopf and I serve as general counsel for the Palisair Home Owners Association ("Association"). Please direct any Association-related communications to me going forward. The purpose of this letter is twofold: 1) to respond to your claims regarding the hearing involving and subsequent fine levied against your client Deborah Streiber; and 2) to propose a new course of action to help resolve this dispute as amicably, fairly, reasonably, and expeditiously as possible.

I am informed that Ms. Streiber is the record owner of the property located within the Association at 1000 Las Lomas Ave. ("Property"). the rear portion of which consists of the side of a hill. At the top of that hill, there is currently a large tree ("Tree") which several of Ms. Streiber's neighbors have complained obscures the views from their backyard. After receiving these complaints, the Board called Ms. Streiber to a hearing on January 15, 2018 ("Hearing") to determine whether the Tree violated the view restrictions in Association's Governing Documents.

The Board ultimately concluded that the Tree unreasonably obstructed the quality and nature of the complaining neighbors' views. As a result, the Board informed Ms. Streiber that she would have to remove the Tree within 30 days. If she failed to do so, the Association would impose a monthly \$250 fine against her. Please find a copy of the notice and decision for the Hearing attached hereto for your convenience.

In response, you sent a letter dated April 11, 2018 to the Association on behalf of Ms. Streiber ("Letter") which made several several claims (collectively, the "Claims") regarding both the Hearing and the subsequent actions taken by the Board. The Claims include (but are not limited to) the following:

1. The claim that the Association could not impose a fine against Ms. Streiber at all because it lacked the authority to adopt a fine policy;
2. The claim that even if the Association had the authority to impose fines, it failed to adhere to its fine policy by not permitting Ms. Streiber to bring an attorney and in so doing, “steamrolled” Ms. Streiber;
3. The claim that the presentation at the Hearing of what the Letter characterized as “extraneous and inflammatory material” without providing notice that such material would be introduced was “manifestly unfair” and an attempt by the Board to “effectively sandbag” Ms. Streiber; and
4. The claim that the Board’s inspection of the Tree once in August (when its height and growth was at its fullest) and again in October (after it was pruned but without providing notice to Ms. Streiber) was an “example of the Board (or certain members) rigging the process”.

Based on the Claims, the Letter concluded that the Association violated Ms. Streiber’s right to due process. The Letter also concluded that because of this, the Hearing was invalid and all actions arising therefrom (including the imposition of a fine) were void. Please find a copy of the Letter attached hereto for your convenience.

The Board categorically rejects any claim that the Association lacks the authority to impose fines or that it deprived Ms. Streiber of her right to due process. It similarly rejects any notion that it “rigged” the hearing process against, “steamrolled”, or “sandbagged” Ms. Streiber. As a result, it stands by its actions and decisions regarding Ms. Streiber and the Tree.

Having said that, the Board’s ultimate goal here is to resolve this matter and is willing to be flexible if it helps it achieve that goal. In furtherance of this, the Board would like to invite Ms. Streiber to participate in the Association’s Internal Dispute Resolution (“IDR”) program. An IDR is an open forum during which Ms. Streiber and the Board can discuss this issue openly, fairly, and respectfully. As both a gesture of good faith and in demonstration of the Board’s commitment to reaching an amicable resolution to this matter, the Board has agreed to vacate the decision it came to at the Hearing as well as waive the \$250 monthly fine.

Please provide me with Ms. Streiber’s response (email is ok) within 10 days of the date of this letter. If Ms. Streiber agrees to participate in the IDR and plans on having you attend, please let me know in advance so that I can be sure to be there as well. Though Ms. Streiber is under no obligation to participate, the Board is confident that the IDR process will allow the parties to work together to come up with a mutually-agreeable solution, thereby avoiding the need to escalate this matter.

Finally, please be advised that the Association is acting under a reservation of rights. Nothing contained herein should be construed as an admission of wrongdoing, acceptance of liability, or release of claims by the Association. The Board thanks you and Ms. Streiber in advance for your consideration and hopes Ms. Streiber will accept the Boards invitation so that

May 3, 2018  
Page 3

we can put this whole matter behind us. Thank you very much and as always, please do not hesitate to let me know if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'A. Schwarzkopf', with a long, sweeping horizontal stroke extending to the right.

Aaron Schwarzkopf, Esq.  
ADAMS | STIRLING  
A Professional Law Corporation

ATS  
Encl.  
Cc: Board of Directors



**Palisair Home Owners Association**

A NON-PROFIT CORPORATION

P.O. Box 901

Pacific Palisades, CA 90272

[www.palisair.org](http://www.palisair.org)

[palisair@gmail.com](mailto:palisair@gmail.com)

The association itself is a "Tract Committee"  
under the Declaration of Restrictions covering  
Tracts 15944, 15948 and 19890, and operates as  
such through its Board of directors and its Officers

**NOTICE OF HEARING**

Deborah Strieber  
1000 Las Lomas Avenue  
Pacific Palisade, CA 90272

January 4, 2018

Re: Notice of Hearing

Dear Ms. Strieber:

As you know, members of the Palisair Home Owners Association are subject to restrictions found in the governing documents. The documents also describe the board's responsibilities. One such responsibility is the enforcement of the governing documents. Sometimes this requires the imposition of fines and penalties against those who violate the association's restrictions. The board always regrets taking such measures and would prefer to minimize them whenever possible.

In this case, you are alleged to have violated the CC&R's by maintaining a large tree that impairs the protected views of neighbors at 1031 Anoka Place and at 1020 Las Lomas Avenue. Accordingly, a hearing has been set so that you may have an opportunity to appear before the board to discuss

the matter and/or contest the evidence. You may appear in person or submit a written response.

The Board will not permit non-witness individuals (including legal counsel or other advocates) to attend this hearing. Should you bring any such non-witness individuals, the Board will request they leave and will proceed with the hearing without their participation. While you have every right to bring individuals who will provide testimony on your behalf, the Association is not planning to have its legal counsel present and thus cannot allow for your counsel, if any, to attend.

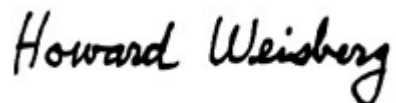
The hearing will be held as indicated below:

***Date:*** January 15, 2018

***Time:*** Our monthly Board Meeting starts at 7pm. The Hearing will be held at an Executive Session immediately after the board meeting. It will start at approximately 9 pm

***Location:*** Home of Miriam Schulman, 16006 Anoka Drive, Pacific Palisades.

Sincerely,

A handwritten signature in black ink that reads "Howard Weisberg". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Howard Weisberg, PHOA President

**Palisair Home Owners Association**

A NON-PROFIT CORPORATION

P.O. Box 901

Pacific Palisades, CA 90272

[www.palisair.org](http://www.palisair.org)

[palisair@gmail.com](mailto:palisair@gmail.com)

The association itself is a “Tract Committee” under the Declaration of Restrictions covering Tracts 15944, 15948 and 19890, and operates as such through its Board of Directors and its Officers

January 24, 2018

Deborah Strieber  
1000 Las Lomas Avenue  
Pacific Palisades, CA 90272

*Via certified mail, return receipt requested and email*

Re: Results of Hearing on 1/15/2018 Regarding Alleged CC&R Violation (Trees)

Dear Ms. Streiber:

On 1/15/2018, the Palisair Home Owners Association board of directors (Board), acting as the Tract Committee, conducted a hearing in executive session to review complaints of view obstruction by a tree located on your property. The complaints were submitted by the PHOA Members living at 1020 Las Lomas (Silverton) and 1031 Anoka Place (Gabayan) (“Complaining Members”).

Copies of the written complaints, photographs, and other supporting materials were sent to you prior to the hearing.

The Palisair Home Owners Association (“Association”) is governed by its recorded CC&Rs<sup>1</sup>, which are enforceable equitable servitudes binding on each owner. The CC&Rs are enforced by the Association’s Board of Directors, which is referenced as the “Tract Committee” in the CC&Rs.<sup>2</sup>

Article III, Section 9 of the CC&Rs states the following, in part:

Height of Fences, Walls, Hedges, and Trees Limited

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

---

<sup>1</sup> Those restrictions and modifications as referenced and included in the Third Modification of Restrictions for Tracts 15944, 15948 and 19890 recorded on January 11, 2012 as Document No. 20120045091 in the Official Records of Los Angeles County, and any amendments thereto.

<sup>2</sup> CC&Rs, Article IV, Section 1.

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.

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.

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.

Upon a finding made by the Tract Committee that the nature or quality of the view is unreasonably diminished or unreasonably obstructed by fences, etc. or by trees on any land in this tract, or that outside lights are objectionable under the preceding paragraph, the owner thereof, upon written notice sent by the Tract Committee, within thirty (30) days shall remove, cut down or cut back any such obstructions or remedy the objectionable effect of such lights to the extent specified by the Tract Committee.

Article V, Section 8 of the CC&Rs states the following, in part:

View

... The 'view' shall include, but is not limited to, the sight of the ocean, mountains, city, valleys, canyons, sunrises and sunsets or any other sight deemed by the Tract Committee as being an important part of the property's value that is entitled to protection.

The Association's Rules and Regulations are contained in the following document, which is posted on the Association's website: <http://palisair.org/wp-content/uploads/2017/07/Plans-Application-Process-Rules-Fees-for-Alteration-or-Construction-7-24-2017.pdf>. Policy regarding fines are contained in the section entitled "FINE POLICY," starting on page 5. Section 4, entitled "For continuous violations," includes the following:

Continuous violations will be considered a violation the first day of each month from the first day of the violation until remedied in full.

...

Continuous violations for landscape or tree violations are subject to a fine of up to \$250.00 per month for each month of the violation, whether consecutive or not, until the violation is remedied.

Prior to the hearing, Board members had personally observed the alleged view obstruction from the two complaining properties, including observations both prior to and after the tree was pruned.

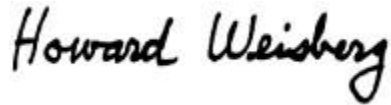
At the January 15, 2018 hearing, a majority of the Board was present, the Complaining Members were present, and you were present with a personal representative. During the hearing, the Board heard extensive comments by you and a personal representative, and by both Complaining members and a representative. The Board reviewed the evidence submitted. No attorney providing legal representation of a client was present. Extensive discussion by the Board followed, and the Board heard responses by those in attendance.

The Board moved as follows:

*The large tree located at 1000 Las Lomas unreasonably obstructs or unreasonably diminishes the quality and nature of the view from adjoining properties. Pruning the tree is not a satisfactory solution because, in its pruned condition, it will continue to diminish the quality and nature of the view. Therefore, you are required to cut down the tree within thirty days of your receipt of this letter. If the tree is not cut down by such time, the Association will impose a fine of \$250.00 per month until the tree is cut down, as provided for in the Association's rules and regulations.*

We all love trees. However, this is a hillside neighborhood, and views are an important part of the value of our properties. The PHOA encourages the maintenance of trees and other landscaping that do not obstruct or diminish views. We expect that you will remove the obstructing tree in the time frame given so that we do not have to impose fines.

Yours truly,

A handwritten signature in black ink that reads "Howard Weisberg". The signature is written in a cursive, slightly slanted style.

President, Board of Directors  
Palisair Home Owner's Association

LAW OFFICES OF  
**ROBERT P. FRIEDMAN**  
827 MORAGA DRIVE  
BEL AIR, CALIFORNIA 90049  
TELEPHONE: (310) 471-3413  
FAX: (310) 471-8613  
E-MAIL: robert@rpfesq.com

April 11, 2018

Via Certified Mail –  
Return Receipt Requested

Board of Directors  
Palisair Home Owners Association  
P.O. Box 901  
Pacific Palisades, CA 90272

Re: Hearing Regarding Alleged CC&R Violation (Trees)

Ladies and Gentlemen:

This firm represents Deborah Streiber, the owner of 1000 Las Lomas Ave. and a member of the Palisair Home Owners Association (the “PHOA”).

The Board of Directors (the “Board”) of the PHOA purported to conduct a “hearing” on January 15, 2018 (the “Hearing”) concerning complaints submitted by the residents living at 1020 Las Lomas and 1031 Anoka Place (the “Complaining Members”) alleging view obstruction by a tree located on Ms. Streiber’s property. By letter dated January 24, 2018 (the “Notice”), the President of the Board notified Ms. Streiber of the following:

- The tree unreasonably obstructs or unreasonably diminishes the quality and nature of the view from adjoining properties;
- Pruning the tree is not a satisfactory solution because it will continue to diminish the quality and nature of the view even in a pruned condition;
- That Ms. Streiber is required to cut down the tree within thirty (30) days of receipt of the Notice; and
- If the tree is not cut down within such thirty (30) day period, the PHOA will impose a fine of \$250.00 per month until the tree is cut down, as provided in the PHOA’s rules and regulations.

Thereafter, the HOA delivered a statement to Ms. Streiber dated March 8, 2018 assessing a monthly charge of \$250 for the month of March, 2018 for a “Landscape Violation.”

The Board's actions, including the imposition of the fine, are void and unenforceable for the reasons set forth herein.

First, there is no authority in the PHOA's governing documents authorizing the Board or the PHOA to impose fines. Neither the PHOA's Third Modification of Restrictions (the "CC&Rs") or the PHOA's Bylaws (the "Bylaws") authorize fines. While the Board purported to enact a fine policy (the "Fine Policy") as set forth in an Annual Policy Statement dated November 1, 2017 (the "Policy Statement"), any such policy would constitute rulemaking. California Civil Code Section 4350 states that an operating rule is valid and enforceable only if the rule is within the authority of the board conferred in the governing documents or by law. Nowhere in the CC&Rs or the Bylaws is the Board given the authority to engage in rulemaking, nor is any right to do so in this context conferred by law. Accordingly, the Board has no authority to impose fines and its purported attempt to do so as set forth in the Notice is void and unenforceable.

Second, even if the Fine Policy is valid, the Board violated the express provisions of this policy. The Policy Statement advises the members that the full details of the Fine Policy are contained in Application Process, Rules & Fees for Alterations or Construction available on the website. That document provides that at any hearing in which a fine is imposed:

"The homeowner's attorney may attend and participate in the hearing, in which case the Board's attorney will also attend. If the homeowner's attorney will attend, the homeowner must provide advance written notice to the Board."

Unfortunately, the Board violated this policy by refusing to allow Ms. Streiber to be represented by an attorney at the Hearing. By email dated September 16, 2017 to the HOA, Ms. Streiber advised the Board that her attorney (myself) would attend the meeting. By email dated September 18, 2017, Howard Weisberg on behalf of the Board wrote that Ms. Streiber's attorney may not attend. Following postponement of the hearing, Suzanne Weisberg on behalf of the Board sent an email on November 20, 2017 to Ms. Streiber stating that Ms. Streiber's attorney was not welcome to attend. Following another postponement, by email to Ms. Streiber dated November 26, 2017, Suzanne Weisberg on behalf of the Board again instructed Ms. Streiber that Ms. Streiber's attorney could not attend. I should further note that I appeared with Ms. Streiber at the first inspection of the purported obstruction in August 2017, but was approached by Mr. Weisberg and informed that Ms. Streiber was not allowed to have her attorney present and was instructed to leave.

Clearly, the actions of the Weisbergs on behalf of the Board are in direct conflict with the Fine Policy. The Board cannot impose a fine without following the requirements it adopted. But what is particularly galling is that one or more members of the Board, including Suzanne

Board of Directors  
Palisair Home Owners Association  
April 11, 2018  
Page 3


Weisberg, are themselves attorneys or former attorneys, and the Gabayans' son, who spoke on their behalf, is also an attorney. Accordingly, this appears to be an attempt to set up a rigged process to steamroll a homeowner.

Third, the Board effectively sandbagged Ms. Streiber by allowing extraneous and inflammatory material to be presented at the Hearing. Specifically, one of the Complaining Members submitted a letter from Dan Urbach, a broker with The Agency suggesting the tree caused a reduction in value of between \$500,000 to \$600,000 to the Complaining Member. There was also a second letter concerning the impact on value that was summarized but not reviewed by the Board. This material is not only speculative, but it has nothing to do with whether a tree unreasonably obstructs a view or unreasonably diminishes the nature and quality of the view. There is nothing in the CC&Rs about the impact of value caused by a tree – the standard is purely visual. The speculation posed by brokers is designed to inflame passions and scare homeowners. It is particularly unfair since Ms. Streiber had no notice that this would be introduced and, having been told she could not have an attorney present, had no ability to respond or challenge such information. Allowing such information was manifestly unfair to Ms. Streiber.

Finally, as all of you know, Ms. Streiber prunes the tree in question regularly twice a year – once in early October and again in March. The inspection that took place occurred in August when the tree's height and growth was at its fullest, and was subsequently pruned in October. The Notice claims that a second inspection was conducted after the October pruning. However, Ms. Streiber was not informed of any such inspection and therefore was not present. She has no way of knowing what the view impact was or what was communicated between the Board and the Complaining Members. This is yet another example of the Board (or certain members) rigging the process.

In summary, the Board's actions are in breach of its governing documents, applicable law and have denied Ms. Streiber her substantive and procedural due process rights. The Hearing was invalid and the Board's actions arising therefrom, including the imposition of a fine, are void and unenforceable. As a result, there is no need to address the substance of the Board's conclusions at this time.

Very truly yours,

  
Mark E. Abramson, Esq.

cc: Deborah Streiber (via E-Mail)



**From:** [Aaron Schwarzkopf](#)  
**To:** ["David Krause-Leemon"](#)  
**Cc:** ["Mark Abramson"](#)  
**Subject:** RE: Palisair HOA re Deborah Streiber  
**Date:** Monday, January 21, 2019 4:32:00 PM

---

David,

One thing I forgot to mention was that prior to the start of the hearing, the parties customarily exchange evidence for the other to review (similar to the manner in which small claims hearings are conducted). As a result, please bring a few copies of the evidence you are planning on presenting for the Gabayans and the Board to review. The Board and the Gabayans will do the same for you. Thank you and let me know if you have any questions.

Best regards,



**Aaron Schwarzkopf, Esq.**



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**From:** Aaron Schwarzkopf  
**Sent:** Monday, January 21, 2019 3:03 PM  
**To:** 'David Krause-Leemon' <David@bk-llaw.com>  
**Cc:** 'Mark Abramson' <mark@markalaw.com>  
**Subject:** RE: Palisair HOA re Deborah Streiber

Mr. Krause-Leemon,

Thank you for the email. I apologize for the delay in response to your January 14, 2019 letter to me (the "Letter") but for whatever reason, I did not receive the email version of the Letter so I did not become aware of it until the version sent by mail arrived a few days later. In any case, the purpose of this email is twofold. First, it is to address a few preliminary matters regarding the hearing currently scheduled for tomorrow, including the request for clarification contained in your Letter. Second, it is to address your position regarding access to records raised in both the Letter and your email to me dated December 14, 2018. Any items you raised in the Letter which I do not address in this email will be addressed at the hearing currently scheduled for January 22, 2019 (the "Hearing").

With respect to your requests for clarification, you are correct that the hearing is scheduled to take place tomorrow. The reason why it is not on the agenda is likely because it is slated to be held in executive session, not open session. However, I wanted to let you know that the Board will be holding an open session meeting before the executive session meeting and I will only be present for the latter. While Ms. Streiber is of course free to attend both the open and executive session meeting, you will only be permitted to attend the executive session meeting (as the Board is a represented party) which is slated to begin at approximately 7:30. Thank you for your anticipated cooperation. As for Mr. McCall's presence at the hearing tomorrow as a witness in support of Ms. Streiber's position, thank you for letting me know.

Additionally, the only items to be discussed during the Hearing will be those mentioned in the notice for the Hearing dated September 18, 2018. More specifically, the Board will consider whether the view impairment by a certain silver oak tree located on Ms. Streiber's property constitutes a violation of Article III, Section 9 of the Association's CC&Rs. I also wanted to let you know that on Friday, the Board informed me that Ms. Silverton cannot attend the Hearing. As a result, it will be continuing the portion of the Hearing intended to address the impairment of her view by the silver oak tree in question to a later date. Consequently, the Board will only consider whether the view obstruction from *Mr. and Mrs. Gabayan's property* caused by Ms. Streiber's silver oak tree constitutes a violation of Article III, Section 9 of the CC&Rs at the Hearing.

With respect to your outstanding records requests, you originally asked for copies of "any written interpretive documents created by the HOA to interpret any portion of Article III, Section 9 of the Palisair HOA CC&Rs." After looking through past correspondence, it does not appear as if I responded to that request. I confirmed with the Board that no such documents exist. I also thought I sent you copies of all the minutes you requested. After looking through them, however, I noticed that I did not include copies of the minutes from the Association's annual meetings (only its open board meetings). Please find them attached. I apologize for the oversight.

With respect to your position that Ms. Streiber is legally entitled to review (in advance of the hearing) noncompliance forms regarding her tree, supporting documentation submitted with those forms, notices to her regarding the tree that will be the subject of the upcoming hearing, correspondence with her regarding the tree that will be the subject of the upcoming hearing, copies of the Tree Maintenance Parameters, and any evidence that Ms. Streiber has failed to comply with those parameters, the Board respectfully disagrees. With respect to your request for notices to Ms. Streiber regarding the tree that will be the subject of the Hearing, Civil Code §4525 (as incorporated by Civil Code §5200(a)(2)) does require the Association to produce notices of hearings for violations that are unresolved at the time of the request. However, the only such notice is the one for the Hearing dated September 18, 2018 and there has never been a reason to think that Ms. Streiber did not already have a copy of it (a fact which you confirmed in the Letter). Additionally, the only correspondence regarding the tree in question since April other than the aforementioned hearing notice have been between me and either you or Mr. Abramson (which you should also have as well). This being the case, producing these records would constitute an idle act, which the law does not require. Civil Code §3532. As a result, the Association is not required to disclose these documents.

With respect to the remaining documents Ms. Streiber is seeking, there is nothing in any of the provisions of Civil Code §5200 et seq. (or any of the sections it incorporates) which could reasonably be construed to mean that her inspection rights as a member extend to noncompliance forms regarding her tree, supporting documentation submitted with those forms, correspondence with her regarding the tree that will be the subject of the upcoming hearing, copies of the Tree Maintenance Parameters, and any evidence that she failed to comply with those parameters. While I appreciate the statements in your December 14, 2018 email to me that the law is broad enough to include these documents and that you “have had sufficient success in past matters with judges who agree” with your position, my firm represents thousands of HOAs across the state so I can confidently say that my position is standard and totally defensible from a legal standpoint. That said, I encourage you to provide me with any legal basis for your interpretation and will gladly reconsider my position if merited.

I also appreciate your interpretation of Article IV, Section 1 of the CC&Rs to mean that members have the right to inspect not just those they are entitled to under Civil Code §5200, but “all files kept by the HOA.” However, such an interpretation would mean that Ms. Streiber (or any other member) could review everything from executive session minutes and members’ phone numbers/email addresses to the Association’s credit card numbers. On this basis alone, such an interpretation of Article IV, Section 1 of the CC&Rs is simply not tenable.

Additionally, the principle of interpretation known as *expressio unius est exclusio alterius* states that when a statute specifically mentions it applies to certain things, there is a presumption that it does not apply to anything it does not mention. See, e.g., *Goudelock v. Sixty-01 Association of Apartment Owners* (2018) 895 F.3d 633, 640. According to Civil Code §5205(a), the Association has a duty to make “association records” available for inspection and copying by the membership. Under Civil Code §5200, the term “association records” refers to 13 categories of documents. Taken together, this means the Association does not have a duty to make documents available for inspection and copying by the membership if they do fall into one of these 13 categories.

As previously noted, the noncompliance forms regarding Ms. Streiber’s tree, supporting documentation submitted with those forms, notices to Ms. Streiber regarding the tree that will be the subject of the upcoming hearing (other than the formal notice of that hearing), correspondence with Ms. Streiber regarding the tree that will be the subject of the upcoming hearing, copies of the Tree Maintenance Parameters, and any evidence that Ms. Streiber has failed to comply with those parameters are not considered “association records” for the purpose of Civil Code §5200. Additionally, Civil Code §4205(a) explicitly states that in the event of a conflict between the CC&Rs and the law, the law prevails. As a result, even if Article IV, Section 1 of the CC&Rs *could* be interpreted to give members the right to inspect more than what is covered under Civil Code §5200, such a right would be unenforceable. With this in mind, there is no legal basis for the idea that Ms. Streiber has the right to inspect all of the Association’s files.

That said, I spoke with the Board and they agreed to provide you with copies of the notice for the Hearing and all correspondence regarding between myself and either you or Mr. Abramson. It also has agreed to disclose copies of its photos of the tree’s impact on the views from Mr. and Mrs. Gabayans’ property (as you provided it with a copy of the photo you took). Please find those

documents attached hereto for your convenience and reference. The Board is also willing to let you review copies of the noncompliance forms (as well as any other evidence it has related to the tree's obstruction of Mr. and Mrs. Gabayan's property) at the Hearing itself. That said, the Tree Maintenance Parameters are only applicable to the impact Ms. Streiber's tree has on the views from Ms. Silverton's property. As this will not be discussed at the Hearing, the Tree Maintenance Parameters (as well as any document related to them) are not relevant and will thus not be made available at this time.

Finally, please be advised that the Association is (and has been) acting under a reservation of rights. Nothing contained herein should be construed as an admission of wrongdoing, acceptance of liability, or release of claims. Thank you very much and I look forward to meeting you tomorrow. As always, please do not hesitate to let me know if you have any questions.

Best regards,



**Aaron Schwarzkopf, Esq.**



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**From:** David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)>

**Sent:** Monday, January 21, 2019 8:59 AM

**To:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>

**Cc:** 'Mark Abramson' <[mark@markalaw.com](mailto:mark@markalaw.com)>

**Subject:** RE: Palisair HOA re Deborah Streiber

Hi Aaron,

Following up on the below. I haven't heard anything from you in response to my letter and I do not see anything relating to Ms. Streiber on the agenda for the Palisair HOA Board meeting tomorrow evening, but I am operating under the assumption that the Palisair HOA Board intends to proceed tomorrow evening with a hearing regarding Ms. Streiber's tree. Please advise me immediately if that is not the case. Also, please add Michael McCall as someone who will attend the meeting for Ms. Streiber and who may speak on her behalf as a witness regarding the tree's condition.

Cordially,

David R. Krause-Leemon

Beaudoin | Krause-Leemon, LLP

15165 Ventura Boulevard, Suite 400

Sherman Oaks, CA 91403

Direct Dial: 818-205-2809

Fax: 818-788-8104

[david@bk-llaw.com](mailto:david@bk-llaw.com)

[www.bk-llaw.com](http://www.bk-llaw.com)

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**From:** David Krause-Leemon [<mailto:David@bk-llaw.com>]

**Sent:** Monday, January 14, 2019 12:06 PM

**To:** 'Aaron Schwarzkopf' <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>

**Cc:** 'Mark Abramson' <[mark@markalaw.com](mailto:mark@markalaw.com)>

**Subject:** Palisair HOA re Deborah Streiber

Please see attached.

David R. Krause-Leemon

Beaudoin | Krause-Leemon, LLP

15165 Ventura Boulevard, Suite 400

Sherman Oaks, CA 91403

Direct Dial: 818-205-2809

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**From:** [Aaron Schwarzkopf](#)  
**To:** ["David Krause-Leemon"](#)  
**Cc:** ["Mark Abramson"](#)  
**Subject:** RE: Palisair HOA re: Deborah Streiber  
**Date:** Friday, December 28, 2018 3:07:00 PM  
**Attachments:** [2015 minutes.zip](#)  
[2014 minutes.zip](#)  
[2017 minutes.zip](#)  
[2016 minutes.zip](#)  
[2018 minutes.zip](#)

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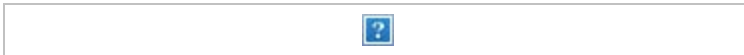
Mr. Krause-Leemon,

I am still evaluating your request for the documents you are seeking which are the subject of disagreement and will get back to you as soon as possible. In the meantime, however, please find copies of the meeting minutes you requested from 2014-2018. Additionally, the Board would like to know if you are available on January 4, 2019 to view and photograph the view obstruction at issue. If not, please provide me with alternative dates which do work for you. Thanks and happy new year.

Best regards,



**Aaron Schwarzkopf, Esq.**



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**From:** David Krause-Leemon <David@bk-llaw.com>  
**Sent:** Friday, December 14, 2018 4:12 PM  
**To:** Aaron Schwarzkopf <aschwarzkopf@adamsstirling.com>  
**Cc:** 'Mark Abramson' <mark@markalaw.com>  
**Subject:** RE: Palisair HOA re: Deborah Streiber

Dear Mr. Schwarzkopf,

Thank you for the response. The January 22, 2019 date is fine.

As far as minutes of meetings, we would request that minutes be provided from January 1, 2014 through the present.



With respect to your view that the Board is not obligated to provide copies of (or access to view) noncompliance forms/documentation associated with those forms, notices to Ms. Streiber regarding the tree, and correspondence with Ms. Streiber regarding the tree, I strenuously disagree. First, the Bylaws of the HOA provide a right to inspect all "Association Records." I believe the definition of "Association Records" provided by Civil Code section 5200 is sufficiently broad enough to cover the types of documents requested and I have had sufficient success in past matters with judges who agree with me. Second, and more importantly, the CC&Rs themselves provide a right to inspect the documents requested. Article IV, Section 1 provides that "[t]he files of the Committee, including its Book of Minutes, shall be open for inspection by any landowner of the tract at all reasonable times." "The files of the Committee" is broad, and encompasses all files kept by the HOA, not just the "Association Records" defined in the Civil Code. Accordingly, please advise when the requested documents will be made available for review.

As far as photographing the tree goes, I am available any day next week, with the exception of Friday. Please let me know what works best. I expect it will take about 15 minutes or less.

Cordially,

David R. Krause-Leemon  
Beaudoin | Krause-Leemon, LLP  
15165 Ventura Boulevard, Suite 400  
Sherman Oaks, CA 91403  
Direct Dial: 818-205-2809  
Fax: 818-788-8104  
[david@bk-llaw.com](mailto:david@bk-llaw.com)  
[www.bk-llaw.com](http://www.bk-llaw.com)

---

**From:** Aaron Schwarzkopf [<mailto:aschwarzkopf@adamsstirling.com>]

**Sent:** Tuesday, December 04, 2018 6:09 PM

**To:** David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)>

**Cc:** 'Mark Abramson' <[mark@markalaw.com](mailto:mark@markalaw.com)>

**Subject:** RE: Palisair HOA re: Deborah Streiber

Mr. Krause-Leemon,

Thank you for the email and it is nice to make your acquaintance. Before going any further, I spoke with the Board and they have decided to move Ms. Streiber's hearing to January 22, 2018 at 6:30pm. Please advise if that works for you and Ms. Streiber. With respect to your request for minutes, the Board will of course comply with its obligations under the law and its governing documents. Having said that, the law and Palisair's Bylaws only require it to make records available to Ms. Streiber, not compile or organize them for her. With that in mind, while the Board is happy to provide Ms. Streiber with minutes for meetings that occurred in a specific date range/ranges, it unfortunately cannot provide her with just the minutes which involve her tree.

To that end, please provide me with such a date range/ranges and I will pass that request onto the Board. However, I should note that the Tree Committee is only advisory in nature and currently only consists of one director. As a result, it is not only not required to keep minutes under Civil Code §5210, it is not even technically a “committee” for the purposes of Corporations Code §7212. For this reason, I do not believe the Tree Committee keeps minutes.

With respect to your request for copies of noncompliance forms/documentation associated with those forms, notices to Ms. Streiber regarding the tree, and correspondence with Ms. Streiber regarding the tree, please be advised that neither the Bylaws nor Civil Code §§5200 et seq. give Ms. Streiber the right to inspect these documents. I also want to point out that associations in my experience generally use small claims court as a model for conducting disciplinary hearings. As a result, the parties exchange evidence immediately before the hearing, not as part of pre-trial discovery. However, I believe the Association provided Ms. Streiber with a packet of documents prior to the hearing dated January 15, 2018 so I will speak with the Board about extending Ms. Streiber that courtesy for this hearing as well. If merited, I will include documents related to the tree maintenance parameters within that packet.

With respect to your request to view and photograph the claimed view obstructions, the Board is happy to help facilitate your request. Please provide me with a few dates and times during which you are available to do so and I will pass them onto the Board to make the necessary arrangements with the complaining owners. Finally, please be advised that the Association is (and has been) acting under a reservation of rights. Nothing contained herein should be construed as an admission of wrongdoing, acceptance of liability, or release of claims. Thank you again and as always, please do not hesitate to let me know if you have any questions.

Best regards,

**Aaron Schwarzkopf, Esq.**

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**From:** David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)>

**Sent:** Thursday, November 29, 2018 11:34 AM

**To:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>

**Cc:** 'Mark Abramson' <[mark@markalaw.com](mailto:mark@markalaw.com)>

**Subject:** Palisair HOA re: Deborah Streiber

Dear Mr. Schwartzkopf:

As I believe you have been informed, I represent Deborah Streiber, a member of the Palisair Homeowners Association (the "HOA") and the owner of 1000 Las Lomas Avenue. I will be attending the December 17, 2018 HOA meeting at which the height of the Silver Oak tree on Ms. Streiber's property will be addressed. On behalf of Ms. Streiber, I thank you and the HOA for adjusting the meeting time to make it easier for Ms. Streiber to attend.

In advance of the meeting, please provide the following information and/or documentation to assist me in evaluating the HOA's position regarding Ms. Streiber's tree:

1. Copies of the minutes from any membership (annual or special) meeting, board meeting or committee meeting (including but not limited to any "Tree Committee" meetings) at which any issues concerning Ms. Streiber's tree was discussed.
2. Any "Tree and Landscape Non-Compliance Form(s)" submitted to the HOA and/or its "Tree Committee" regarding Ms. Streiber's tree, along with any documents (photos, maps, etc.) submitted in support of such forms.
3. Copies of all notices to Ms. Streiber regarding the tree that will be the subject of the December 17 meeting.
4. All correspondence with Ms. Streiber regarding the tree that will be the subject of the December 17 meeting.
5. Any written interpretive documents created by the HOA to interpret any portion of Article III, Section 9 of the Palisair HOA CC&Rs.
6. All documents regarding the "Tree Maintenance Parameters" established by the HOA on or about August 21, 2014 for the tree in question and any evidence in the HOA's possession that Ms. Streiber has failed to comply with those parameters.

I thank you in advance for your anticipated courtesy and cooperation in providing the requested documents. As you know, Ms. Streiber has an absolute right to inspect and copy such documents pursuant to both Civil Code sections 5200, et seq., and Section 1.2 of the HOA's Bylaws. If you are unable to provide copies of the requested documents to me, please specify a date and time within the next 10 business days that the records will be available for inspection and copying.

Additionally, I would like the opportunity to inspect and photograph any claimed view obstruction that presently exists. Please advise as to a date and time that the claimed view obstruction will be available for inspection and photographing.

Cordially,

David R. Krause-Leemon

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Sherman Oaks, CA 91403

Direct Dial: 818-205-2809

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**From:** [Mark Abramson](#)  
**To:** [Aaron Schwarzkopf](#)  
**Subject:** Re: Palisair Home Owners Association- Re Response to April 11, 2018 Letter  
**Date:** Friday, May 25, 2018 9:54:46 AM

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Aaron:

Thank you for your letter. My client does not wish to participate in the dispute resolution proceeding with the Board. As detailed in my April 11, 2018 letter, certain members of the Board acted in bad faith and with bias against my client, so a proceeding with the same Board would be unproductive. We stand by the positions stated in my April 11, 2018 letter.

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---

**From:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>  
**Date:** Thursday, May 24, 2018 at 12:35 PM  
**To:** Mark Abramson <[mark@markalaw.com](mailto:mark@markalaw.com)>  
**Subject:** RE: Palisair Home Owners Association- Re Response to April 11, 2018 Letter

Mr. Abramson,

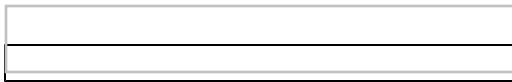
As you know, I serve as general counsel for Palisair Homeowners Association. In the email below, you mentioned you would speak with Ms. Streiber last week regarding my May 3, 2018 letter (a copy of which is attached for your convenience). However, I have yet to receive your formal response. As the May 3, 2018 letter requested such a response no later than May 13, 2018, I would appreciate you getting back to me at your earliest convenience. Please advise. Thank you very much and I look forward to hearing from you.

Best regards,



Aaron Schwarzkopf, Esq.

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---

**From:** Mark Abramson <mark@markalaw.com>

**Sent:** Wednesday, May 09, 2018 1:27 PM

**To:** Mathew Medina <mmedina@adamsstirling.com>

**Subject:** Re: Palisair Home Owners Association- Re Response to April 11, 2018 Letter

We are in receipt of your correspondence. My client is not available this week, so any response will have to wait until after I discuss with her next week.

Please note my new contact information:

Mark E. Abramson

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Media Center, 4<sup>th</sup> Floor

Manhattan Beach, California 90266

(O) (310) 321-7657

(C) (310) 245-8174

(F) (310) 321-7810

[mark@markalaw.com](mailto:mark@markalaw.com)

---

**From:** Mathew Medina <[mmedina@adamsstirling.com](mailto:mmedina@adamsstirling.com)>

**Date:** Thursday, May 3, 2018 at 9:33 AM

**To:** Mark Abramson <[mark@rpfesq.com](mailto:mark@rpfesq.com)>

**Subject:** Palisair Home Owners Association- Re Response to April 11, 2018 Letter

Good Morning Mr. Abramson,

Attached please find a correspondence from Aaron T. Schwarzkopf, Esq. with relation to the above-referenced matter.

Thank You!

**Mathew Medina**

*Administrative Assistant*



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**From:** [David Krause-Leemon](#)  
**To:** ["Kim Bantle"](#)  
**Cc:** [Aaron Schwarzkopf](#); ["Howard Weisberg"](#)  
**Subject:** RE: Palisair Site visits - Streiber  
**Date:** Wednesday, January 09, 2019 2:42:43 PM

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Great. Thanks so much. I will see you then.

David R. Krause-Leemon  
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**From:** Kim Bantle [mailto:[ksbantle@gmail.com](mailto:ksbantle@gmail.com)]  
**Sent:** Wednesday, January 09, 2019 2:31 PM  
**To:** David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)>  
**Cc:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>; Howard Weisberg <[hlweisberg0@gmail.com](mailto:hlweisberg0@gmail.com)>  
**Subject:** Re: Palisair Site visits - Streiber

Hi David,

Tomorrow at 8:30AM would work for everyone.

See you then.

Thanks.

Kim

On Wed, Jan 9, 2019 at 10:34 AM David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)> wrote:

Unfortunately, Friday at 8:30 does not work, as I have a court appearance in Burbank at 8:30. I could do any time on Friday after 10:30. Or, I could do tomorrow at 8:30.

David R. Krause-Leemon  
Beaudoin | Krause-Leemon, LLP  
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[david@bk-llaw.com](mailto:david@bk-llaw.com)  
[www.bk-llaw.com](http://www.bk-llaw.com)

**From:** Kim Bantle [mailto:[ksbantle@gmail.com](mailto:ksbantle@gmail.com)]

**Sent:** Wednesday, January 09, 2019 10:31 AM

**To:** David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)>

**Cc:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>; Howard Weisberg  
<[hlweisberg0@gmail.com](mailto:hlweisberg0@gmail.com)>

**Subject:** Re: Palisair Site visits - Streiber

Hi David,

The Gabayans are available to meet for photos on Friday at 8:30 AM. 1031 Anoka Place. Howard and I will also be there.

Does this work for you? The Silvertons have decided not give approval for you to enter their property.

Thanks.

Kim

On Thu, Jan 3, 2019 at 1:02 PM David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)> wrote:

Ok. Let's try for next week then. If they do respond by tomorrow, I can arrange for a last minute schedule change tomorrow, too. But unless I hear differently from you, I will assume we are on for a date next week.

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[david@bk-llaw.com](mailto:david@bk-llaw.com)  
[www.bk-llaw.com](http://www.bk-llaw.com)

**From:** Kim Bantle [mailto:[ksbantle@gmail.com](mailto:ksbantle@gmail.com)]

**Sent:** Thursday, January 03, 2019 12:54 PM

**To:** David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)>

**Cc:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>; Howard Weisberg  
<[hlweisberg0@gmail.com](mailto:hlweisberg0@gmail.com)>

**Subject:** Re: Palisair Site visits - Streiber

No, Gabayans have not responded to email or phone calls so far.

On Thu, Jan 3, 2019 at 12:47 PM David Krause-Leemon <[David@bk-llaw.com](mailto:David@bk-llaw.com)> wrote:

Which neighbor is available Friday? If it is the Gabayans, then I would like to do Friday at 10.

If the Gabayans are not available Friday, then I would like to set something up for next week.  
I can make any time after 10 work on the 7, 8, 9<sup>th</sup> or 11<sup>th</sup>.

Cordially,

David R. Krause-Leemon  
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[www.bk-llaw.com](http://www.bk-llaw.com)

**From:** Kim Bantle [mailto:[ksbantle@gmail.com](mailto:ksbantle@gmail.com)]

**Sent:** Thursday, January 03, 2019 12:42 PM

**To:** [David@bk-llaw.com](mailto:David@bk-llaw.com)

**Cc:** Howard Weisberg <[hlweisberg0@gmail.com](mailto:hlweisberg0@gmail.com)>; Aaron Schwarzkopf  
<[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>

**Subject:** Palisair Site visits - Streiber

Hi David,

Howard Weisberg asked me to set up the site visits for you to take photos of the Streiber's tree. I've only heard back from one neighbor so far who is available Friday at 10 AM. The other neighbor must be out of town as I have been unable to reach them.

Would you like to begin with the one neighbor or try to book both next week?

Please let me know of your availability Friday and next week.

Thanks.

Kim Bantle  
Plans Administrator

**From:** [Mark Abramson](#)  
**To:** [Aaron Schwarzkopf](#)  
**Cc:** [David Krause-Leemon](#); [Mathew Medina](#)  
**Subject:** Re: Palisair  
**Date:** Friday, November 09, 2018 4:14:20 PM

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Aaron:

Thank you for your email. Please interface directly with David Krause-Leemon, who has been retained by Ms. Streiber to represent her at the hearing and any resulting proceedings. David is copied on this email. I will continue to be involved, and will likewise attend any hearing, but David will be the primary attorney for Ms. Streiber in these proceedings.

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---

**From:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>  
**Date:** Thursday, November 1, 2018 at 6:55 PM  
**To:** Mark Abramson <[mark@markalaw.com](mailto:mark@markalaw.com)>  
**Subject:** RE: Palisair

Mark,

I hope this email finds you well. Earlier today, I received word from the Board that it has evaluated the height of Ms. Streiber's tree since she trimmed it and still feels the tree at its current height may constitute an unreasonable obstruction of her neighbors' views in violation of the CC&Rs. As a result, the Board is planning on calling Ms. Streiber to another hearing to make a formal determination on this issue. When we last spoke on October 12, you informed me that Ms. Streiber was still recovering from surgery and as a result, was not able to attend any hearing. As I previously mentioned, the Board is willing to provide Ms. Streiber a continuance on such a hearing given her health. To that end, the Board would like to schedule the hearing for December 17, 2018 in the hopes that Ms. Streiber will be well enough to attend.

Please let me know if this will work. If not, I can talk with the Board about making alternative arrangements. However, I hope you can understand the Board cannot indefinitely postpone this hearing so if she cannot attend on December 17<sup>th</sup> and alternative arrangements cannot be made, she is free to either submit a written statement for consideration or send a representative on her behalf. Finally, I wanted to let you know that I will be out of town from November 3 through

November 22 so if you have any questions during that time, please feel free to reach out to my assistant Mathew Medina. Thank you very much.

Best regards,



**Aaron Schwarzkopf, Esq.**



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**From:** Mark Abramson <mark@markalaw.com>

**Sent:** Friday, October 12, 2018 8:52 AM

**To:** Aaron Schwarzkopf <aschwarzkopf@adamsstirling.com>

**Subject:** Re: Palisair

Aaron: Just to follow up on my email below re: the October 15 hearing, Debbie is not in a position to attend any hearings at this time.

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---

**From:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>

**Date:** Friday, October 5, 2018 at 6:11 PM

**To:** Mark Abramson <[mark@markalaw.com](mailto:mark@markalaw.com)>

**Subject:** RE: Palisair

Mark,

Thank you for your email. I will forward this information to the Board and ask them to look into

whether the tree's height is acceptable as is and whether your proposal below works for them, the Gabayans, and the Silvertons. Once I hear back, I will let you know and we can go from there.

Best regards,



**Aaron Schwarzkopf, Esq.**



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**From:** Mark Abramson <[mark@markalaw.com](mailto:mark@markalaw.com)>

**Sent:** Friday, October 05, 2018 3:17 PM

**To:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>

**Subject:** Re: Palisair

Aaron:

I understand that Debbie cut and trimmed her tree this week as much as it could possibly be cut without destroying it. I'm not sure how that looks from the neighbors properties, but she cuts it regularly every 6 months in October and March.

Perhaps one approach would be to say that she will cut it to the point where she cut it this past week, and that she will do so every 6 months. I can't predict how high it gets from this point, but as long as it is cut every 6 months there is a "cap" of sorts.

Let me know your thoughts.

Thanks.

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---

**From:** Aaron Schwarzkopf <[aschwarzkopf@adamsstirling.com](mailto:aschwarzkopf@adamsstirling.com)>  
**Date:** Monday, October 1, 2018 at 7:13 PM  
**To:** Mark Abramson <[mark@markalaw.com](mailto:mark@markalaw.com)>  
**Subject:** Palisair

Mark,

Thank you for your phone call with me earlier. I spoke with the Board and they confirmed they would be willing to consider a continuance of the hearing given Ms. Streiber's medical condition. If possible, please let me know by Thursday, October 11, 2018 when Ms. Streiber anticipates she will have a better idea about her ability to participate in the hearing. As I mentioned, the Board is happy to provide her with a reasonable continuance here so she can recover. For obvious reasons, however, the continuance cannot be indefinite. With this in mind, if we are unable to hold the hearing within a reasonable period of time, we can discuss how Ms. Streiber can send someone to a hearing on her behalf and/or submit a statement. However, the Board is fully willing to accommodate her to the best of its abilities given her condition.

The Board also said they would reach out to the Gabayans and the Silvertons (the two owners whose views are obscured by Ms. Streiber's tree) to see if they would allow Ms. Streiber/you to view the obstruction from their backyards. Please let me know when Ms. Streiber would like to do so and I will pass that information onto the Board so they can confirm what dates would be workable with the Gabayans and the Silvertons. The Board further said that they would be open to Ms. Streiber cutting down a portion of the tree if enough was removed to remove the obstruction. However, the Board requested that Ms. Streiber have an arborist/gardener mark off how much of the tree she was willing to remove with some sort of visual aid (e.g., a ribbon) so that the Board, the Silvertons, and the Gabayans could use that as a reference point for determining whether the amount of the tree to be cut down would be enough to adequately address the obstruction. Please advise if that would work. Additionally, if the Board, the Silvertons, and the Gabayans are satisfied with the height proposed by Ms. Streiber, we may be able to avoid holding a hearing. To that end, please also let me know when Ms. Streiber plans on arranging for the arborist/gardener to determine the tree height. Thank you again and feel free to reach out if you have any additional questions.

Best regards,



**Aaron Schwarzkopf, Esq.**





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