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**WATERS LANDING HOA MINUTES FROM 5/25/23 HEARING
ON AERC APPEAL (GAVIN GREEN)**

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Called to order at 7:01 P.M. in the Waters Landing Community Center

Notation of Attendance: John Pesce, President (who also serves as Chairperson of the Waters Landing Architectural and Environmental Review Committee and voted in favor of the Gavin Green application below), Nic D' Ascoli, Vice President, Laura Magnuson, Treasurer, Anita Weinstein, Secretary, Mark Sagarin, At Large, Kristin Czarick, General Manager, Shelia Jenkins-Diaz

Members of Community Present: Anita Duvall, Anna Davis, Steve Blum, Don Wiggins, Suzanne Wiggins, Gavin Green, Charles Scaringelb, Stephen Tise, as reported and provided by the office.

1. Kristin Czarick read the bullet point summary of letters submitted in opposition to the Gavin Green Application; Kristin Czarick read the bullet point summary of letters submitted in favor of the Gavin Green Application
2. Evidence: The evidence which was made a part of this appeal file includes:
 - a. AERC.Appeal.Favor.2023
 - b. AERC. Appeal.Opposed.2023
 - c. Bullet Point Summary of Letters in Favor of and Opposed to Application
 - d. 051823 Addendum submitted by Kim Schwalm as allowed by the WL BoD which covers the history of 6-foot fences along Waters Landing Drive
 - e. AERC Minutes from April 2023 meeting
 - f. Opposed and Favor appeal.swc00030
 - g. Information about Fence Survey posted to AERC file
3. RECUSAL: Anita Weinstein announces that she is going to recuse from this hearing although not required to based on the advice of counsel. Anita was asked by a friend to edit an appeal letter considered in this case and although the changes made were minor and not substantive (deleting a sentence, moving a sentence, and adding punctuation), Anita decided to recuse herself.
4. Submitter's Comments (given 20 minutes to present): Gavin Green presented the following comments to the Waters Landing Board of Directors serving as an appeal body pursuant to the Declaration and Architectural Guidelines:
 - a. applied for variety of reasons for safety, security, privacy. Thought be relatively innocuous
 - b. Felt attacked and targeted
 - c. wanted fence before moving in; saw plenty of fences
 - d. Did get a copy of guidelines; understood; knew could be a contentious issue
 - e. had problems with house—structural issues with house after purchase—finally getting to yard
 - f. backing up to a busy road; prevent strangers from approaching; people have come within 3 feet of daughter
 - g. prevent children from leaving yard; prevent large animals from coming in
 - h. prevent passersby from entering property; thefts of opportunity (none personally);

- i. registered sex offenders in community
- j. looked at planting shrubs but not want to wait for time it takes to grow
- k. 15 feet of space from end of deck to fence
- l. Simple case followed procedures; approval from AERC; few opposed citing guidelines
- m. Montgomery County law must meet argument of reasonableness. Covenants are valid and enforceable but precedent has been set along Waters Landing Drive
- n. AERC practice of allowing 6 foot fences so that covenants abandoned or waived
- o. character of neighborhood has changed; to allow other fences and not this one would be discrimination
- p. Architectural guidelines—guidelines are not a mandate; not hard set of rules but things to use as a guide. Not intended as all-inclusive but as a guide; each application is approved on individual basis—allows for exceptions
- q. evaluate on case by case basis to make exceptions
- r. guidelines should be updated. 1987 version through 1995. Subject to amendment and approval by AERC and Board; Amended to reflect clarifications or changes in technology; should be updated to reflect the times and needs of community
- s. AERC has submitted changes to guidelines but nothing has been done by the board
- t. survey of single family homes overwhelmingly in favor of 6 foot fences. Increased number of people applying; crime increased; public thoroughfare, traffic increased
- u. committee asked for another survey not sure what the result is; think most people want privacy
- v. Backing to Waters Landing Drive is unique situation that should be accounted for
- w. Board members are representatives and they should not be imposing own will but reflect that of neighborhood
- x. General appeal process set out in guidelines and states 3 criteria; proper procedures were followed; fair hearing; AERC decision was not arbitrary but had rational basis
- y. proper procedures were followed; fair hearing; AERC not arbitrary
- z. None of appeals meet any of three criteria
- aa. Submitted application form and reached out to neighbors; HOA notified others around who would be impacted; meeting held virtually on AERC application; proper procedures were followed
- bb. Was grilled about application for fence—notified those most affected; rational basis for decision considered safety and security of family
- cc. address blossoming trees
- dd. Claims all 3 criteria met. Most people want to be left alone. Only one of appellants backs to Waters Landing and do not have same privacy issues. Not feel like the appeals were strong
- ee. Nice view not override need for safety and security

- ff. many of those in favor of fence also live on Waters Landing. Not feel fences much of a barrier

The submitters comments went from 7:12 pm to 7:35pm

- 5. Appellants Comments: None provided; no appellants appeared at meeting
- 6. Comments for issues not previously raised
 - a. Steven Tise: how secure are 6 foot fences? Expert in security said in his experience—people can get over fences; better to use cameras
- 7. Final Comments from Submitter:
 - a. Right after meeting....immediately attacks started coming; felt like a personal attack; Started with 4 appeals and ended up with 10
 - b. felt uncomfortable because not all decisions were published but just the exceptions
 - c. people walking by fence and pointing..... harassed at his property about changing request for fence
 - d. Damage to trees—value trees and assure not damage trees. Fence not impact trees
 - e. This is my own yard and fence and should have ability to protect my family but feel attacked. Those attacks felt personal
 - f. Need to be careful—all decisions should be posted not just those with exceptions
 - g. fences add value to property
 - h. Aesthetics not override need for safety and security of family
- 8. Questions/Comments from Board:
 - a. Question John—new fence in same position; footprint of fence is same.
 - b. Question Nic—distance from fence to sidewalk is about 10-12 feet. From fence uphill to house. Nic differentiates that this is about fence not about applicant.
 - c. John—is there liability if child hurt because fence denied –ask State Farm and WTP

Motion to Adjourn at 7:51 by John/ Laura seconded. All in favor. Adjourned until Thursday June 1 at 7 p.m. and reconvene on June 1 by Zoom.

WATERS LANDING HOA MINUTES FROM 6/1/23 RECONVENED HEARING ON AERC APPEAL (GAVIN GREEN)

Called to order at 7:09 P.M. via Zoom

Notation of Attendance: President John Pesce (who also serves as Chairperson of the Waters Landing Architectural and Environmental Review Committee and voted in favor of the Gavin Green application below), Vice President Nic D' Ascoli, Treasurer Laura Magnuson, Secretary Anita Weinstein, At Large Representative Mark Sagarin, Kristin Czarick, General Manager, Shelia Jenkins-Diaz

Members of Community Present: Anita Duvall, Anna Davis, Steve Blum, Don Wiggins, Suzanne Wiggins, Gavin Green, Tracy Green, Sharon Black, Stephen Tise, Lee Callicutt, Kim Schwalm, Chris Perier, Erik Herron, Jason Leitner as reported and provided by the office.

1. Kristin Czarick—Chairperson. All letters were summarized and reviewed by board and will be part of the record with personal information redacted.
2. Purpose of meeting: To vote on whether to affirm or reverse the AERC approval for the 6' fence application at 30 Spinning Wheel Court.
3. Board Discussion:
 - a. President John Pesce:
 - i. Most important criteria for safety of child.
 - ii. Want to know the responses from attorneys to Nic's questions and yields rest of time. Nik responded that questions were provided and counsel responded to the entire board.
 - b. Vice-President Nic D'Ascoli:
 - i. AERC Committee of Volunteers—Independent committee to review and rule on architectural changes. Board has oversight role. On appeal of AERC decision, the board may affirm, reverse, modify, remand. Appreciate work of volunteers.
 - ii. Jurisdiction: appeal procedure exists—if criteria not met—proper procedures; fair hearing; rational basis. Proper procedures not followed in administration and review—direct violation of language of architectural guidelines.
 - iii. Security: Dozen registered sex offenders within 2 mile radius—does this mean we become walled city. I do not think so. Guidelines state that security fences must be of open type and property line fences should not be used to provide security.
 - iv. Concept of Open Space—Specific in Guidelines is concept of common open space which contributes to what makes this community different. Provides atmosphere of large open area and fencing can destroy open space. Guidelines say long lengths of continuous solid fencing not approved. Six foot fences disapproved except for townhomes.
 - v. 9 Criteria for reviewing applications to AERC—The first criteria is the relation to the open space concept—damage to open space. Fence types: improper fencing can detract from neighborhood. Privacy in the guidelines—in no case should property and privacy fencing be combined.
 - vi. Neighborhood guidelines if there are any cannot be adverse to guidelines...the same with results of opinion survey should be abided by as if NAC decisions—but neighborhood guidelines cannot be adverse to guidelines.
 - vii. Guidelines speak to alternatives: not discussed in meeting minutes—there are options and alternatives. Other ways to secure property.
 - viii. AERC Guidelines can be modified: Modifications to AERC guidelines—there is a process to modify guidelines. Last updated in 1995. AERC did a Draft revision in late 2021 and early 2022....eventually track changes version. Over 200 major/minor changes and not ready for blanket

approval. The Group document and not ready for approval. Board not approve 2022 draft and sent back to AERC in May 2022 and that was the last the board has seen of guideline revisions. Suggests the guidelines be reviewed together with Board. Can be reviewed together with AERC and Board. Not against review/revise/but policy is not changed by actions taken outside guidelines.

- ix. Guidelines specific. Kim Schwalm letter sets out history of fences. Guidelines need updating. Improve notice process and expand appeals process and create timeline in the review process; require close out inspections. AERC did not resubmit for advise and consent and AERC cannot ignore current directions. There is a proper procedure to follow and it is not a deviation from guidelines. Every one bound by current written guidelines...we all should playing on same field.
- c. Secretary Anita Weinstein: Recuse as discussed at the May 25, 2023 hearing.
- d. Treasurer Laura Magnuson:
 - i. Lived here for 32 years- Waters Landing is unique in its setting and winding path to lake. Unique in its community.
 - ii. Concerned that Gavin feels attacked. Other feels targeted because they want to follow rules they bought into.
 - iii. Gavin raised many arguments; ready everything and attended seminars, talked to counsel.
 - iv. One of the arguments—do appellants have standing to appeal? Proper procedure, fair hearing, or decision arbitrary? Even if they do not list prongs, goal is due process and no magic words in appeal to be considered. Any party dissatisfied with AERC decision can appeal.
 - v. Notice has been big issue. Up until now community did not get notice of AERC decisions---with only 15 day appeal period after approval. All fences until now granted without rest of the community having notice or a right to appeal. The recent change in procedures allows due process.
 - vi. Fairness of hearing
 - vii. Was decision arbitrary or irrational, illogical? For fence application, there was little discussion of criteria which are included in guidelines. Focus of the decision was on safety and security but safety is not specific factor that the guidelines say to address. AERC is supposed to be harmony, design, aesthetics which is missing in memo.
 - viii. Saying safety prevails over aesthetics opens up all kinds of problems and inconsistencies with guidelines. There are ways to effectuate safety which is not category included in guidelines. Factor is focus on open space.
 - ix. What is the Standard for granting an exception? Is there something exceptional about circumstances in this case?
 - x. Question about 2016 fence survey and validity of survey: The survey results are not a valid basis for overturning this.

- xi. Look at the application de novo—need to refocus on aesthetics. Clear, unambiguous statements about 6 foot fences specifically that they are disapproved and that is what controls and we have to judge them and whether there is a basis for exception.
 - xii. Concerned that changing guidelines by granting one exception at a time. Board constrained to follow existing guidelines. Traffic concerns have been lessened due to existence of safety committee and installations of cross walks and reduced speed limit.safer
 - xiii. Discrimination and precedent—specifically that the AERC has allowed other fences and we are discriminating because we are not allowing this one. There is a non-waiver provision in our documents that any decision made shall not be basis for all others—approval is not construed as a waiver of the right to disapprove others.
 - xiv. Fences have not yet changed character of the community....not yet. Stockade fences disallowed in the community. Lots of other types of fences but these were not even addressed by AERC.
 - xv. Argument that times have changed so the rules should change—some things should not change such as natural, open setting.
 - xvi. The submitter’s contention that there is no real impact on neighbors by fence but there is for people who feel like they want to appreciate open, natural setting.
 - xvii. People hate HOAs—people want to do what they want with their properties. Hate rules but HOAs have rules and they are important to enforce consistently.
 - xviii. Guidelines are not just suggestions—they run with the land. They bind us unless an exception is granted for good reason.
 - xix. Need to educate ourselves and educate community.
 - xx. Decision is not based on board’s opinion as it is the responsibility of the board to enforce guidelines. Not popularity contest. Can accomplish property security by other means than six foot fences—use shorter fences, landscaping. Security cameras.
- e. At-Large Mark Sagarin
- i. Thanks AERC....thankless job. Thanks Kristin and Shelia for guidance.
 - ii. Moved here in 2018 and we walk all over community. Beautiful community. Have to say that in 4.5 years we have lived here, we have walked Waters Landing Drive several times a week and surprised at the number of fences along that drive in 5 years. Concept of open space seems to be at odds with fences. This happened to be the first application with notice to the community. We have had guidance by counsel about this issue and other guidance—reading and rereading AERC guidelines. As sympathetic as many of people who wrote in in support of the fences are, we have to weigh and weighting the two is difficult. Guidance from lawyers is to rely on guidelines and that is

where we need to be basing our discussions. Hope we can find a way to move forward that could lead to more harmony.

4. Voting: There was some discussion about the options of affirming, reversing, modifying and remanding. John votes to affirm AERC decision; Nic votes to reverse AERC Decision; Anita recused/abstained; Laura votes to reverse AERC decision; Mark votes to reverse AERC Decision. AERC decision is reversed with a decision letter to be issued by the office.
5. Reflections: John stated that the AERC has authority to grant exceptions and guidelines can change. Nic responded that guidelines are subject to revision but there is a specific process and necessity to get agreement on changes from the board. Laura reflected that there have been revisions to the guidelines and they went through the process and were filed in land records. She expressed that it was improper to modify try and modify guidelines by granting exceptions without any basis. Modification of guidelines requires a thorough and comprehensive review.
6. Adjournment: Motion to Adjourn at 8:01 made by Nic; seconded by Laura. Unanimous.