



February 5, 2018

To: Board of Directors  
From: Ron Rubino, President

Subject: Status Report on Proposed New Architectural Guidelines

This report is to update Directors and Members on the comments received on the proposed Architectural Standards (AS), answer commonly asked questions and discuss options for how the Board can proceed.

The draft Architectural Standards Report was approved for distribution to Members for comments at the 11/08/17 HOA meeting. This draft was prepared by HOA Architect Jeff Smith over an 18-month period, with suggestions, additions and edits from the prior and current term BOD and a Members' Committee. The BOD is required to mail a copy and request Member's comments in establishing HOA rules and regulations. Copies of the draft report were posted 11/21/17 on the HOA web site and a copy was mailed to all Members 11/29/17. The goal was to receive comments during December and conduct a Members' workshop.

At the 12/04/17 HOA meeting, the Board discussed progress on receiving comments from Members. The BOD announced they would extend the comment period through 12/31/17 and planned to conduct a Members workshop in January.

At the 1/08/18 HOA meeting the Board discussed comments that had been received and announced they would extend the comment period through 1/31/2018. The BOD also determined that the final decision on the Standards would be made by a Members' vote. The BOD also set a date for Members workshop on 1/25/18. This workshop was later cancelled to provide more time for the BOD to consider Members' comments and discuss how to proceed at 02/05/18 HOA meeting.

As of 1/31/2018 the BOD has received 65 written comments from our 460 homeowners. All comments were provided to each HOA Director, Property Manager, Attorney and Architect for review. This report is to discuss the results of the comments and to answer a variety of questions that were asked. We are also seeking direction from the BOD on how they wish to proceed.

At the 1/08/2018 HOA meeting several Members spoke. Two requests for additional data were among comments received.

- a. **How many ARC requests have been considered in the past three years and how many are new homes and major remodels.**

Exhibit A provides a summary of ARC hearings for the past three years. There have been 10 new homes, 33 major remodels and 29 minor replacement and improvement projects considered. There has been controversy with many of the new home and major remodel applications due to neighbors objecting to elements of the proposed design and/or HOA Architect disagreeing with a proposed project. For several projects, this has required a change in the plans as a condition of approval.





Due to the age of Eastbluff homes, desire to improve or replace houses, homeowners moving due to retirement or illness, and investment opportunity for a new owner to purchase a home for redevelopment, the volume of projects is expected to continue in the future.

**b. How do the proposed Architectural Standards compare to recently approved large two-story homes?**

We selected 5 recently approved homes which are still under construction. Exhibit B provides data and photos of these homes. The sq ft data for each home compares the existing limitation (City) and proposed HOA limitation. Data also compares proposed HOA total sq ft to the actual homes' sq ft. Data is also provided for roof heights and setbacks. Review of the data indicate:

- For all 5 homes, the existing maximum structure sq ft for 1<sup>st</sup> story (City standard) using 60% of total lot area including slopes is greater than the proposed HOA standard of 70% of pad. The differences ranged from 421 sq ft. (6.8%) to 1,529 sq ft (25%) impacted if lot included slope area.
- For all 5 homes the actual sq ft of home was less than the proposed HOA standard. The range of total home sq ft were 4,825 to 5,365 sq ft. These homes were 2,300 to 3,522 sq ft under the proposed new HOA maximum structure sq ft.
- The roof height ranged from 22.83 to 26.56 ft high. Each is under the city's 29 ft for pitch roofs and 24 feet for flat roofs. Four of the five homes are under the proposed new HOA height standard of 26.5 ft for pitch roofs and 25 feet for flat roofs. The one exception was only .72 of one inch over the limitation.
- Setbacks for sides, front and street varied for each project. This is due to the proposed front yard setback of 6 ft for no more than 33% of the lot width and 10 feet thereafter. Also, side setback proposed at 50% at 6 ft (same as City) and 50% at 10 ft.

Comments were divided into three categories: Oppose, Support and Suggestions. There were significantly more oppose/negative comments than support/positive comments. Comments opposing guidelines included:

- A number of comments questioned the HOA's authority to approve changes to guidelines that have been in place since mid-1970's.
- The 70-page proposed guidelines are too lengthy and difficult to understand.
- Proposed guidelines will not reduce disputes among neighbors, BOD and applicants over new homes and major improvements.
- Changes in standards impact the rights of Members to improve their property as defined by City Building Code. Opinion was stated that new standards would negatively impact current and future value of property.
- New standards should only apply to new owners after new standards are effective.





Comments in support of proposed guidelines included:

- Problem of large homes needs to be addressed when it impacts the value and rights of existing homes
- The BOD needs to protect Eastbluff from mansionization.
- Members stated they support the proposed 1<sup>st</sup> to 2<sup>nd</sup> story ratios to address harmony of Eastbluff existing homes when a one-story home is replaced by a two-story home.
- Big box-like homes of massive size should not be approved.
- Builders should not be allowed to maximize their property values at the loss of value for neighboring homes.
- In the long run, building new homes or major additions should be respectful of existing homeowners.

Suggestions were included in both opposing and supporting comments and included:

- Revise the proposed new standards in a manner that separates policy from procedures.
- Shorten the new standards or restart the process by proposing edits to the existing standards.
- Delete items such as children's playhouse, fire pits, gardens, flags, banners, dog houses and portable basketball hoops from the standards.
- Reduce the second story limitation to modest staggering from the first floor.
- Delete setback for side yard and rely on City standards.
- Reduce the scope of the changes to only the most basic items needed.
- Allow homeowners to complete a poll of specific changes to indicate support before proceeding with new standards.
- Landscape guidelines should be limited to trees at maturity that would impair views.
- HOA should rely on city code for backyard pools, barbecues and fireplaces.
- First floor elevation should be referenced to existing grade and be limited to less than 1 ft above grade.
- For new and major remodeled homes, the HOA should rely on City inspection and not slow building process with HOA inspections.
- Should not require ARC review of additions of skylights or re-roofing with same materials.
- Metal fencing should allow dark colors that are black and brown.
- Provision for emergency repairs without ARC approval should be included.
- Consider seeking additional input on proposed standards from Architects familiar with new home construction and major remodels in Eastbluff.

The comments included several questions on legal authorization and implementation. Exhibit C is provided to answer some of the questions asked. These questions are important to understand the processes for proposing and implementing changes in the Architectural Policies and Procedures, Enforcement Policy, setting fees for cost recovery and adopting fines for noncompliance. From the beginning of this project the BOD has had discussions with our HOA attorney from Berding-Weil. Our legal firm has represented hundreds of Associations and provides a full range of services for administration, dispute resolution, EIR and civil litigation. The BOD has concluded it does have the authority under the CC&Rs, Bylaws and State Statutes to amend, add and delete rules





and regulations related to Architectural Control. The process requires Members' comments to be sought and considered before final action is taken. There is also a required notification and implementation timeframe. The following information was provided by our HOA attorney for the BOD review and dissemination to Members. Also, Members should review Exhibit C for more detailed Q & A.

- California Civil Code defines architectural standards and procedures as “operating rules.”
- Operating Rules are enforceable so long as they are within the Board’s scope of authority to adopt, are adopted consistent with the member notice and comment procedure in the Civil Code and are not inconsistent with the governing documents.
- The Bylaws of Eastbluff authorize the Board to adopt rules as it deems fit to fulfill the purposes of the Association.
- One of the Board’s duties or purposes is to exercise “architectural control” over the Eastbluff community.
- The CC&Rs provide that the Architectural Committee/Board determines whether a proposed improvement is “harmonious.” Rules are intended to supplement, not contradict the CC&Rs. Rules, or Architectural Standards, defining what “harmony” is supplement and are not inconsistent with the CC&Rs.
- The Board is authorized to levy fines for violations of the CC&Rs (constructing improvements without architectural approval) pursuant to both California case law (Liebler case) and its CC&Rs (under “Enforcement”).
- The Board is authorized under the Association’s Bylaws and Articles of Incorporation to hire consultants and contractors and to delegate duties to such consultants and contractors, so long as the Board maintains ultimate control.

(Note: The Board can hire Jeff Smith and Scott Smith, and delegate duties for review of minor improvements as proposed. They are not “Members” of the Architectural Committee, so they can be compensated so long as Members can appeal any architectural denials by them to the Board. The Board continues to exercise ultimate control serving as the ARC.)

The BOD approved goals for the Architectural Standards Policies and Architectural Review Committee (ARC) Procedures review process to help form a foundation for what should be considered. The review of comments has been consistent with these goals.

1. Reduce ambiguity by creating well-defined standards for new homes and major remodeling to provide clarity and understanding of the design approval process and expectations.
2. Ensure continued value and enjoyment of Eastbluff community.
3. Provide for timely disclosure to Members of proposed improvements to provide awareness and obtain feedback.





4. Make it easier for Members to complete the Architectural Review process to encourage improvements to maintain and improve their property.
5. Consider modifying Architectural Review application and approval procedures for minor projects to utilize an "Administrative Review Process" by HOA Architect and Property Manager to streamline the process.
6. Consider adding procedures and enforcement policy to protect against uncooperative owners who do not follow ARC Policy or Procedures.

## Discussion

The BOD should discuss their conclusions from the Members' comments, information provided our HOA Professional staff and this report. The Board must determine what action they wish to take on the proposed Architectural Standards and the Enforcement Policy. To assist in this discussion, I have provided three options for your consideration:

### **Option #1 - Continue process with the proposed Architectural Standards and Enforcement Policy.**

This option does not mean approval of the draft guidelines. It would require conducting a workshop to review the current version. After this workshop the BOD would need to decide if any significant edits to the Standards should be made. If changes are approved, a copy would need to be mailed to Members and a new comment period started.

### **Option #2 – Terminate process with current version and direct staff to work with BOD on new version.**

This option can be selected if the BOD determined that the current version of the draft guidelines is no longer supported. This option has two sub options:

- a. Continuing the process with the current version would require the BOD to establish a process for reviewing changes and deciding what edits will be made. This can include a BOD Subcommittee, Member's Committee or both. This can also include seeking peer review by other Architects familiar with new home/major remodel projects in Newport Beach. Upon completion of the edited version the BOD would need to approve the draft and mail to Members for comments and conduct a Members' workshop. This is estimated to be a 6-month project before a final version could be ready for Members' review and comment. This direction would cross over the new BOD term effective 6/1/18 and would require the new BOD to support approval and submitting proposed Architectural Standards to a Members' vote.
- b. Continue process but direct professional staff to develop a new version of limited scope. This could be a reorganized new version with policies separated from procedures as has been suggested. It can also be limited to certain specific elements and reduced scope. Creating a new version requires further Board discussion. As suggested in option 2a this can include a BOD Subcommittee, Member's Committee or both. Upon completion of a new version, the BOD would need to approve the draft and proceed to mailing to Members for comments and conducting a Members' workshop. This is estimated to be a 6-month project before a final version could be approved for Members' review and comment. This would





also cross over the new BOD term effective 6/1/18 and would require the new BOD to support approval and submitting proposed Architectural Standards to a Members' vote.

**Option #3 – Terminate the proposed new Architectural Standards process and rely on existing standards and procedures.**

This option ends all work on a new Architectural Standard Report but has two sub options:

- a. Do not develop any changes in Standards, Procedures and Enforcement Policy (status quo).
- b. Direct staff to develop modifications only to limited items such as changes in categories, fees to recover cost and procedures to simplify process. This option could also include further consideration of proposed Enforcement Policy and Fines, which is separate from the Architectural Standards. This could be accomplished by the current BOD during the remaining term. Decisions on conducting Members' workshop and BOD decision of Members' vote on revised procedures would be needed.

Thank you,

*Ron Rubino*

