

=====

**WATERS LANDING HOA MINUTES FROM 6/22/23 RECONVENED HEARING  
ON 6/13/23 AERC APPEAL (JENNIFER LEITNER)**

=====

**Called to order** at 7:05 P.M. via Zoom

**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 Leitner application), 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, Don Wiggins, Gavin Green, Tracy Green, Jenn Leitner, Jason Elkjer, Stephen Tise, Yaeko Tise, Anna Davis, Sharon Black, Andy Williford, Steven Blum as reported and provided by the office.

Applicant and Address: Jennifer Leitner, Jason Elkjer (applicants) for 6-foot fence at 13420 Cloverdale Place, Lakeforest

1. Kristin Czarick read approved by AERC on May 1, 2023
2. Evidence: The evidence which was made a part of this appeal file includes:
  - a. Map showing of 6-foot fences in Single Family Homes
  - b. AERC.2023.05clo13420.pdf
  - c. AERC Minutes from May 2023 meeting
  - d. AERC. Appeal. Blanchard
  - e. AERC.Appeal.Faupel
  - f. AERC.Appeal.Wikman
  - g. 13420 Cloverdale Pl Authorization
  - h. 13420 Cloverdale Place Appeal Hearing Official Statement 6\_13\_23
3. RECUSAL: Applicants asked for Anita Weinstein to recuse based on fact that she is a neighbor and friend of one of the appellants. Anita announced her 30 + years in the neighborhood and that she has been involved with many community organizations and the local school system and that she knows many people in the community. She stated that she can be impartial and is not going to recuse from this hearing based on the advice of counsel. Applicants also requested that Laura Magnuson recuse. Laura Magnuson also spoke about her tenure in this community and that she knows many people in this community. Also, she can render impartial decision and will not recuse.
4. Appellants Comments: Read letter from Appellants into the record.
  - a. Letter May 13, 2023 from Chris and Jane Wikman—strongly opposes 6 foot fences that are prohibited in Waters Landing. Negatively impact visual aesthetics.
  - b. Second letter from Frank Blanchard—appeal of AERC decision from May 1—protect integrity of neighborhood and integrity of architectural covenants. Not continue to allow exceptions...exceptions becoming the rule. Granting waivers to anyone that asks.
  - c. Third Letter from Jessica Faupel—May 16, 2023—strong opposition to 6-foot fencing granted on May 1. Want AERC to adhere to guidelines of the community; documents and guidelines given to buyers; opportunity to review guidelines and should not purchase if cannot agree to guidelines. Not understand why making exceptions to guidelines. Not about individuals but about adhering to guidelines.

No 6 foot fencing exception granted where impact larger community; obligation to those who purchased with expectations that guidelines will be followed; exceptions haphazard; there is an obligation to those who expected the 6 foot guidelines prohibition to be followed.

5. Submitter's Comments (given 20 minutes to present): Jennifer Leitner presented the following comments to the Waters Landing Board of Directors serving as an appeal body pursuant to the Declaration and Architectural Guidelines:
- a. AERC Application Approved at May 1, 2023 AERC meeting
  - b. Requested documents and information—not received info until June 12, the day before the hearing
  - c. Hearing On Zoom against applicant's wishes. Lack of respect.
  - d. Adherence to Governing Documents; Was there reason for exception
  - e. Received HOA documents and there is language in declaration that supports our application
  - f. August 2, 2021 Memorandum from WTP on AERC powers and authority—Applications are handled on an individual basis and AERC is permitted to approve applications that do not abide by guidelines;
  - g. Governing docs make no reference to maximum fence height. AERC may approve exceptions to published requirements. May publish modifications to guidelines. AERC has power to grant exceptions to guidelines.
  - h. Height and design of approved fence conforms to other fences in area---another 6 foot fence on one side of yard. Leitner yard is not adjacent to any common open space.
  - i. Concept of common open space stressed in documents but our yard is not by any common open space.
  - j. Signatures for application—all 4 properties adjacent to property signed and all were enthusiastic
  - k. AERC has 9 review criteria. Leitners provided all required materials. Photos, plats, etc.
  - l. They showed a 360 video of backyard and front of house... go almost 140 feet up in the air to see our yard.
  - m. Criteria--Relationship to Open Space—not adjacent to common open spaces
  - n. Criteria--Validity of Concept—neighbor has while 6-foot fence
  - o. Criteria--Design Compatibility—compatible with setting
  - p. Criteria--Location/Impact on Neighbors—signatures of those directly impacted
  - q. Criteria--Scale—size of alteration relate well —6-foot fence on one side
  - r. Criteria--Color- matches existing fencing in area
  - s. Criteria--Materials- house vinyl siding and white vinyl fences in neighborhood
  - t. Criteria--Workmanship—this type of fencing already exists in neighborhood
  - u. Criteria--Timing—contractor selected and was ready to start before appeal
  - v. Criteria for Appeals—procedures were followed--proper procedures; fair hearing; decision not arbitrary and had rational basis

- w. None of appeals meet any of the criteria—not any of appellants show how they are specifically impacted; One of appellants have 6-foot privacy fence; how can they be affected if they chose to have one in their backyard; Plus they have a suspect relationship with board member who has been vocal on opposition to 6 foot fences
- x. Another Appellant stated—exceptions are allowed for guidelines; there is hypocrisy—suspect relationship with another board member;
- y. Guidelines do state that property line fences disapproved except for townhomes—but there are many 6-foot fences around this community;
- z. Fences are here—evaluate our application on own merits as it conforms to other fences in neighborhood
- aa. Harmony—maintain harmony allow us to complete fence that does not encroach on harmony of others
- bb. Farce—Another appellant is not record owner of property
- cc. There is a board member who is not a homeowner of record. Jason not a homeowner, but application is in Jennifer’s name.
- dd. Jennifer Leitner claimed there was a background check on Jason—nothing to hide; personal backgrounds irrelevant to fence applications. She asserts that this is personal and disgusting. They will be filing complaints with CCOC. Never felt so unwelcome. Experienced real discrimination. Board should represent whole community.
- ee. Everything they researched was in the public record in preparation for case. Documents not received until yesterday.

The submitters comments went until 7:39 p.m. (20 minutes)

- 6. Comments for issues not previously raised: Nothing from appellants
- 7. Final Comments from Submitter: Rebuttal from Applicants—since no comments from appellants, there were no further comments allowed.
- 8. Questions/Comments from Board: Board Responses: Magnuson—denied that she ran background check; she is disturbed about the fact that the Applicants looked into the tax records of board members to try and establish past and present addresses and connections to promote their requests for recusal.
- 9. No comments taken from the community.
- 10. Decision to be announced Thursday, June 22 at 7 p.m. Via Zoom.

Motion to Adjourn at 7:42. Adjourned until Thursday June 22 at 7 p.m. and reconvene on June 22 by Zoom.

**WATERS LANDING HOA MINUTES FROM 6/22/23 RECONVENED HEARING  
ON AERC APPEAL (JENNIFER LEITNER)**

**Called to order** at 7:10 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 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, Executive Assistant

**Members of Community Present:** Sharon Black, Andy Williford, Anita Duvall, Steve Blum, Gavin Green, Anna Davis, Jenn Leitner, Jason Elkjer, Chelsea Gridley-Smith, Don Wiggins, Stephen Tise

1. Kristin Czarick—Chairperson.
2. Purpose of meeting: To vote on whether to affirm or reverse the AERC approval for the 6' fence application at 13420 Cloverdale Place
3. Board Discussion:
  - a. President John Pesce: No comments
  - b. Vice-President Nic D'Ascoli:
    - i. Reviewed all documentation regarding this forum
    - ii. 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. Appeal is brought to board...not personal and I appreciate work of volunteers.
    - iii. Jurisdiction: appeal procedure exists—denovo review on whether criteria was met—proper procedures; fair hearing; rational basis.
    - iv. Proper procedures not followed in administration and review---direct violation of language of architectural guidelines.
    - v. AERC Guidelines current—long lines of continuous solid fencing not approved. Six-foot fencing disapproved except for townhomes.
    - vi. 9 criteria—Waters Landing Open Space concept.
    - vii. 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 are not approved. Six-foot fences disapproved except for townhomes.
    - viii. 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.
    - ix. Neighborhood guidelines can be more specific but cannot conflict with architectural guidelines.
    - x. Guidelines speak to alternatives: 6-foot fence allowed only if abut 4 lane roadways.

- xi. Process for modifying guidelines—pending.
- xii. Notice—for while attendance at AERC meeting was required. Affected parties did not learn of change until construction.
- xiii. Minutes—looking through AERC minutes on May 1—minutes talk to modifications to application and changes to notification from 4 to 2 but number of signatures is 4. In order to change that we would need to change guidelines. Not be changed until board agrees what changes should be.
- xiv. No specific discussion about alternatives in minutes—I ask would you consider placing fence 4 foot inside property line around patio? Did consider replacement of picket fence in vinyl...but natural wood look?
- xv. Leitners response—we want it to be consistent with next door and really do not want to shorten property?
- xvi. Notice by office to other neighbors—in notice that went out to those behind, it describes a replacement six-foot fence, but this is not a replacement six-foot fence but is an application for replacement of 4 foot picket fence with 6 foot white vinyl stockade fence. Concerns about notice.
- xvii. Leitners were willing to consider materials change to cedar but that is only change they would concede.

c. **Secretary Anita Weinstein:**

- i. Described Leitner application and Described procedure before AERC and that the 6-foot fence application was approved by AERC with no specific reason for the exception
- ii. Went through Leitners testimony in the Appeal before the Board of Directors.
- iii. Reviewed the provisions in Declaration for appeal of an AERC decision and criteria for appealing AERC decision i.e., proper procedures, fair hearing, and reasoned, rational decision that is not arbitrary.
- iv. Explained that appellants do not have to be adjacent property owners or even property owners but can be anyone impacted by the AERC decision, as long as they appeal within 15 days.
- v. Prior to April of this year, fences were approved with NO notice to the public either before the application was heard or after decision...so impacted or affected parties could never appeal because more than the allowable 15 days for appeal had passed once the fences were constructed and visible to the community. The appellants here are questioning the basis for these AERC decisions, and, in essence, their appeals are arguing that the decisions are not rational based on the current guidelines.
- vi. All time requirements were met for hearing and for notice.
- vii. Reviewed standard in Declaration for AERC Committee which is safety, harmony of external design, color, and location in relation to surrounding structures and topography by an Architectural and

Environmental Review Committee designated by the Board of Directors.”

- viii. Guidelines further define some of these provisions including: Relation to the Open Space Concept which states specifically that “fencing, in particular, can have damaging effect on open space.” And for the location and impact on neighbors: The primary concerns are access, view, sunlight, ventilation and drainage. For example, fences may obstruct views, breezes, or access to neighboring property; decks or larger additions may cause unwanted shadows on adjacent patios or infringe on a neighbor’s privacy and view.
- ix. As stated in the Guidelines: “Fundamental to Waters Landing is plan is the concept of common open space. The preservation of green space and natural features, as well as a feeling of openness, contributes significantly to Waters Landing' s difference from typical subdivisions. The purpose of this community open space is to provide each residential lot with the atmosphere of a larger open area. Fencing, if it is carelessly used or placed, encroaches upon open space and can even destroy it.”
- x. Guidelines further provide: “Long lengths of continuous solid fencing will not be approved.” “Six (6) foot high property-line fences will be disapproved except for townhomes.” “Property line fencing must be an "open" type (either split rail or open space picket) and may not exceed 4' in height.
- xi. Guidelines recognize the need for six-foot fencing along four-land highways such as Crystal Rock and Father Hurley Boulevard but that does not apply in this case.
- xii. Members have raised the existence of a 2016 survey as justification for these fence deviations, but our own counsel has expressly stated that the surveys are only a single piece of information. They are not dispositive in any way. The fence guidelines have not been changed, or modified, nor do the previously granted exceptions by the AERC serve to supersede the written guiding principles of Waters Landing.

**d. Treasurer Laura Magnuson:**

- i. The applicant described discretion of AERC at their level. The board exercises supervisory authority. Board review is de novo.
- ii. Three prongs for appeal—no magic language for appeal. #1 proper Procedure and # 3 is whether decision is arbitrary or reasonable.
- iii. Procedure—proper notice—signatures of awareness of adjacent property owners. Must be those most affected. Record shows application signed by Leitner and 4 signatures. 13417 Biddiford Court—there is no signature for this address. Only a letter from this address. Application should be rejected unless all 4 adjacent homeowners’ signatures are attached. Instead, staff started to send letters on April 25 for May 1 hearing. Raises problems—addressed to residence of—often thrown out as junk mail. Homeowners need to be specifically

- addressed and signature. 5 days' notice over a weekend is not sufficient notice. On that ground alone I would consider reversal.
- iv. Want to know impact of fence on the ground—13417 Biddiford—picket fence 4 foot on back. In winter when greenery gone—picket fence on two sides and white vinyl 6-foot fence along backyard. The neighbor moved in expecting guidelines to be maintained.
  - v. People sign because they do not want to be the bad neighbor—not right where people have abided by rules and expect them to be enforced are bad people because of their opinion. There is a Dispute about facts of notice.
  - vi. Is decision by AERC based on reason.... thorough review of guidelines that are different types of decisions within AERC purview...clearly discretionary. I have seen AERC apply criteria and come up with reasonable solutions and compromises within their discretion.
  - vii. Clear mandates that prohibit 6-foot fences on boundary lines in neighborhood—not discretionary. Guidelines use words” shall not” and “will not” and “disapproved.”
  - viii. Need to explain why exception to a clearly prohibited change should be acceptable. Fundamental to this HOA, foundational, essential is the open, natural concept of the community. This is what we have been for 40 years. To preserve that, founders included prohibitions.
  - ix. Claim homeowners slept on rights have been addressed by others. Now that there is notice, appeals are starting to come in.
  - x. The argument that the property is Not adjacent to open space, nobody will see us, but there will be unintended consequences, and this will cause impact on others. Unintended consequences that could result in discriminatory application.
  - xi. This is Death by 1000 papercuts—guidelines cannot be changed by the AERC granting one exception at a time
  - xii. Issues of Privacy and Security can be achieved by other means such as landscaping. 4-foot fences have been here for 40 years.
  - xiii. People don't like HOA rules but there will be discontent if not follow rules. No reason why we should except this from the direct prohibition as this will change the look and effect on this community. We must weigh individual desire against those who moved here and have lived here expecting rules to be applied uniformly.
  - xiv. No reasonable basis for approving deviation from prohibition of 6-foot fences.
- e. Jennifer Leitner-- Showed view of the backyard in winter and did get signatures of those behind her home. **[Packet provided to Board had an error in indicating which neighbors actually signed the application]**
  - f. At-Large Mark Sagarin
    - i. Jennifer Leitner—may take part of his time.
    - ii. Thanks AERC.... thankless job. Thanks Kristin and Shelia for guidance.

- iii. Not going to repeat anything that was said before. Would note that there is guidance from counsel that previous approvals do not set precedents. Must look at each application on an individual basis.
    - iv. Unique case there is no common area behind their house...important to keep in mind. Difference in this case.
- 4. **Voting:** There was some discussion about the options of affirming, reversing, modifying and remanding.
  - a. **Roll Call:**
    - i. John Pesce to affirm AERC decision
    - ii. Nic D'Ascoli against affirming; votes to reverse
    - iii. Anita Weinstein against affirming; votes to reverse
    - iv. Laura Magnuson against affirming; votes to reverse
    - v. Mark Sagarin votes to remand to AERC
  - b. **Comments/Reflections by Board Members:**
    - i. Nic-against affirming. He reverses. The notice is problematic since it read that it was replacement of a six-foot fence when it was actually replacement of a 4 foot fence with a 6 foot fence and that is problematic notice and violates spirit of guidelines.
    - ii. Anita—against affirming because of the express prohibition on 6-foot fences in single family neighborhoods and the fact that fencing is so important to the concept of neighborhood as stated in the architectural guidelines and the fact that the AERC did not specify a reason for the exception
    - iii. Laura—votes to reverse based on clear prohibition which needs to be maintained
    - iv. Mark: I would remand to AERC to see if applicants would they be willing to change request--- that may still be an option given uniqueness of location of fence and maybe they can come to agreement.
- 5. Kristin reports out vote: —1 affirm, 1 remand to reconsider; 3 to reverse AERC approval. Notice will be given to applicant, and they will be advised on their right to resubmit or appeal to CCOC.
- 6. **Adjournment:** Motion to Adjourn at 8:15 made by Magnuson/ seconded by D'Ascoli. Unanimous.