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**WATERS LANDING HOA MINUTES FROM 9/14/2023 HEARING
ON AERC APPEAL for 14462 Long Channel Drive**

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Called to order at 6:01 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 signed this application without a vote since this was considered a “maintenance” application), Laura Magnuson, Treasurer, Anita Weinstein, Secretary, Mark Sagarin, At Large, Shelia Jenkins-Diaz, Executive Assistant to the General Manager. Nic D’Ascoli, Vice President has recused himself since he is the appellant.

Members of Community Present: Courtney Egan, Don Wiggins, Suzanne Wiggins, Sharon Black, Steve Blum as reported and provided by the office.

Applicant and Address: Joseph Thume, 14462 Long Channel Circle, Townes of Waters Edge

1. Board Members introduced themselves; referred to the AERC minutes from July 10, 2023 approved by AERC on August 7, 2023. Nic D’Ascoli , Vice president is the appellant, and recusing from serving on decision panel. Question about category of maintenance applications which is not defined in the Architectural Guidelines.
2. Evidence: The evidence which was made a part of this appeal file includes:
 - a. Application for Joseph and Grace Thume and approval letter from AERC
 - b. AERC Minutes from July 10, 2023 meeting
 - c. Appeal email from Nic D’Ascoli July 25, 2023
 - d. Notice of Appeal Hearing for 14462 Long Channel Circle
 - e. Architectural Guidelines
 - f. 2023.07 Pending Applications Status Sheet
 - g. AERC Application 2023 final version
 - h. Exhibit 1 emails about window replacement
 - i. 2001 Summer CCOC newsletter
 - j. Exhibit 4 home prices
 - k. Exhibit 6 D’Ascoli appeal letter with highlights by Thume
 - l. Appellants Power Point presented at hearing
3. Appellants Comments: Read letter from Appellants into the record.
 - a. Email from Nic D’Ascoli (HOA Board member) opposing this after the fact application for front facing windows which are not colonial style and do not have grids or muntins and do not conform to the rest of the community. The AERC guidelines say that an improvement must be compatible with the applicant’s house, adjoining houses, and the community. This is the only home in the townhouse community which does not have window grids and therefore does not maintain harmony of external design which is a colonial style. This is not a maintenance application as it departs from the existing windows since they have no grids and does not meet the standard in the community and serves to decrease property values.

4. Submitter's Comments (given 15 minutes to present): Joseph Thume presented the following comments to the Waters Landing Board of Directors serving as an appeal body pursuant to the Waters Landing Declaration and Architectural Guidelines:
 - a. Thume states that this appeal is about windows installed in house that the neighbor says brings values down. He replaced them because they leaked argon gas and were in bad shape. Thume said he emailed the HOA to see if he could replace the windows without grids back in April 2018. The email response from Shelia Diaz Jenkins was that the crosshatch window is preferred but not required—Exhibit A ---so said do not need cross hatch. He asked how many homes in Waters Landing are without grids. John estimated roughly 40-50%. He said he did not need to have the application approved but it only needs to be filed for application since it is "maintenance." Architectural Guidelines under alteration say windows should match but it does not say they have to match. Exhibit 3, which is a CCOC 2001 Case #473-0 is about a resident who did not want mullions and HOA said it was required. Thume claims this case stands for fact that mullions are inside the house and cannot be regulated by the Association. CCOC said it is unreasonable to prohibit owner from taking out mullions. Thume claimed the appellant had mullions in front but not in back. He pointed to a number of houses around without mullions. About 1400 feet away on Sea Breeze Court there is a house without grids. On a different street, Tide Winds Way, there are 4 houses without grids. In the area, there are 6 homes without grids in windows. He pulled up Zillow estimates to make the point that the lack of grids did not affect Zillow estimates. Thume said he did the research and claimed that of the 1,578 homes about 41 % without grids; 36% of single-family homes are without grids, and 43.7% of townhouses have windows without grids. He claims this appeal is based on preference not facts. He contradicted appellant who he said claims AERC did not take architectural characteristics into consideration. Thume thinks AERC did in fact consider this. Six other homes in the neighborhood have windows without grids. He asked why these weren't appealed the same way. He chastised the board to make sure it did its fiduciary duty and was fair and not biased because the appellant is a board member (who recused himself). The submitters comments went until 6:31 p.m. 14 minutes.
5. Rebuttal Comments from Appellants: Nic stated the the appeal addresses one application and one decision. He asked that covenants, guidelines, photos be included as evidence of the conditions of Townes at Waters Edge. Our community is designed with grids in windows. The Covenants say no exterior change be made without submitting in writing or to remove to alter any windows to AERC and a vote of majority of AERC members is required to issue approval according to Article VII, Section 2 and 3. Any dissatisfied party may appeal to the Board of Directors. The intent of Architectural Guidelines and the covenants is to insure standard of design quality which protects property values. The association's job is to ensure standards are maintained and is reflected in preservation and enhancement of values. He discussed the AERC Review Criteria which state changes need to be compatible with architectural characteristics with neighborhood setting. He stated that all applications should go to AERC for review

to follow proper procedures, fair hearing, rational basis for decision. AERC must review each submitted application on an individual basis to make sure it does not violate covenants and is in conformity with design concept for the community. Application was mischaracterized as “maintenance” since this is a design change. Application was submitted after the fact, meaning after the windows were installed. The application was processed without proper notice since his next-door neighbor was not notified as an adjacent owner. Application originally indicated all neighborhood signatures were there but then that was whited out. If alterations are done without approval, can members be required to remove them. Article VII of Covenants states there must be affirmative vote on each application and the majority of members did not vote on this. The Minutes show No vote. Nic went through definitions of true divided light windows and simulated divided light windows and stated that the look can be achieved using variety of products after the fact. In 2012, there were original builder grade windows with muntins. All street-facing windows on all townhomes on Long Channel Drive and Long Channel Circle include muntins except this one. Only 4% of other homes on 3 streets around have replacement windows without muntins. All were built with simulated windows with muntins. Long Channel Drive and Long Channel Circle all have muntins. This deviates from colonial design of neighborhood and negatively affects home values. 6:52 end of presentation

6. Final Comments from Submitter: Rebuttal from Applicants (5 minutes)—6:53 start—Thume asked why appellant has windows without mullions in the back. He does not think it adversely impacts the value of homes and wants proof that this decrease value of homes. This is a maintenance item, but this appeal is about a neighborhood feud. Why is this the first time an appeal has been filed? The board should make sure appellant filed form to change windows on back. He said the board needs to treat members with fair, unbiased treatment. This appeal was filed by a board member so expect board to be vigilant to be fair and act in a fiduciary role.
7. Appellants Rebuttal—Page 6 Section 2—This is not a delegation of ministerial duties; The appeal does not involve the back of homes since they are about 20 feet before the park—there are trees and back does not affect curb appeal or design elements. Other homes that do not conform need to be addressed through the inspection process. It is important to Maintain neighborhoods and the design supports home values.
8. Questions/Comments from Board: Board Responses:
 - a. Laura—As a board, we need to answer questions about appeals. Refining and tightening architectural procedures. We only recently began giving notice to the community of decisions by AERC. No one had the ability to appeal until we started given notice—just started this process and that was a failure of process. People are feeling wedged in this process change. I understand that you got permission/okay for windows from office, but there is nothing in guidelines that defines maintenance in this way which is approval automatically without votes. Any exterior changes should go through AERC process. It sounds like this was not discussed by AERC. If people were aware that a change was sought, then appellant might have appeared at the meeting to complain. This is a change in look of window—but not considered by AERC because it was considered

maintenance. No notice was given to the adjoining owner---no notice was mailed to adjoining owner.

- b. Anita—Seems like the appellee decided to not get next door neighbor’s signatures--brought application to 4 other owners.
 - c. Mark—in Long Channel Circle—are there other homes without mullins in front. Thume is the only house on that Street.
 - d. John gave some background on AERC process: Years ago, people did not know what was required for application so we would get applications with same color, style and the AERC says why do we even have to look at this. So, we started providing guidance about when need to apply—if normal maintenance does not need to apply. For many years we did not ask for applications if changing to same thing, but to keep track—people asked to submit application to be put into the file. Mullins technically interior to house and not within domain of AERC. Having maintenance applications gives office and neighbor’s notice so that if there are construction workers there—it gives notice. Laura suggests that the office make sure notice is given to all adjacent owners. Not an AERC application.
9. Decision to be announced 6 p.m. via Zoom on reconvene Sept. 26 for 7 p.m. Anita/Laura seconded—all three voted in favor. Motion to reconvene at 7:21 p.m. by Anita and seconded by Mark –all three in favor.

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**WATERS LANDING HOA MINUTES FROM 9/14/23 HEARING WHICH WAS RECONVENED
ON 9/27/23 ON AERC APPEAL for 14462 Long Channel Circle**

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Called to order at 6:58 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), Treasurer Laura Magnuson, Secretary Anita Weinstein, At Large Representative Mark Sagarin, Shelia Jenkins-Diaz, Executive Assistant. Nic D’Ascoli, Vice President has recused himself since he is the appellant. John Pesce, as chairperson, will not vote during this hearing.

Members of Community Present: Courtney Egans, Don Wiggins, Suzanne Wiggins, Sharon Black, Steven Blum, Andy Williford, Kate Snyder, Joseph Thume, Timothy Johnson, John Cancalosi, John Degroff, Karen Keizer, Steve Blum, Anna Vargas, Heidi Grunwald as reported and provided by the office.

Discussion and Motions Prior to Hearing: Anita brought up the fact that Mr. Thume submitted a number of documents to John Pesce which were sent to board members at 3 p.m. on the afternoon of the reconvened hearing on 9/26/23. The board was discussing whether to postpone the hearing with the consent of Mr. Thume or to exclude the new materials since they were submitted too late. Appellant indicated he would want time to review the materials and respond and asked that the materials be posted on the website. The hearing was on 9/14/23 with the reconvened session to announce the decision on 9/26/23. The materials were submitted the afternoon of 9/26/23. According to one board member, the materials focused on the neighborhood dispute between the parties and also some letters from neighbors in favor of

the windows. Laura Magnuson made a motion to proceed with the reconvened hearing to announce the decision and that motion was seconded by Mark. Anita opposed the motion to move forward based on the fact that she did not have an opportunity to review the materials prior to the reconvened hearing. The motion passed 2-1 with Anita being the “no” vote. John Pesce is not voting during this hearing.

1. Chairperson. No open floor.
2. Purpose of meeting: To vote on whether to affirm, reverse, modify or remand the AERC approval for the windows at 14462 Long Channel circle, Townes of Waters Edge
3. Questions for Thume:
4. Board Discussion:
 - a. **President John Pesce:** None
 - b. **Secretary Anita Weinstein:**
 - i. Described Thume application and described procedure before AERC
 - ii. Went through 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 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.
 - vi. All time requirements were met for hearing and for notice.
 - vii. Board members sitting as an appeal panel explained that we have just started tightening the architectural procedures and only recently began giving notice to the community. Previously no one had the ability to appeal but the decisions were not publicized and the time for appeal (15 days) would expire before people even knew of architectural changes
 - viii. In reviewing our Declaration and governing documents, it is clear that windows are subject to our review
 - ix. I understand that Mr. Thume relied on communication with the office to proceed with the office in proceeding with his installation. He emailed the association to see if he was required to install windows with grid and the Association replied that the window grids were preferred but not required. However, I have some problems with that situation.
 - x. There is nothing in our governing documents that address “maintenance” applications. The guidelines do suggest that there are either “conforming applications” which conform to the guidelines, have all signatures, and include all necessary information. There are “special” applications which do not meet the conforming requirements and may need additional time for processing. The guidelines say that

all applications, whether conforming or special, are sent to the AERC for their review.

- xi. The Declaration in Article VII, Section 2 does allow the AERC to delegate responsibilities to the Managing Agent but only for ministerial and policing functions.
- xii. So even if an application is “conforming,” it must still go to the AERC for its review and not a rubber stamp by the office. And to be clear—a conforming application is defined in the guidelines as an application with clear and concise drawings, explanations of style, color and about which there are no conflicting opinions. This application was a change of style and it could be anticipated that there would be conflicting opinions. It was wrongly characterized and handled by the office.
- xiii. There is nothing in the governing documents that removed the obligation to notify adjacent homeowners if an application is “Conforming” or “Special.” In this case, the next-door neighbor did not receive notice of the window change which is counter to all WLA requirements. Normally, if the applicant does not provide notice to adjacent owners, that is done by the office, but it didn’t happen in this case presumably because it was considered a “maintenance” application.
- xiv. Even in the guidelines, they state: The basic authority for maintaining the quality and design in Waters Landing is founded in the Covenants which are part of the deed to every property in Waters Landing. The intent of Covenant enforcement is to assure homeowners that the standards of design and quality will be maintained. This, in turn, protects property values and enhances the community’s overall environment.

c. Treasurer Laura Magnuson:

- i. This case is very problematic.... because of procedural problems.
- ii. This is not criticism of staff but is a plea to staff – we need to find ways to address understaffing, so we do not continue to have problems.
- iii. No notice to next door neighbor D’Ascoli; staff need to make sure next-door neighbor gets notice.
- iv. Had D’Ascoli gotten notice—he would have showed up at AERC and argued case and the AERC would have decided about the case and then there would have been rights of appeal. But, when you don’t get notice, this is what happens.
- v. Procedurally, what was created is a sub-category of applications that is not in our documents. There is no such thing as maintenance applications. John tried to clarify during the hearing how this transpired—but it relies on the homeowner to assess if the application is actually replacement of the same thing (like for like) without the need to go to AERC. This requires more probing than just homeowner determination. There need to be safeguards such as having the applicant provide a photo of existing and replacement and AERC can decide if it is actually a replacement of conforming exterior elements.

There needs to be notice and opportunity to be heard and state grievances. People need to get involved...people need to pay attention—show up at hearings and form NAC in their neighborhoods if desired. The board is constrained to follow the rules. Here there are 2 aggrieved homeowners...D'Ascoli not get notice before change made and Thume followed directions of the staff. We need to make sure our policies are consistently followed.

- vi. Property values—Zillow is not an accurate measure. An argument was made by the applicant that some owners do not have grids on back. But conformity within the neighborhood is about what is seen—not concerned if backs to park. We take this on a case-by-case basis. She tried to find the CCOC case cited by Thume...not rely on summaries by others. Tried to get case but could not get the case itself. Magnuson said there is a historic basis for this type of window as it is historically installed in colonial homes. This is a lovely townhouse neighborhood—called Townes of Waters Edge—and they are colonial in nature. There is Colonial architectural—muntins and mullions and grids and few houses without grids.
- vii. Architectural Guidelines in place that people expect to be followed. When you have conformity and harmony and it looks planned and taken care of, it is a different feel than hodge podge.
- viii. Magnuson told Pesce--Do not get into personal lives of people—not get into the issue of why Thume did not get D'Ascoli's signature. We understand there are personal disagreements, but notice should have come from the office.

d. At-Large Mark Sagarin:

- i. Thanks Thume for the thorough presentation. I have 2 points, the first is Thume presented email sent to the office asking if okay to install windows without grids and the office said it was okay. He was asked on Long Channel Circle if there are any other townhomes without grids—his was only one.
- e. Board Questions and Comment---John Pesce started to describe why D'Ascoli did not get notice but Magnuson told Pesce that we are not getting into the personal lives of people. We understand there are personal disagreements but notice should have come from the office.

5. **Voting:**

a. **Remand: Remand**

- i. John Pesce –not voting
- ii. Anita Weinstein -- no
- iii. Laura Magnuson --no
- iv. Mark Sagarin -- no

b. Modify—Modification

- i. John Pesce – not voting
- ii. Anita Weinstein – on the condition of installation of muntins
- iii. Laura Magnuson – no
- iv. Mark Sagarin – no

Affirm/Reverse—There are

- i. John Pesce – not voting
- ii. Anita Weinstein - reverse
- iii. Laura Magnuson – reverse –if reapply with grids affirm
- iv. Mark Sagarin – affirm—with the suggestion that all other front facing townhomes have grids—suggestion that Thume would provide grids— but Thume did due diligence.

Pesce reports out vote: — The decision of the AERC was reversed by vote of 2 (Magnuson/Weinstein) to 1 (Sagarin). Notice will be given to applicant, and they will be advised on their right to resubmit or appeal to CCOC.

Motion to Adjourn: Magnuson made the motion to adjourn at 7:40 p.m./seconded by Mark —all in favor