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HEARINGS OFFICER



OFFICE OF ADMINISTRATIVE HEARINGS
CONDOMINIUM MANAGEMENT DISPUTE RESOLUTION PROGRAM
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of)	CMDR 0809-4
)	
APRIL and STEVE KACHILLA)	HEARINGS OFFICER'S FINDINGS OF
)	FACT, CONCLUSIONS OF LAW AND
Petitioners,)	DECISION
)	
vs.)	
)	
WOODCREEK AOAO BOARD OF)	
DIRECTORS,)	
)	
Respondent.)	
)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

On April 1, 2009, April and Steve Kachilla ("Petitioners") filed a request for administrative hearing to resolve a condominium management dispute pursuant to Hawaii Revised Statutes ("HRS") Chapter 514B. The matter was set for hearing and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

By a letter dated April 14, 2009, the Hearings Officer was notified that the parties had agreed that: 1) Respondent would have until May 15, 2009 to file its response, 2) the pre-hearing conference would be rescheduled to June 1, 2009 and 3) the hearing would be rescheduled to June 25, 2009.

The pre-hearing conference on June 1, 2009 was attended by Petitioners and Respondent was represented by Sandy S. Ma, Esq. The parties agreed to file motions for

summary judgment and that an evidentiary hearing or a hearing on the motions would not be necessary.

On June 26, 2009, Respondent filed its Motion for Summary Judgment (“Respondent’s Motion”). On August 5, 2009, Petitioners filed their response to Respondent’s Motion and their Motion for Summary Judgment (“Petitioners’ Motion”). On August 11, 2009, Respondents filed their response to Petitioners’ Motion.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and decision.

II. FINDINGS OF FACT

1. By a letter dated March 2, 2003, Petitioners requested Respondent’s approval to extend the driveway to the left side of their house to accommodate one additional car.

2. By a letter dated April 18, 2003, Respondent approved Petitioner’s request for a concrete slab on the condition that: 1) total driveway space is 24 feet, cannot exceed 8 feet in width of grasscrete, 2) 4 feet of concrete can be added, 3) beyond 4 feet must be grasscrete or similar product.

3. By a letter dated April 22, 2003, Petitioners asked for specific reasons for not approving their request as originally proposed. Petitioners believed that the mixture of grasscrete and concrete would have an unprofessional look and questioned whether the required lawn covering and grasscrete would survive the pressure of a car.

4. By a letter dated May 16, 2003, Petitioners asked for specific reasons why their original request for a concrete extension was not approved

5. By a letter dated May 21, 2003, Respondent stated that its main goal is uniformity, consistency, and aesthetics and that it would like to make sure that a “green” front area is kept and that there is not “too” much concrete in the front area.

6. Petitioners did not perform the requested improvements and moved out of Woodcreek.

7. On December 18, 2006, Respondent approved revised landscape guidelines. No. 8 of the guidelines state:

Concrete may be laid in the driveway area only with the following conditions:

- a maximum of four feet is allowed
- ground must first be treated for ground termites prior to concrete pouring and a copy of the termite receipt submitted to the managing agent.

8. Petitioners moved back to Woodcreek in November 2007 and by a letter dated January 16, 2008, Petitioners requested that Respondent revisit the permission given to Petitioners in Respondent's April 18, 2003 letter to add 8 feet of driveway by combining 4 feet of concrete and 4 feet of stone pavers or similar product. Petitioners explained that they did not initiate the requested improvements in 2003 because they moved into Woodcreek Crossing for a few years. Petitioners further explained that they were back now and intended to extend the driveway based on Respondent's April 18, 2003 letter. Petitioner's letter also states:

We also intend to put a second gate that leads into the back yard to facilitate our garbage and recycle bins as a part of that pavement project. It will be located on the right side of the house, opposite our original one and identical to the current fence in look and material.

However, we would like the board to reconsider our original request, which was for the entire 8 feet to be concrete. We continue to believe that it would promote continuity in the look of our home. It would also be less of a burden on us, although that is not our primary concern.

Please consider our request for 8 feet of concrete and/or the renewal of your original approval.

9. Petitioners submitted an undated request for approval for a redesign of the right side of their front yard. This request included a drawing of the proposed design and also included a copy of their January 16, 2008 request because they had not yet received a response to their request.

10. By a letter dated February 26, 2008, Respondent notified Petitioners that it had approved their request for concrete with the following conditions:

No more than a total of 4 ft. combined. Example, 4 ft. on one side or 2 ft. on each side not to exceed a total of ft. (sic).

11. By a letter dated March 4, 2008, Respondent notified Petitioners that it had approved their request for “the extension of retaining wall, grass planting and front yard renovations. We are sorry to inform you that the Board did not approve the 8 feet concrete extension for the driveway. The maximum allowed is 4 feet total.”

12. Petitioners began construction in late May 2008. By a letter dated June 2, 2008, Respondents asked Petitioners for an explanation regarding activity on the left front side of their retaining wall. Petitioners assert that they did not receive this letter.

13. By a letter dated July 2, 2008, Respondents again request that Petitioners explain what their intentions are for the left side of the retaining wall.

14. On July 15, 2008, Respondents received an e-mail from Petitioners explaining the finished improvements to their home. It states in part:

On the right side of the house we have extended the stone that was dividing our yard with the neighbors and planted grass, flowers and a tree. On the left side we extended the concrete of the driveway and installed one row of grasscrete and planted grass. We also put in a gate on this side for access to our backyard from this side.

The e-mail also stated that Petitioners would be using the additional parking space only as needed because of the lack of visitor parking in the area and that the car cannot be seen when it is behind the fence.

15. By a letter dated August 26, 2008 from Respondent’s attorney, Respondent demanded that Petitioners remove the grasscrete from the front yard, cease parking vehicles behind their front fence and restore the front fence on the left side of their house to its original condition. The basis for the demand was Petitioners’ failure to obtain Respondent’s consent for the modifications and that Petitioners had proceeded with modifications that Respondent had rejected.

16. By a letter dated September 5, 2008, Petitioners requested approval for alterations to the fence on the left side of their house. This letter also stated:

We originally made the request in a letter dated January 16, 2008, but received no response on that issue. We apologize for assuming that we were cleared to continue[.]

...

The visible gate is obviously for access to the wider part of our house, facilitating garbage and green waste removal, as well as access to the side door w/o opening the garage. The secondary gate is for rare occasions when large items may need to be moved, such as sod, dirt, and the like. The secondary gate stays closed and does not look like a gate. Additionally, it is attached to a steel door frame so it is very strong.

We will not utilize the gate to park a vehicle behind the fence until such time as it would be approved by the board.

Number 4 of the guidelines state that front yards can be maintained with grass or groundcover with prior board approval and that “other front yard modifications may be approved by the board upon submittal, however, 25% of the yard needs to be greenery.”

17. Section 15(a) of the Declaration of Condominium Property Regime of Woodcreek provides that:

...any alterations or additions to an apartment...including without limitation any fence and/or wall, shall require only the written approval thereof, including the apartment owner’s plans therefor, by the ...Board, and all other owners thereby directly affected (as determined by said Board)[.]

18. Section 5.04 of the By-Laws of the Association of Apartment Owners of Woodcreek provides in part:

No apartment owner or occupant shall park his or her vehicle or permit his or her guests to park their vehicles except in the garage or on the paved driveway area within the apartment’s Private Yard.

III. CONCLUSIONS OF LAW

The issues to be resolved are whether Petitioners addition of grasscrete and a secondary gate were approved by Respondent.

Grasscrete

The evidence presented showed that in 2003, Petitioners proposed using concrete to extend their driveway and that Respondent approved Petitioners’ request to extend the driveway, but that only 4 feet of concrete could be added and the rest of the extension had to consist of grasscrete or a similar product. The evidence presented also showed that Petitioners were unhappy with Respondent’s decision that grasscrete be used, and that

Petitioners did not perform the requested improvements. In January 2008, Petitioners again requested approval of a driveway extension project. The letter to Respondent requested that Respondent reconsider Petitioners' request for 8 feet of concrete and/or renewal of the 2003 approval. Prior to receiving a response to their driveway extension request, Petitioners submitted a second request for approval of proposed improvements to the right side of their front yard and a renewed request for the driveway extension project. Respondent first notified Petitioners that they had approved Petitioners' request for concrete but that it could be no more than a total of 4 feet combined. Thereafter, Respondent approved the proposed improvements to the right side of Petitioners' yard, but reiterated that Petitioners' approval of 8 feet of concrete extension was not approved, and that the maximum extension was 4 feet. Respondent asserts that they only gave approval for 4 feet of concrete, consistent with the 2006 revised landscape guidelines. Petitioners assert that it was reasonable to construe these letters as approval of 4 feet of concrete and grasscrete for anything beyond 4 feet, as was approved in 2003. Based on the evidence presented, the Hearings Officer finds that Respondents approved 4 feet of concrete only, consistent with Petitioners' request to install 8 feet of concrete. Although Respondent did not specifically reject Petitioners' request that their 2003 approval be renewed, it was unreasonable for Petitioners to assume that Respondent renewed its 2003 approval from the correspondence received from Respondent. Respondent's argument that they received approval for "front yard" improvements which should include the driveway extension is disingenuous because the Petitioners clearly made two requests and the drawing submitted with their "front yard" improvements request only showed the right front yard and did not include the driveway extension using grasscrete.

Gate

The evidence presented showed that Petitioners requested approval to install a second gate on the right side¹ of the house. Petitioners stated that the gate would lead to the backyard "to facilitate our garbage and recycle bins" and would be "identical to the current fence in look and material". Based on the evidence presented, the Hearings Officer finds that Petitioners did not obtain Respondent's prior approval to construct a secondary gate for

¹ The Hearings Officer assumes that the parties agree that Petitioners sought approval for a gate to be located on the left side of the house.

the purpose of allowing a car to drive through and park behind the fence in Petitioners' back yard.

The Hearings Officer has considered Petitioners' other arguments and does not find them to be persuasive.

IV. DECISION

Based on the foregoing, the Hearings Officer finds that Petitioners failed to show that the grasscrete or secondary gate were approved by Respondent, and accordingly, denies Petitioners' Motion for Summary Judgment and grants Respondent's Motion for Summary Judgment. The Hearings Officer also orders the parties to bear their own costs, including attorneys' fees.

OCT 15 2009

DATED: Honolulu, Hawaii, _____.

/s/ SHERYL LEE A. NAGATA

SHERYL LEE A. NAGATA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs