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**WATERS LANDING HOA MINUTES FROM 6/27/23 HEARING
ON AERC APPEAL for 20629 Neerwinder Street (Sebastian Palacios)**

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Called to order at 7:02 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 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, Suzanne Wiggins, Don Wiggins, Stephen Tise, Sharon Black, Karl Vilbig, Kim Schwalm, Steve Blum as reported and provided by the office.

Applicant and Address: Sebastian Palacio, 20629 Neerwinder Street, Lakeforest

1. Kristin Czarick introduced board members; stated there are two (2) applications pending for this evening's hearing the first was at 6 p.m. and this is the second at 7:00 p.m; referred to the AERC minutes from May 5, 2023 approved by AERC on June 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 Minutes from May 2023 meeting
 - c. AERC. Appeal. Blanchard
 - d. AERC.Appeal.Faupel
 - e. AERC.Appeal.Wikman
 - f. Notice of Hearing
 - g. AERC Application for Fence from 20629 Neerwinder Street
3. 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.
4. Submitter's Comments (given 20 minutes to present): Sebastian Palacio presented the following comments to the Waters Landing Board of Directors serving as an appeal body pursuant to the Declaration and Architectural Guidelines:
 - a. Presented application, received approval, then later received notice of an appeal of 6-foot fence
 - b. Period of time when had unwanted neighbors and a shooting. Son did not feel protected; missed process of asking for permission

- c. Once received letter about non-compliance improvement, then he went through process
- d. Identical fence to neighbor behind---same type and height off fence as behind on Neerwinder Court
- e. Other homes with 6-foot fences; did not think it was a problem
- f. Can't see fence from front of house
- g. Both neighbors to right and left signed approval and are fine with fence.
- h. Materials—color and materials in line with other neighbors and if violated, then there are other violators. Gate is compatible with fence height and color; retained original fences on sides—6 years about 4 foot high. Six feet and privacy was to provide some type of protection. Meaningful change that allows him to enjoy backyard. Son is slowly gaining his confidence again.
- i. Allows ventilation—stacked; able to provide visual coherence. Same construction as neighbor.
- j. Dog is jumper; additional safety measure. Not know if contractor submitted for county permit. Neighbor used same company.

The submitters comments went until 7:13 p.m.

- 5. Rebuttal from Appellants: None
- 6. Final Comments from Submitter: Rebuttal from Applicants—since no comments from appellants, there were no further comments allowed.
- 7. Questions/Comments from Board:
 - a. Laura—we understand that you were shaken by shooting incident—son is 8 years old—people have moved out;
 - b. Who is behind that house? Laura asks staff to make sure Board can see all neighbors' properties
 - c. Not change to the fence in the back or side. Yard goes back to a point and far from any house behind—Neerwinder Court
 - d. Not change existing backyard fence type –split rail.
 - e. Before the side fences were 4 foot split rail.
 - f. 3 changed fences all way around and 2 of us did just side fences
 - g. Front fence is about 6-8 feet long and other side 10 feet long.
 - h. Fence on right is same style but gate different.
 - i. Shooting was 2 homes down 20621 Neerwinder Street. Neighbor's truck in front stopped bullets from hitting his home.
 - j. Other fences open space picket 4.5 feet.
 - k. Is 2 Neerwinder Court the same style? That is where we got the idea—board on board versus stockade.
 - l. Laura—Heavy tall landscaping on both sides of property---that is why we did not alter fence—landscaping provided security. Along back is split rail--- shed provides some security.
- 8. Decision to be announced 7 p.m. Via Zoom. July 6

Motion to Adjourn at 7:31 p.m. made by John; seconded by Laura. Adjourned until July 6 at 7 p.m. and reconvene *by Zoom*.

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**WATERS LANDING HOA MINUTES FROM 7/6/23 RECONVENED HEARING
ON AERC APPEAL for 20629 Neerwinder Street (Sebastian Palacios)**

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Called to order at 7:01 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: Karl Vilbig, Sebastian Palcio, Sharon Black, Andy Williford, Steve Blum, Gavin Green, Courtney Eagan as provided by the office.

1. Kristin Czarick—Chairperson
2. **Purpose of meeting:** To vote on whether to affirm or reverse the AERC after the fact approval for the 6' fence application at 20629 Neerwinder Street, Lakeforest
3. **Questions from Board:**
 - a. Magnuson asked about the single 6-foot section in rear of property perpendicular to the gates. Palacio said it was his fence.
 - b. Palacio said there was no mention of HOA requirements to the fence company. Used same folks doing work for Tim Johnson, 20625 Neerwinder Street contracted for company. Workers did it on their own.
 - c. The board questioned what house is behind Sebastian’s? It is on Neerwinder Court. Checking to see if that 6-foot fence behind is approved.
 - d. Nic-- Many side yard fences are new in this area.
 - e. Magnuson: did anyone in HOA say that these fences would be approved or that you did not have to apply? Palacio said it was a pure lack of knowledge on our part. Not trying to avoid process. It was about Security, safety, upgrading of fences.
 - f. Magnuson—we need to figure out why this has snowballed.
 - g. Nic—First get HOA approval and then take to MC DPS. The fact that previous fences were approved is not a defense.
 - h. GM said there are 145 units in neighborhood, and they are pulling anything that is over 4 feet.
 - i. Nic—fence at 20625 Neerwinder Street got MC approval but not HOA. Palacio did not get either approval. The fence behind looks relatively new.
 - j. Pesce—did your contractor bill for permit—Palacio says no but he insists the Fence done professionally.
4. **Board Discussion:**
 - a. President John Pesce: No comments
 - b. Secretary Anita Weinstein:
 - i. Described Palacio application and described procedure before AERC and that the 6-foot fence application was approved by AERC with no specific reason for the exception. Palacio did not appear before the AERC to provide justification or testimony for his fence application.

- ii. Went through Palacio’s 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
 - 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.”
 - 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: “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. 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.
- c. Treasurer Laura Magnuson:
- i. Fences are articulated and explained in guidelines.
 - ii. Open, natural setting with harmonious and uniform design. Exceptions interrupting harmony and uniformity and open design.

- iii. Board sits as AERC anew and look at the bases for appeal. Not much to review of AERC—no basis for exception. This fence is prohibited.
 - iv. Sitting fresh and reviewing dew novo. We appreciate that your 8-year-old shaken by shooting in the neighborhood. Community worked together to remove problem. This community makes 6 foot fencing unnecessary.
 - v. More than 1 year since the incident. Other means to provide security other than fences. Mention of dog. Pets, children and security are not a basis for overcoming 6-foot prohibition because you can control it in other ways.
 - vi. Landscaping around your house is a good example of how plantings can provide privacy. That is allowed and what we should be doing.
 - vii. Guidelines stated where 6 foot fences allowed and that there can be higher fences around patios. This 6-foot fence does not fit exception.
 - viii. AERC asked if the previous fence approved. It is indeed replacement of 4-foot fence not 6 foot fence and I'm hoping that the parties are more careful in describing. Examined by staff first and then AERC.
 - ix. No one appeared to be concerned about a piece of 6 foot fencing in the back.
 - x. It appears that a group of neighbors did this without knowing, caring about guidelines—this may be a lack of education.
 - xi. We need to ask for regular communication with neighborhoods about need for filing applications and tighten up the processes. Use licensed contractors.
 - xii. What are the consequences are the fence is non-compliant and allowed to exist but not allowed to convey. Through AERC, it is now it is just approved with no restriction on conveyance.
 - xiii. Magnuson asks if we have ever stopped conveyance of property for non-compliance. Response: notice of non-compliance is included with resale packet. GM explained that if the seller comes to us, we include it but we are not always aware of conveyance.
 - xiv. Laura expresses that this method is ineffective. If this were a full yard, what is the consequence. People have gone through proper procedure and been denied—what is fair here. We need to go back and follow what guidelines state.
- d. Sebastian Palacio---- If there is need to put some greenery to cover fence, he would be agreeable. Difficult for my son still to sleep in his room. Lived with this situation for a long time. Need to look after my family. Need to look after family—main reason.
- e. At-Large Mark Sagarin:
- i. Anita and Laura detailed all the documents. We need to brainstorm for ways to make sure that people need to go through a process of getting approval. This is happening over and over again. It is important and we need to find a way to get this out.
- f. Vice-President Nic D'Ascoli:

- i. Safety/privacy for this approval—homes on Neerwinder are close to street
 - ii. Fences close in the streets. This is a small section of fencing/gates—like many in neighborhood.
 - iii. Nic asks about resale—buyers can get documents from repository. The seller is the one obligated to provide resale package but not required to come to the HOA. Bank does not always come to the Association for current information. What happens if there is a violation notice in packet—what is legal effect? It is only a notification and does not ensure any correction. This is something we need to address.
 - iv. Clearly we are in intensive review of this neighborhood and in transition about fencing issue. Concerned about moving forward with approval while in this period
- 5. **Voting Roll Call:**
 - a. **Remand: Failed 4-1 against remand**
 - i. John Pesce: yes-- remand to AERC—review in light of new information-permit
 - ii. Nic D'Ascoli -no
 - iii. Anita Weinstein -- no
 - iv. Laura Magnuson –no
 - v. Sagarin-no
 - b. **Modify: Failed 4-1 against modification**
 - i. John Pesce: no
 - ii. Nic D'Ascoli -no
 - iii. Anita Weinstein – no
 - iv. Laura Magnuson –no—exception can grow into many other exceptions—how does that apply to next person; Laura asks about 6 foot fence going into yard which was not disclosed—opening a Pandora's box
 - v. Mark Sagarin—yes to modify—suggest screening with bushes/trees
 - c. **Reverse/Affirm: Reversed by vote of 4 to 1**
 - i. John Pesce: affirm
 - ii. Nic D'Ascoli – reverse
 - iii. Anita Weinstein – reverse as arbitrary
 - iv. Laura Magnuson –reverse as arbitrary
 - v. Mark Sagarin-- reverse
- 6. GM Kristin reports out vote: — Appeal is reversed. Notice will be given to applicant, and they will be advised on their right to resubmit or appeal to CCOC.
- 7. This portion of the meeting was closed at 7:58 p.m. to be followed by the next appeal.