

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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POTOWMACK PRESERVE :
 :
v. : Case No. 72-13
 : OZAH No. C14-01
MICHAEL AND PETER BALL :
 :
-----X

A hearing in the above-entitled matter was held on June 30, 2014, commencing at 9:47 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Complainant:

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For the Respondents:

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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Lynn Gowan				
By Ms. Rosen:	28,144			
By Mr. Mohammadi		230		
Peter Gibson				
By Ms. Rosen:	65			139
By Mr. Mohammadi		91		142

E X H I B I T S

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82(a)-(i)	Photographs		55
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P R O C E E D I N G S

1 MS. ROBESON: All right. Calling the case of
2 CCOC, Case No. CCOC 72-13, OZAH Case No. C14-01, Potowmack
3 Preserve, Inc., versus Peter and Michael Ball. Will the
4 parties please identify themselves for the record?
5 MS. ROSEN: Corinne Rosen, attorney for Potowmack
6 Preserve.
7 MS. ROBESON: All right.
8 MR. MOHAMMADI: Good morning, Farrokh Mohammadi on
9 behalf of the respondents, the Balls.
10 MS. ROBESON: All right. I believe we have some
11 preliminary objections from Ms. Rosen as far as admissions
12 of photographs.
13 MS. ROSEN: Yes. I mean, I had indicated
14 previously, I have -- I withdraw the objection to the
15 photographs of the subject property itself. I don't have
16 any issue with that. I'm actually going to use some of
17 them, but I still do maintain the objection to other
18 photographs, which are not of the subject property, for
19 various reasons.
20 My understanding is these photographs were taken
21 by Mr. Schwartz, who is now their expert, and in looking at
22 the answers to the interrogatories, it indicates that Leo
23 Schwartz is expected to testify that the roof of the garage
24 is built according to plan. It says he's an expert in

1 residential construction, is expected to testify about plan
2 submission process and how DPS may alter plans in order for
3 them to comply with county codes. I don't see anything,
4 first of all, in his testimony that talks about him
5 testifying about any other properties. The issue in this
6 case is very simple. There was an approved construction
7 plan, and the question is whether or not the construction
8 that's been done is in accordance and compliance with that
9 plan or not. So I don't see any relevance to photographs of
10 other properties.
11 Initially, when they filed this -- when they filed
12 their counterclaim, they had the siding issue in there and
13 probably intended to show that there were other houses that
14 had whatever, horizontal siding, but that, that count is no
15 longer part of this complaint. So I just don't see that
16 that, that those photographs have any relevance, and there's
17 nothing in the answers to interrogatories that even put me
18 on notice that there was going to be any testimony to that
19 effect. And since Mr. Hancock is, I mean, Mr. Schwartz is
20 the one who took the photographs, I would have to assume
21 that he'd be the one that would have to authenticate them
22 and testify about them.
23 And as I've indicated previously, just looking at
24 the amended countercomplaint, which at this point there's
25 only one -- the only issue that's in the amended

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1 countercomplaint that this body is going to be dealing with
2 is Count 2, and there's really nothing in Count 2 that has
3 anything to do with photographs of other properties in it,
4 and the same thing with regard to, if you could look at the
5 answer to the complaint. I just don't see that any of these
6 photographs of other properties are relevant in this case
7 because this is not a -- this is not a case where, for
8 example, you have somebody who submitted an application and
9 the application was rejected and they're trying to come in
10 and say, well, 10 other people have X, why isn't my
11 application being approved.
12 We already have an approved application and plans.
13 They were done by Mr. Ball. You know, that's what was
14 approved. So it's really not relevant what somebody else
15 may have at this point in time because he submitted certain
16 plans and those plans were approved, and what came after
17 that, the fact that he wants to keep changing everything
18 just isn't relevant to the case.
19 MS. ROBESON: Mr. Mohammadi.
20 MR. MOHAMMADI: All right. With respect to these
21 pictures, first of all, the question really should be, at
22 this point, whether it's prejudicial to have them admitted
23 -- admitted is not even the question, whether they should be
24 allowed to be presented as evidence today. It's been, I
25 think, three or four weeks now since they were initially

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1 produced. I don't think there's any prejudice at this point
2 to say, look, I didn't have enough time. That was the
3 initial objection: I didn't have enough time to review
4 them, have my experts and my witnesses look at them. I
5 think that issue no longer exists now that we're here on the
6 second day, about two weeks after the first hearing, about
7 three-and-a-half weeks after they were first submitted. So
8 relevance is not, I don't think, what should be looked at
9 right now, at the preliminary stage. It's whether there's
10 prejudice or not.
11 With respect to -- with respect to relevance, it's
12 clearly relevant. Part of our claims and/or defenses are
13 that this property that is subject today is being treated
14 differently than any other property in the neighborhood,
15 that the Balls are constantly being sort of targeted, and so
16 these pictures show that there's other properties in the
17 community that have the features that have been requested
18 and/or built and no problems with them. The board has never
19 said anything about them, they exist, there's no violations
20 of any kind, but when the Balls requested to have these
21 built or when the Balls built them, it's a big problem,
22 violations, several CCOC cases now. And so they are
23 relevant to show that there is disparate treatment,
24 essentially, of this particular property as compared to the
25 remaining properties herein.

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1 As I stated, there is also a claim against Mr. Raj
2 Barr for sort of bad-faith dealings for not properly doing
3 what he's supposed to do. These pictures show, again, that
4 there's disparate treatment between how the Balls' property
5 is being treated versus everybody else. So they are
6 relevant. I would maintain that relevance is just a matter
7 of whether they should be admitted once presented; it's not
8 a matter at this preliminary stage, where the only question
9 really is whether it's prejudicial to have them presented as
10 potential exhibits.
11 MS. ROBESON: Ms. Rosen, do you want to address
12 that?
13 MS. ROSEN: Well, I think relevance is important.
14 I mean, we're talking about -- what is the point of having
15 testimony and photographs being presented that have really
16 no relevance to this case? This is not a selective
17 enforcement case. This is a, this is an application which
18 has been approved. It was his application and his drawings.
19 You know, the fact that he wants to constantly change things
20 after the fact really doesn't have anything to do with the
21 fact that he has to build according to his application and
22 what was approved, and trying to go around with --
23 MS. ROBESON: All right. This is the first time,
24 Mr. Mohammadi, that I've heard the relevance of these
25 documents and -- now, that being said, you did raise the

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1 claim that they didn't follow their own procedures; you did
2 raise the claim that the approval, or the enforcement was
3 arbitrary. My issue is that this is the first time I've
4 understood the relevance of the pictures, and even though
5 Ms. Rosen has had the opportunity to look at the pictures,
6 I'm not sure she was on notice as to what you were
7 proffering as far as the pictures are concerned.
8 What I'm going to do is this: I am going to
9 reserve the -- see how far we get today and see when our
10 next hearing is. Well, it's July 10th. All right? If
11 there is time for her -- you know, you did raise these
12 claims, but you didn't say what the pictures were going to
13 be for in discovery, and so she didn't have the -- Ms. Rosen
14 did not have the opportunity to really understand and
15 prepare for these pictures.
16 MS. ROSEN: If I may also admit and give you a
17 copy -- I have a copy of their answers to my interrogatories
18 where I ask, you know, give a complete statement of facts
19 upon which you base each claim or defense you intend to use
20 at the hearing. This is not part of it, and this is their
21 answers to interrogatories. They never supplemented them.
22 So I would like to hand them, if I could.
23 MS. ROBESON: That's fine, because I don't have
24 it, and we'll -- do you have any objection to admitting this
25 as an exhibit, Mr. Mohammadi?

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1 MR. MOHAMMADI: Well, I don't know --

2 MS. ROSEN: It kind of goes with my theory of a

3 moving target, which is what this case has always been.

4 MR. MOHAMMADI: I don't know if they should be

5 admitted as an exhibit, but --

6 MS. ROBESON: Well --

7 MR. MOHAMMADI: I don't have a problem because

8 they are our interrogatory responses under oath. So there's

9 not a problem with that, but typically, the way they're used

10 is not as evidence; they're used for impeachment purposes.

11 So I don't know why they're coming in as an exhibit versus,

12 you know, to impeach or otherwise. So that's my only

13 objection with respect to as an exhibit.

14 MS. ROBESON: Well, I'm going to let it in because

15 it does, it's relevant to Ms. Rosen's objection that she

16 wasn't provided notice of this theory, and I do agree, I do

17 feel that, as Ms. Rosen pointed out, the, your defense --

18 you can't have a shifting defense. It's not fair to the

19 other side. My position is, you know, I'd like to get as

20 much of the relevant evidence in so that we get to the

21 bottom of the controversy and hopefully come to the right

22 decision. Nevertheless, you can't -- I don't believe in

23 sandbagging people either. It's got to be a fair process.

24 So I understand, you did raise the general issue

25 of the arbitrary nature of the enforcement in your

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1 pleadings, but you didn't provide that to Ms. Rosen. So

2 what I'm going to do is see where we are -- and, also, this

3 case has got to end at some point -- so we'll see where we

4 are at the end of this hearing, and we will, I'm going to

5 reserve that question and give, at least eliminate some of

6 the prejudice to -- I do feel that there was prejudice to

7 Ms. Rosen in this case. I am not going to -- at this point,

8 I am going to be very reluctant to go beyond what, the scope

9 of the discovery in the case and not add new elements. All

10 right?

11 Now, I think there was another objection of

12 Ms. Rosen's to Ms. --

13 (Exhibit No. 107 was received

14 in evidence.)

15 MS. ROSEN: Bentolita, I think, is her -- I'm not

16 sure I'm pronouncing it right. Bentolita?

17 MR. MOHAMMADI: Bentolita, I think, is right.

18 MS. ROBESON: Okay. So can you tell me that

19 objection?

20 MS. ROSEN: Yes. Well, first of all, she was not

21 even -- she was never listed as any kind of a witness on the

22 pre-hearing statement, and she was not on the request of

23 listed people for a subpoena either. So she's completely

24 new to me, so to speak. There are plenty of -- in our

25 discovery, I think on both sides, there are plenty of

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1 homeowners who are listed as potential witnesses.

2 So, for example, it appears that he, they wanted

3 to call Ms. Bentolita for various matters that, I think,

4 theoretically they could probably call other homeowners on,

5 but like I said, at this point, I don't think they should be

6 allowed to just suddenly bring in a new witness out of the

7 blue either.

8 They have plenty of opportunity -- they seem to

9 want to call her as a witness about her roof, to compare the

10 height of her roof to the height of Mr., to the height of

11 Mr. Ball's roof, and if that's the case, well, they could

12 have identified her a long time ago. The roof height was

13 obviously an issue in this complaint from the beginning,

14 that the roof is higher than what it's supposed to be.

15 So if they had wanted her to be a witness, they

16 could have certainly identified her previously and not

17 waited until, you know, long after discovery and while we're

18 in a hearing to suddenly decide they want to make her as a

19 witness. And as far as other things -- it appeared that

20 they wanted to call her about notices or this or that --

21 there are plenty of other homeowners on the list that, if

22 they want to call for that purpose, that have been

23 identified, they can do that.

24 MS. ROBESON: Mr. Mohammadi.

25 MR. MOHAMMADI: In discovery it is not, we're not

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1 required to necessarily list every single impeachment

2 witness, because it's hard to identify every impeachment

3 witness until we are at trial. What we did is we listed

4 that impeachment witnesses may be called.

5 Now, here's the, here's the issue: Ms. Bentolita

6 is -- the primary reason she's going to be called is because

7 of Mr. Barr's testimony that no other house in the community

8 has ever deviated above the original roofline, has never,

9 the roofline has never gone up above the original roofline.

10 This is not a comparison of her roofline in comparison to

11 Mr. Ball's roofline. That's not the purpose. The purpose

12 is to show that what Mr. Barr stated, that there has been no

13 deviation previously, is in fact incorrect; that hers was

14 higher, after she constructed her house again, than her

15 original roofline.

16 Now, that's for impeachment purposes only. I

17 can't, I don't know what Mr. Barr is going to testify to

18 prior to the hearing. I don't know that I need to use her

19 to impeach him on that ground. Her coming in at this point,

20 she can also impeach on a number of other issues -- as

21 Ms. Rosen pointed out, notices, board meetings, things like

22 that. That was not the primary purpose. The primary

23 purpose, like I said, of us listing her after the last

24 hearing was because of Mr. Barr's testimony that he gave on

25 the stand at that hearing.

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1 So, again, it's not -- if I wanted to identify
2 everybody, I would've had to said every potential homeowner
3 in the Potowmack Preserve community. That may have covered
4 me, but I don't think that's our obligation, to sort of give
5 this broad list of witnesses of every potential person that
6 could have anything to say. Similarly, let's say he had
7 testified about some kind of inspections that went on and,
8 you know, that inspections had failed, for example. I may
9 have had to call one of the inspectors at the department. I
10 don't need to list him. It's for impeachment purposes.
11 MS. ROBESON: Well, where does it say you don't
12 need to list him? I mean, I'm governed by the APA and the
13 CCOC regs. So where does it say you don't have to list him?
14 That's what I'm looking for.
15 MR. MOHAMMADI: I'm not sure if any rule says
16 specifically you don't need to list every, every witness in
17 your pre-hearing statement. What I'm saying is, it's
18 impossible to identify every single witness at the
19 pre-hearing statement stage. I don't, I simply don't know
20 what Ms. Rosen's witnesses are going to testify to, and I
21 simply don't know what other impeachment witnesses I will
22 need to locate and call.
23 It wasn't my plan to call her right away. It
24 wasn't, it wasn't my plan to have her testify, because as
25 Ms. Rosen pointed out, other members that we have listed can

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1 testify about the meetings taking place, about the notices
2 sent out, et cetera. That wasn't why she was, why we have
3 listed her now. The primary purpose, as I said, is because
4 of Mr. Barr's statement that the roof -- no roofs have ever
5 been raised above the original grade, original height, and
6 that's just simply not true, as Ms. Bentolita will testify
7 to.
8 MS. ROSEN: I would just like to note that they
9 deposed Raj Barr. They had ample opportunity to ask Raj
10 Barr any questions of that nature. They took his
11 deposition. They also -- this is a house. They had their
12 expert go around the community and take photographs of
13 houses, including Ms. Bentolita's house. So to sit here now
14 and act like, well, gee, all of a sudden they're discovering
15 that supposedly the roof is higher, that's ridiculous. They
16 had an opportunity.
17 MR. MOHAMMADI: Again, that's not, that's not
18 the --
19 MS. ROBESON: Well, you don't have to characterize
20 it.
21 MS. ROSEN: I'm sorry, my bad.
22 MS. ROBESON: Mr. Mohammadi, I agree with
23 Ms. Rosen on this one. You did have the opportunity. I
24 think that -- I'm looking for the APA, but there is language
25 in the APA which governs these proceedings that says you,

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1 there is -- you did have the opportunity to depose quite a
2 few people; you did have the opportunity for discovery, and
3 so part of the reason for discovery is that you don't have
4 these last-minute witnesses. There's language in the APA
5 that -- and I was just looking for it -- there's language in
6 the APA that says the pre-hearing statement doesn't preclude
7 rebuttal witnesses to, and that would be Ms. Rosen's
8 rebuttal to your case-in-chief, but you have had ample time
9 to prepare your case-in-chief. So I'm going to sustain
10 Ms. Rosen's objections on Ms., I'm sorry, on this matter.
11 MS. ROSEN: Ms. Bentolita.
12 MS. ROBESON: Ms. Bentolita.
13 MR. MOHAMMADI: I would also point out, again,
14 this was -- it's been almost two weeks since our last
15 hearing. So I don't know -- you know, prejudice-wise, she
16 had time to find out what Ms. Bentolita's --
17 MS. ROBESON: Well, I --
18 MR. MOHAMMADI: -- testimony was going to be and
19 to talk to her if she needed to.
20 MS. ROBESON: I think the language, though, in the
21 APA is, you have to show -- I don't, I have everything but
22 the APA. It, you know, it would help me if you look at the
23 rules and be ready to address what the rules say about
24 deviations from the pre-hearing statement, because it
25 shouldn't be my job to dig up the APA. Now, that being

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1 said, I am going to sustain her objection --
2 MR. MOHAMMADI: Just --
3 MS. ROBESON: -- and I'll note your objection to
4 that ruling.
5 MR. MOHAMMADI: Just one other matter. You --
6 after the hearing you permitted us to amend our pre-hearing
7 statements. So we did that. We amended it and we listed
8 her in that new pre-hearing statement. So it's not, it's
9 not like I'm coming in today and saying, here she is.
10 We gave notice upon discovery. We gave notice
11 upon your order to amend it. So, again, we followed it. We
12 listed it in the pre-hearing statement. The supplemental,
13 or I think we might have called it amended pre-hearing
14 statement, listed her and specifically stated what her
15 testimony was going to be. So that's in line with the rules
16 that the pre-hearing statement should state every witness,
17 and at that point, once we had identified her, we did list
18 her.
19 MS. ROBESON: All right.
20 MS. ROSEN: I think the pre-hearing, when you
21 asked us to amend the pre-hearing statement, it was
22 referencing documents, not witnesses.
23 MS. ROBESON: Yes, I didn't expect new witnesses.
24 In any event, that's my ruling and we're going to move on.
25 Anything else? I hesitate to ask, but --

1 MS. ROSEN: Okay. Just --
 2 MR. MOHAMMADI: Yes. Go ahead.
 3 MS. ROSEN: Just real quick, just on the
 4 transcript that was sent over, it just had the wrong -- it
 5 had the case captioned as Robert Ball versus Potowmack
 6 Preserve instead of the correct caption.
 7 MS. ROBESON: Okay. We'll have that -- I found
 8 some other things in there too. Sometimes it refers to me
 9 when I think it was Ms. Rosen speaking. So it says Robert
 10 Ball?
 11 MS. ROSEN: Yes. It says, Robert Ball versus
 12 Potowmack Preserve, or something like that. It should be
 13 Potowmack Preserve versus Michael and Peter Ball.
 14 MS. ROBESON: Okay. I'll take a look at it, and
 15 we'll correct that.
 16 MS. ROSEN: Okay.
 17 MS. ROBESON: Anything else?
 18 MR. MOHAMMADI: Yes. I received an e-mail
 19 yesterday from Ms. Rosen with a -- I got two e-mails,
 20 actually, and one of the e-mails had a bunch of documents
 21 attached to it. And I believe these documents are going to
 22 be used today or in Ms. Rosen's case-in-chief, and a lot of
 23 these documents are just being provided to me today.
 24 MS. ROBESON: They weren't provided in discovery?
 25 MR. MOHAMMADI: I looked through the discovery to

1 try to compare. Again, I got this at 6:00 yesterday; so I
 2 came in early to try to compare. I was unable to do it, to
 3 compare to every single document, but the first one on the
 4 list of provided documents is, board meeting of July 17,
 5 2013. These are the minutes of the board meeting. I did
 6 find what was produced to us of that board meeting, and
 7 although the July 17, 2013, minutes were provided, they are
 8 completely different than the ones that were just provided
 9 to us yesterday. And if you'd like, I can provide you a
 10 copy of what I got and what the minutes are, but --
 11 MS. ROBESON: Well, let me have Ms. Rosen address
 12 it first.
 13 MS. ROSEN: Okay. Well, I'll tell you what it
 14 was. I got these on Friday. This is the -- and I think you
 15 might remember from last testimony -- there was the
 16 stand-alone version of minutes and there was --
 17 MS. ROBESON: And the compilation?
 18 MS. ROSEN: Yes, and anyhow, the July 17th was a
 19 stand-alone that I had not been given until Friday; so I
 20 sent it over. So this is just a stand-alone version of July
 21 17th, 2013, minutes. I didn't have them before. If I had
 22 had them, I would've obviously produced them.
 23 MS. ROBESON: Okay. But again --
 24 MS. ROSEN: I understand. I understand. I'm
 25 just, you know -- it is what it is. So it either comes in

1 or it doesn't.
 2 MS. ROBESON: We've got to get beyond these
 3 last-minute stuff. Are you going to use --
 4 MS. ROSEN: I mean, I can, I can use it --
 5 MS. ROBESON: -- that in today's testimony?
 6 MS. ROSEN: Well, I mean, I think you had
 7 indicated that we could, that I could use certain documents
 8 for impeachment purposes. If -- then I will just hold on to
 9 it if you don't want me to use it then.
 10 MS. ROBESON: Well, if I let you do that, then
 11 I've got to let Ms. -- I'll get that name right. You know,
 12 if I do that, why shouldn't I let Ms. --
 13 MS. ROSEN: Well, you told -- you directed me to
 14 amend the pre-hearing statement to add impeachment
 15 documents.
 16 MS. ROBESON: But that was 10 days ago.
 17 MS. ROSEN: Okay. Well, I don't, I mean, I don't
 18 have to use this document. I'm not going to make a big
 19 issue of it. I mean, it was a -- it's a stand-alone copy of
 20 the minutes, but they can testify about the meeting anyway.
 21 So I don't care.
 22 MS. ROBESON: Is there any other document that is
 23 in there that Mr. Mohammadi hasn't seen?
 24 MR. MOHAMMADI: Well, I think the pictures that
 25 are in here haven't been provided previously.

1 MS. ROSEN: Well, the photographs, the next set --
 2 there's some photographs -- these were from the other case.
 3 They are in the record of the previous case.
 4 MS. ROBESON: Which case? 73-12?
 5 MS. ROSEN: 73-12. They're part of 73-12, these
 6 photographs, the ones -- there's four photographs that are
 7 part of 73-12, which I didn't have to reproduce but I just
 8 went ahead and did.
 9 MS. ROBESON: Okay. We did take official notice
 10 of the record of that case, which I have on my desk. So I
 11 can double check that those photographs are actually in that
 12 file. So I'm going to reserve a ruling until we take a
 13 break and I can verify that those photographs are in that
 14 file. All right?
 15 MS. ROSEN: Okay. And there's also a building
 16 permit, which is also part of that file, just a -- it's a
 17 one-page copy of a building permit that should also be in
 18 that 73 --
 19 MS. ROBESON: Okay. Well, let me, I don't recall
 20 -- see, I don't recall seeing that, but I will double check.
 21 MS. ROSEN: Okay. It should be there.
 22 MS. ROBESON: I have --
 23 MS. ROSEN: But it's also, you know --
 24 MS. ROBESON: -- staff to the CCOC brought over
 25 what I think was the record, but I will double check.

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1 MS. ROSEN: Okay. I understand, but this is also
2 just a basic -- this is a public record. This is their
3 building permit. So I'm not sure that that should be an
4 issue.
5 MS. ROBESON: Yes, but it's got writing and marked
6 up.
7 MS. ROSEN: Okay. Well, I just circled something.
8 I mean, that's all.
9 MS. ROBESON: Okay.
10 MS. ROSEN: I mean, it's the same thing. Okay.
11 The other document is a letter that I had written to
12 Mr. Mohammadi on March 28th of 2014. I'm not sure why that
13 should be an issue.
14 MS. ROBESON: Because he doesn't know why you're
15 proffering it --
16 MS. ROSEN: Okay.
17 MS. ROBESON: -- and he hasn't had a chance to
18 prepare.
19 MS. ROSEN: Well, I wasn't planning on using this
20 today. I mean, this wasn't something I was using today, but
21 you indicated that I should --
22 MS. ROBESON: Oh, okay. All right.
23 MS. ROSEN: Yes, I wasn't planning on, the other
24 ones here that I have -- there's an e-mail from Charles
25 Bruno to Mr. Gibson. I wasn't planning on using that today.

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1 That wasn't something that was going to be used today
2 either. Same thing with the following e-mail, wasn't
3 something I was going to --
4 MS. ROBESON: Well, you have the ability, you --
5 MS. ROSEN: Yes, the rest of these are not
6 documents I was going to use today.
7 MS. ROBESON: Let me do this: You have the
8 ability on rebuttal. I'm not going to start allowing
9 last-minute documents on your case-in-chief. All right?
10 MS. ROSEN: That's fine.
11 MS. ROBESON: You have rebuttal. The APA is less
12 strict on rebuttal than it is on your case-in-chief. So I'm
13 going to wait for your rebuttal to let these documents in.
14 That'll give me time to --
15 MS. ROSEN: Okay. That's fine.
16 MS. ROBESON: -- parse through the file and see
17 what's in there and what isn't in there. All right?
18 MS. ROSEN: Okay. I will take out -- that'll make
19 things real easy. I'm going to pull out anything --
20 MS. ROBESON: The APA says that the pre-hearing
21 statement doesn't limit rebuttal.
22 MS. ROSEN: Okay. I'm just going to make things a
23 little easy. I'm going to take out -- the only things I'm
24 going to use today are things that were already produced in
25 discovery with this witness, just to make things easy.

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1 MS. ROBESON: Okay. Now, I will be asking, in
2 lieu of Ms. --
3 MR. MOHAMMADI: Bentolita.
4 MS. ROBESON: I'm sorry -- Ms. Bentolita not
5 testifying, I will be asking Mr. Barr how high, because he
6 didn't proffer the relevance, but how high the original -- I
7 want somebody from your side, I don't care who it is, to
8 tell me what her original house height was and what the
9 preexisting house height was. I think Mr. Barr said that
10 there were distinguishing factors, which is why I don't know
11 how relevant it is, but at some point in your case, I would
12 like to know that.
13 MS. ROSEN: Okay.
14 MS. ROBESON: All right?
15 MR. MOHAMMADI: May I ask a clarification here?
16 There is a countercomplaint, as you know, pending from us.
17 Doesn't the respondent get a rebuttal, as well, on their --
18 on our countercomplaint, which is exactly in line with
19 Ms. Bentolita's testimony?
20 MS. ROSEN: I think the only open issue on the
21 countercomplaint is, they're asking to have Raj Barr removed
22 as the, from the board or something to that effect.
23 MS. ROBESON: No, no, no. No. There was -- let
24 me do this: Let's take a five-minute recess, and I'm going
25 to get the APA. It would really help me, Mr. Mohammadi, if

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1 you want to do this, bring in new stuff, if you look at the
2 APA and come prepared to say what provision of the APA
3 permits this.
4 MR. MOHAMMADI: That's fair. I was --
5 MS. ROBESON: There is an order of hearing in the
6 APA. I didn't -- I've got every piece of legislation in
7 front of me except the APA. So I'm going to have to take a
8 recess now to go get it. So I would appreciate, if the
9 parties, if you're going to make objections to documents
10 coming in, that you come prepared with that.
11 The other thing is, you know, we got to get
12 through this hearing. Getting documents at 6:00 at night
13 before the next hearing is not acceptable, and I'm not going
14 to make Mr. Mohammadi address those today. So, at some
15 point, we all have to -- I'm not going to allow last-minute
16 things after this. I was trying to work with you, but I'm
17 not going to do it anymore unless, I think the phrase in the
18 APA is manifest injustice.
19 So let me do this: We're going to take a
20 10-minute break. I'm going to go get the APA and look at
21 it, and then I will be back. All right? We'll be back at
22 10:30.
23 (Whereupon, at 10:17 a.m., a brief recess was
24 taken.)
25 MS. ROBESON: All right. We're back on the

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1 record. I have reviewed the APA. What it says -- and I'm
2 reading from 2A-7(a)(4) -- requests for permission at the
3 time of the hearing or prior thereto to submit witnesses or
4 new or supplemental material not contained in the
5 pre-hearing statement and subsequent to the time limits
6 herein specified may be granted by the hearing authority
7 only upon good cause shown and may be cause for a
8 postponement or continuance of the hearing or a decision to
9 leave the record open for a specified time to receive
10 rebuttal evidence. Nothing herein shall interfere with the
11 right to offer rebuttal evidence.
12 Then the order of hearing does permit surrebuttal,
13 and that is in 2A-8(i)(5)g.
14 So what I'm going to do is this: I am going to --
15 we have to get this under control; we have to -- so I am
16 going to ask one of your witnesses in your case-in-chief to
17 testify as to Ms. Bertalini's, Bert -- the height.
18 MR. MOHAMMADI: First name is Beth, if that makes
19 it easier.
20 MS. ROBESON: Yes. I just -- anyway, you have the
21 opportunity to bring that in on rebuttal, on rebuttal, and
22 the standards are less strict, because I really need to get
23 through this hearing with some semblance of fairness, and
24 changing and adding -- now, that being said, I may request,
25 before we start rebuttal, for you to update another

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1 supplemental pre-hearing statement so that we don't have
2 last-minute items. All right? You should know by then who
3 you think you're going to need. All right?
4 So that's what we're going to do. Same thing, you
5 know, I will -- we'll get to the end of the day, and on the
6 pictures that you objected to, we'll make a decision as to
7 how much time. Are you planning on cross-examining today on
8 those pictures, or they're part of your case-in-chief?
9 MR. MOHAMMADI: The additional pictures from the
10 neighborhood?
11 MS. ROBESON: Yes.
12 MR. MOHAMMADI: Probably not, unless somebody
13 specifically testifies --
14 MS. ROBESON: Okay.
15 MR. MOHAMMADI: -- but probably not.
16 MS. ROBESON: Okay. So that's how we're going to
17 proceed, and is there anything else? Are there any other
18 supplemental -- are there any other preliminary matters?
19 MS. ROSEN: The only thing, so other than --
20 Mr. Peter Gibson will be here at about 11 o'clock, and
21 because of his schedule, what I'm going to end up doing is,
22 when he comes here, I'm going to take Lynn Gowan off the
23 stand and put him on in order to just --
24 MS. ROBESON: Do you have any objections taking
25 him out of order?

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1 MR. MOHAMMADI: No objections.
2 MS. ROBESON: Okay.
3 MS. ROSEN: Okay.
4 MS. ROBESON: All right. Is this -- are we ready?
5 Ms. -- is it Gowan?
6 MS. GOWAN: Gowan.
7 MS. ROBESON: Gowan. Ms. Gowan, please raise your
8 right hand.
9 (Witness sworn.)
10 MS. ROBESON: All right. Proceed.
11 DIRECT EXAMINATION
12 BY MS. ROSEN:
13 Q Okay. Can you please state your name and address
14 for the record?
15 A It's Lynn Gowan. I live at 10607 Crossing Creek
16 Road, Potomac, Maryland.
17 Q Okay. And what is your relationship to the
18 Potowmack Preserve, Inc.?
19 A I, I've been -- I've lived in the community a
20 number of years, but I'm the secretary on the board.
21 Q Okay. And how many years have you owned your home
22 at Potowmack Preserve?
23 A About 15.
24 Q Okay. And about how many years have you served on
25 Potowmack Preserve's Board of Directors?

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1 A Two.
2 Q And when did you become secretary?
3 A May of, let me think, May of 2012.
4 Q Okay. And what are your duties as secretary?
5 A I take the minutes. I manage e-mail, you know, as
6 far as the letters and things. I distribute notices. I try
7 to maintain the directory, which is a moving target. It's
8 kind of an all-inclusive kind of a thing.
9 Q Okay. Now, when you take minutes, do you
10 prepare --
11 A Oh.
12 Q -- do you prepare drafts or you just prepare final
13 minutes? Can you tell, tell how you take the minutes and --
14 A Well, and I --
15 Q -- how you kind of get from one draft to final?
16 A -- I also maintain the LISTSERV, which we're
17 killing. We're moving to a website; so I forgot to mention
18 that. I draft up meeting minutes, and I bring them to the
19 board, and we vote on them. You know, they read them, look
20 through, see if, if I captured everything, if I captured
21 everything correctly, and they vote, you know, to either
22 approve or to amend --
23 Q Okay.
24 A -- and then I do a final.
25 Q Okay. So, basically, there'll be a document that

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1 is always termed a draft, and then there'll be, later on,
2 once everybody's looked at it, there will be a final?
3 A Yes.
4 Q Okay. And you keep both -- do you keep both
5 drafts and final?
6 A I do.
7 Q Okay. Okay. And as the association's secretary,
8 are you the custodian of the association's documents, such
9 as their minutes and correspondence and other business
10 records of the association?
11 A Yes.
12 Q Okay. And where do you maintain those documents
13 on behalf of the association?
14 A At my home.
15 Q Okay. And does the association maintain records
16 in the ordinary course of its business?
17 A It does, and I try to categorize it and keep it in
18 some kind of working order so that -- for easy retrieval,
19 you know.
20 Q Okay. And when you became secretary of the
21 association, how did you come into possession of the
22 association's records?
23 A They were brought to me by the previous secretary.
24 Q Okay. All right. And can you tell us, what is
25 your occupation or profession?

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1 A It's recently changed, but I was a construction
2 design coordinator. My background is construction. I'm now
3 working in assignments, and I handle prospectus projects
4 for, how do I, it's agencies -- we help agencies move. So
5 we try to figure out who they are, their size, what their
6 needs are, and I help them to develop their lease as well as
7 their requirements. So --
8 Q Can you explain what your, what you -- for how
9 many years were you a construction design coordinator,
10 approximately?
11 A Twenty, 30-something, like that.
12 Q Okay. Can you explain what a construction design
13 coordinator is and what that position entailed?
14 A It involves anything from developing a statement
15 of work to negotiating, hiring contractors, handling their
16 wage requirements, their security requirements, the schedule
17 of the project, the client's needs, the permitting, the
18 accuracy of documents for any possible, potential change
19 orders, buildout, punch list, invoicing, walk-throughs, that
20 kind of thing.
21 Q Okay. I'm going to show you a document, which I'm
22 going to mark as -- let me just make sure we're on the right
23 exhibit number here -- I think it would be 96, but I could
24 be wrong.
25 MR. MOHAMMADI: I think the new is 107.

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1 MS. ROSEN: I'm sorry?
2 MR. MOHAMMADI: I think the new exhibits, we're up
3 to 107.
4 MS. ROBESON: Right. Did you get a copy of the
5 new, most recent exhibit list?
6 MS. ROSEN: No. Actually, was it outside on
7 the --
8 MS. ROBESON: It should be outside.
9 MS. ROSEN: Okay. Let me just step out and get it
10 because I didn't notice it.
11 MS. ROBESON: Take your time.
12 MR. MOHAMMADI: Just for the record, the
13 interrogatories, since they were admitted, would that be
14 107?
15 MS. ROBESON: Yes.
16 MS. ROSEN: Thank you. Okay. I see.
17 MS. ROBESON: So can you describe -- this would be
18 marked as 108 -- can you describe what it is?
19 (Exhibit No. 108 was marked
20 for identification.)
21 MS. ROSEN: Yes. 108 is Lynn Gowan's résumé, I
22 guess you could say.
23 MS. ROBESON: Okay. Any objection?
24 MS. ROSEN: Provided in discovery.
25 MR. MOHAMMADI: No.

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1 (Exhibit No. 108 was received
2 in evidence.)
3 BY MS. ROSEN:
4 Q And, Ms. Gowan, could you just look at the
5 document, which has been marked as Exhibit 108, and identify
6 that?
7 A This is the résumé that I sent in.
8 Q Okay. And does that résumé accurately describe
9 your professional background in the area of construction
10 design and related fields?
11 A Yes.
12 Q Okay. And what is your general educational
13 background?
14 A I have a degree at University of Maryland, and I
15 continued further education at Montgomery Community College.
16 I'm a certified PM through GW.
17 Q What is PM?
18 A Project manager.
19 Q Okay. Okay. Do you hold any types of licenses
20 and other certificates?
21 A I did. I used to have a license through D.C. as
22 far as design.
23 Q Okay. And are you a member of any professional
24 organizations?
25 A Just government ones.

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1 Q Okay. Related to construction design or --
2 A Project management, construction, LEED, that kind
3 of thing.
4 Q Okay. And are you familiar with the property at
5 issue in this case that's located at 10600 Vantage Court?
6 A Yes.
7 Q Okay. And who lives at that property, if you
8 know?
9 A I, I know that Peter Ball lives there, and I
10 believe an elderly woman, his mother. I believe her name is
11 Trudy --
12 Q Okay.
13 A -- other than that, I'm really not certain.
14 There's --
15 Q Okay. And that property is situated in Potowmack
16 Preserve Association, is that correct?
17 A Yes.
18 Q Okay. And are you familiar with the different
19 types of models for the homes at Potowmack Preserve?
20 A Yes.
21 Q Okay. I'm going to show you a document, which was
22 previously marked as Exhibit 73, which is a group of
23 photographs. Did you take these photographs? Are you --
24 A I did.
25 Q Okay. Okay. I'm going to bring your attention --

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1 last hearing there was a question about the names of the
2 different types of models. So I'm going to have you, I'm
3 going to turn your attention -- first of all, if you could
4 just take a quick look at the document and tell me if this
5 is, if these photographs are an accurate depiction of the,
6 of what the, of what you saw when you took photos of these
7 houses.
8 A They are. The front page is the, it's the same
9 house, just the one at the bottom shows a slight change that
10 they requested, which is a --
11 Q And is that a Brook Grove (phonetic sp.) model?
12 A That's a Brook Grove.
13 Q Okay. And then you, on the second page you have
14 Model --
15 A This is Monteverde (phonetic sp.).
16 Q Okay. Is that an accurate depiction of a
17 Monteverde model?
18 A It is. It's the rambler.
19 Q Okay. And the next page you have a Holly, what's
20 referred to as a Holly View (phonetic sp.) model?
21 A This is Holly View. It's --
22 Q And are those photos an accurate depiction of the
23 Holly View model?
24 A That is.
25 Q Okay. And then the following page also refers to

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1 a Holly View model?
2 A Right.
3 Q Okay.
4 A The one at the top is a Holly View.
5 Q And then there's one at the bottom. It says,
6 referred to as a rebuilt Meadowhall (phonetic sp.) model.
7 It's a different model?
8 A It is.
9 Q Okay.
10 A It's the largest model.
11 Q Okay.
12 A This one isn't a very good picture because of the
13 trees, but it's actually one of the original, excuse me,
14 Meadowhall.
15 Q Okay. And then I'd like to turn your attention to
16 the bottom of what's marked as page 6, a Fair Hill model.
17 A It's really, I think I wrote --
18 Q Is that --
19 A This is a Fair Hill model.
20 Q Okay. Now, is that the model that is Peter Ball's
21 house? Is that the same model?
22 A Yes.
23 Q Okay. Now on the following page there's a couple
24 of depictions that show, that refer to a Fair View model and
25 then something, as shown, Fair Hill. What is the correct

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1 nomenclature?
2 A It's Fair Hill.
3 Q Fair Hill model?
4 MS. ROBESON: Both pictures on that page?
5 THE WITNESS: Yes.
6 MS. ROSEN: Yes, page 7.
7 BY MS. ROSEN:
8 Q So --
9 MS. ROBESON: With your permission, on the
10 official exhibit, I'm going to strike out Fair View and
11 write Hill. Does anyone have a problem with that?
12 MS. ROSEN: That's fine with us. We kind of did
13 the same thing here.
14 MS. ROBESON: Mr. Mohammadi, any objections?
15 MR. MOHAMMADI: No problem.
16 MS. ROBESON: On the top, the caption to the top
17 picture, I'm crossing out View and writing Hill.
18 BY MS. ROSEN:
19 Q Okay. And then on page 8 there's also -- I'd turn
20 your attention to the bottom picture that says, Fair View
21 Model. Would that more accurately be described as Fair Hill
22 Model?
23 A It's a Fair Hill.
24 MS. ROBESON: Okay. I'm going to do the same for
25 that. All right. Go ahead.

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1 BY MS. ROSEN:
2 Q Okay. And the same thing on page 9, is that a
3 Fair Hill model as opposed to a Fair View model?
4 A It's a Fair Hill. There is no Fair View.
5 Q Okay.
6 MS. ROBESON: Okay. So I'm going to do the same
7 thing on page 9.
8 BY MS. ROSEN:
9 Q Okay. And where is your home located in reference
10 to the Ball property?
11 A Mine is on Crossing Creek, and his is at the
12 corner of Crossing Creek and Vantage Court.
13 Q Okay. So are you a next-door neighbor or a
14 neighbor of the Ball property?
15 A Yeah. We have an adjoining lot.
16 Q Okay. And are you familiar with the construction
17 at that property that's at issue in this case?
18 A Yes.
19 Q And how are you familiar with that construction?
20 A I, I see, I see it from a couple of my windows.
21 It's -- my lot is a little lower. It's real easy to see.
22 Q Okay. And for how long, since you've been living
23 at the property, has Mr. Ball's property been under
24 construction?
25 A Almost since day one.

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1 MS. ROBESON: Day 1 being when the Balls moved in
2 or --
3 THE WITNESS: When I moved in. I mean, I didn't,
4 I --
5 MS. ROBESON: When did you move in?
6 THE WITNESS: In '98.
7 MS. ROBESON: Okay.
8 BY MS. ROSEN:
9 Q Okay. And so can you see the ongoing construction
10 on the Ball property from your property?
11 A Yes.
12 Q Okay. And how, at all, does that ongoing
13 construction impact your enjoyment of your property?
14 A Well, now that we've instituted the noise
15 ordinance, it's quieter, but they've excavated and moved a
16 great deal of soil around their property, and when they dug
17 out for the basement and the storage room under the deck,
18 they didn't remove the soil; they just added it to the
19 backyard. So their lot is now substantially higher. So all
20 of the runoff comes to mine, and it's been bare soil for
21 years. It's never -- from what I can see, there's not been
22 any measure taken to prevent silt. I even pick up pebbles
23 from the pouring of concrete. I've had my, the -- the
24 county's had to come three times to repair the spillway.
25 Two were significant.

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1 MS. ROBESON: Wait. The spillway, which spillway?
2 THE WITNESS: Around all of the properties, there
3 is a county easement --
4 MS. ROBESON: Right.
5 THE WITNESS: -- with a spillway in it for water
6 runoff --
7 MS. ROBESON: Oh, I see. Okay.
8 THE WITNESS: -- to go through, and they've had to
9 repair down to an intake twice.
10 BY MS. ROSEN:
11 Q Okay. And are you familiar with the architectural
12 application process which is followed by Potowmack Preserve,
13 Inc.?
14 A Yes.
15 MS. ROBESON: May I interrupt one second --
16 MS. ROSEN: Sure.
17 MS. ROBESON: -- and I apologize. I, when I was
18 reading this, I wanted to make sure I know which shed is
19 which, because there was a shed in 72-13, and when you say
20 the shed, I don't know -- and there's also a shed --
21 THE WITNESS: Oh, okay.
22 MS. ROBESON: -- involved here.
23 THE WITNESS: We can make that Shed No. 3.
24 There's three of them.
25 MS. ROBESON: Okay. Well, okay. All right.

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1 Well, eventually --
2 MS. ROSEN: Yes.
3 MS. ROBESON: -- I'm going to ask you to mark all
4 the sheds you're talking about because -- Shed 1, 2, and
5 whatever shed, so it's clear for the record, because I'm not
6 clear when you're talking. All right?
7 MS. ROSEN: Yes. I will be later -- I will be
8 getting into, you know, the issues --
9 MS. ROBESON: You will? Okay. That's fine.
10 MS. ROSEN: -- in the supplement and the sheds,
11 yes, as I go on.
12 MS. ROBESON: Okay. Then let's proceed.
13 MS. ROSEN: Okay.
14 BY MS. ROSEN:
15 Q All right. Are you familiar with the
16 architectural application process followed by Potowmack
17 Preserve?
18 A Yes.
19 Q Okay. And can you tell the Hearing Examiner, what
20 constitutes an architectural application?
21 A They have a form that you fill out, and they have
22 guidelines that you have to look at and make sure that it,
23 what you want to do applies to it, but you have to give them
24 plans. They have a particular scale. You have to give them
25 a site plan. They want to see materials or a sample,

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1 something of what you're doing. If they don't understand
2 something, if it's not clear, then they'll -- you can ask
3 them what it is they want and they'll come back and tell
4 you. I've done a couple of changes but nothing real
5 significant, but it's generally material, sizes, plans,
6 something scaled, and then you have to provide them a plot,
7 site plot.
8 Q Okay. Are you familiar with the architectural
9 change applications and drawings which were approved by the
10 board in or about May of 2011?
11 A Yes.
12 Q Okay. I want to show you this document, which was
13 previously marked in this case as Exhibit 77 and which was
14 also Plaintiff's Exhibit 2 in the prior case in which you
15 testified. Can you identify what this document is?
16 A It's the set of plans that were approved.
17 Q Okay. That's the approved plans. Thank you.
18 MS. ROBESON: You're identifying that as exhibit
19 -- which exhibit?
20 MS. ROSEN: It's Exhibit 77 for us --
21 MS. ROBESON: Okay.
22 MS. ROSEN: -- and it was Complainant's 2 in the
23 prior case.
24 BY MS. ROSEN:
25 Q Okay. And is that exhibit a true and correct copy

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1 of the approved plans and drawings, the plan records?
2 A Matches the set, but I don't know.
3 Q Okay. And were there any other applications, as
4 defined by the HOA, which were submitted by the Balls in
5 connection with this construction project?
6 A The only one I'm aware of is a change in the brick
7 that was approved.
8 Q Okay. But no others?
9 A No others.
10 Q Okay. Okay. I'm going to show you a document
11 which was previously marked as Plaintiff's Exhibit 78. If
12 you could take a look at that document.
13 A Oh, this is the approval letter.
14 Q Can you just read the date on that letter?
15 A It's May 10, 2011.
16 Q Okay. That's the letter that approves the
17 application for Mr. Ball, is that correct?
18 A Yes.
19 Q Okay. Okay. And, in general, was any board
20 member authorized by the board to communicate by letter with
21 Mr. Ball on behalf of the board concerning this property?
22 A Not that I'm aware of.
23 Q No other board -- well, I want to put this, ask in
24 a different way. The letter that was sent by Dr. Barr to
25 Mr. Ball, was Mr. -- was Dr. Barr, to the best of your

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1 knowledge, authorized by the board of directors to send this
2 approval letter?
3 A Yes.
4 Q Okay. And are you aware of any other letters that
5 have been sent to Mr. Ball by the association?
6 A Yes, by, by Raj Barr.
7 Q Okay. And, to the best of your knowledge, was Raj
8 Barr authorized by the board to send any letters to Mr. Ball
9 concerning the ongoing construction on behalf of the board?
10 A Yeah.
11 Q Okay. Okay. If you know, can you describe what
12 was approved by the HOA concerning the construction of the
13 roof on the property?
14 A No change. I could find nothing that stated an
15 approval for a change in height.
16 Q Okay. Do you know approximately when the
17 construction of the roof started?
18 A I believe it's September.
19 Q September of what year?
20 A 2013.
21 Q Okay. I am going to show you, I'm going to show
22 you a group of photographs.
23 MS. ROSEN: If I can ask, I think at one point,
24 I'm sorry, Ms. Robeson, you had asked Mr. Mohammadi whether
25 or not he would agree to admit the photographs that have

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1 been previously marked without me having to go through --
2 MS. ROBESON: Right.
3 MS. ROSEN: -- the authentication process, but I
4 don't think Mr. Mohammadi responded to that, unless I'm
5 incorrect, the photographs; otherwise, I mean, I can
6 certainly go through the whole authentication process with
7 my witness, but to save time --
8 MR. MOHAMMADI: Is this 82?
9 MS. ROSEN: Yes. Well, it's -- yes. There's a
10 group of photographs, Exhibit 80, 81, 82, 83, they're all
11 photographs of the subject property, 84. Those are
12 photographs that Ms. Gowan took which were originally not
13 introduced because we thought we'd have to have Ms. Gowan
14 authenticate them, unless the question -- I believe the
15 Hearing Examiner wanted to know whether --
16 MS. ROBESON: Right.
17 MS. ROSEN: -- that would be necessary.
18 MR. MOHAMMADI: Yes, I would, I'd still maintain
19 the objection until they're authenticated. I would object
20 to them being admitted.
21 MS. ROBESON: All right. Well, we'll go ahead
22 then.
23 MS. ROSEN: Okay. Then we will go through the
24 whole process.
25 BY MS. ROSEN:

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1 Q Okay. I'm going to show you a document which has
2 been marked as Exhibit 80. Can you please identify it?
3 MS. ROBESON: Is it 80 or 82?
4 MS. ROSEN: Well, the first one I have, I have is
5 80, where it just says --
6 MS. ROBESON: Oh, I see. Okay.
7 MS. ROSEN: Yes.
8 BY MS. ROSEN:
9 Q I'm going to have you identify these two
10 photographs. Can you say what they are?
11 A This is the rear of the house with the first-floor
12 addition.
13 Q Okay. And what is the second photograph?
14 A It's --
15 MS. ROBESON: On page 2.
16 MS. ROSEN: Yes.
17 THE WITNESS: Right, page 2. It's a view of
18 basically the same area of the house. It just shows the
19 chimney.
20 BY MS. ROSEN:
21 Q Okay. Now, did you take these photographs?
22 A I did.
23 Q Okay. And when did you take these photographs?
24 A I took, I took them in 2012.
25 Q Okay. And what month in 2012?

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1 A Oh, December.
2 Q Okay. And there's typewritten commentary on it,
3 but it -- on the same documents, with regard to the
4 photographs. Did you prepare that?
5 A I did.
6 Q Okay. And what do these photographs depict?
7 A It basically shows the original height of the main
8 home, and it shows the addition that was added 2002 --
9 Q Okay.
10 A -- to --
11 MS. ROBESON: Is the addition the bump-out to the
12 rear?
13 THE WITNESS: It is, and it shows some of the
14 elements added to the roof.
15 BY MS. ROSEN:
16 Q Okay. And do these photographs accurately depict
17 what you saw at the time you took them?
18 A It does.
19 MS. ROSEN: Okay. I would move Exhibit 80 into
20 evidence.
21 MS. ROBESON: Mr. Mohammadi?
22 MR. MOHAMMADI: Nothing with respect to 80.
23 MS. ROBESON: Okay. They're admitted.
24 (Exhibit No. 80 was received
25 in evidence.)

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1 BY MS. ROSEN:
2 Q Okay. I'm going to ask you to identify documents
3 which has been -- it's a two-page document, one photograph
4 on each page, marked as Exhibit 81. Can you identify those
5 photographs?
6 A Yes. This is the new roof additions, and they're
7 sitting on top of the original roof. They actually
8 overextend the ridge, and I don't know if you can see it,
9 but the original chimney is the brownish, almost now a
10 triangular look in the lower left-hand side.
11 Q Okay. And can you identify the second photograph?
12 A That's a side view. You can more clearly see the
13 chimney, and you can see the double truss.
14 Q Okay.
15 MS. ROBESON: Ms. -- okay. Go ahead. I'm sorry.
16 Go ahead.
17 MS. ROSEN: Okay.
18 BY MS. ROSEN:
19 Q Did you take these photographs?
20 A I did.
21 Q Okay. And when did you take these photographs?
22 A I took these in 2013 --
23 Q Okay. Well, the first photograph --
24 A -- December, and one is in September.
25 Q Okay. The first photograph you took in September

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1 2013 --
2 A Yes.
3 Q -- and the second one, December of 2013?
4 A Yes.
5 Q Okay. And is the typewriting comments that are in
6 any of photographs, was that also prepared by you?
7 A That -- it is.
8 Q Okay. And what do these photographs depict?
9 A The one on page 6 just shows a double roof truss
10 system now together, and then on page 7 it's a view from the
11 neighbor's home, and it shows how they're stacked, joined
12 together.
13 Q Okay. And do these photographs accurately depict
14 what you saw at the time you took them?
15 A It does.
16 Q Okay.
17 MS. ROSEN: I would move Exhibit 81 into evidence.
18 MR. MOHAMMADI: No objection.
19 MS. ROBESON: All right. I'm going to ask,
20 Ms. Gowan, can you approach, and if you want to approach
21 also. I just want her to mark the chimney location on
22 Exhibit 81, page 6. I think it's this.
23 THE WITNESS: That's the chimney right there.
24 MS. ROBESON: Okay. Can you mark that just with
25 an X, or why don't you mark it with an X right on the

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1 border.
2 THE WITNESS: Right here? Is that okay?
3 MS. ROBESON: Yes. Okay. All right. Thank you.
4 All right.
5 (Exhibit No. 81 was received
6 in evidence.)
7 BY MS. ROSEN:
8 Q Okay. All right. I'm going to ask you to
9 identify a group of photographs marked as Exhibit 82(a)
10 through (n). And if you could just flip through that
11 quickly and identify whether those are photographs that you
12 took.
13 A This is the front of the house, and it shows the
14 addition above the garage.
15 Q And that's (a)?
16 A That's (a). It shows the discrepancies in the
17 recessed area on the upper right-hand side where it's a
18 window instead of a double door, like a French door with a
19 balcony. It shows the brick veneer. It's not a -- I mean,
20 I have pictures that, and I've seen pictures close up, but
21 basically those, the windows in the brick area were
22 installed earlier, and then -- and they're not according to
23 the approved plans -- and then the brick was installed
24 around the wood, the thick wood trim and detail that was put
25 in.

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1 Q Okay. Well, I'm going to first just have you kind
2 of go through them relatively quickly because we're just
3 trying to --
4 A Okay, sorry.
5 Q -- authenticate them. It's okay. And could you
6 identify what that photograph is?
7 A This photograph is a better one. It --
8 Q That's (b).
9 A -- shows you -- it's (b) -- it shows you the
10 chimney and then the double trusses.
11 Q Okay. And (c)?
12 A (C) shows the view from Crossing Creek side,
13 Crossing Creek Road, and it shows the trusses covered over
14 in blue tarp; so does the second page.
15 Q Okay. (D)?
16 A (D) is the front of the house. I made a few
17 comments, and they're typed in.
18 Q Okay. And I'll have you go through more detail
19 later. We're just --
20 A And the lower one just shows a little bit of a
21 closer-up view of the chimney and the relationship to the
22 truss and the additions in the back. The top picture is --
23 Q That's (e).
24 A On (e) -- someone working in May on, they're doing
25 the fascia and trim, a little bit of roof work on the

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1 addition above the garage, and then the lower one is really
2 a picture to show the various widths of fascias, the roofs,
3 a little bit of the windows and doors, the trim at the
4 garage.
5 And then (f) is showing the series of the, I call
6 them sections. People are referring to them as townhouses,
7 but they're four different modules, basically, and they, the
8 windows are different on each one. The fascias are
9 different on each one. The one to the left is recessed back
10 further, a lot further than what was approved. It's just a
11 lot of different changes that I noticed.
12 Q Okay. And then (g)?
13 A (G), the top picture shows you the view of this
14 homestead from the, and construction, from Crossing Creek,
15 and then the lower one shows you a little bit closer view of
16 some of the windows, the chimney on this side of the house,
17 the rooflines, the setbacks, things of that sort.
18 On (h) it's just another view of the same kind of
19 thing, setting the -- looking at the different modules or
20 units as they are seen from the street.
21 Q Okay. (I)?
22 A (I) is a view up on Vantage Court, looking at the
23 other side of the house. If you're looking at the house,
24 the garage is on your right. This is the side of the
25 garage, and it shows the relationship of the roof to the

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1 chimney. You can see a little bit of Shed No. 2 -- we're
2 just, we're numbering them so maybe it'll help everyone --
3 below the chimney, and it depicts a window that was
4 originally to be located on the second floor that's no
5 longer there.
6 (J) is, it's a very dark, darkened view, kind of
7 shadowed. It just shows -- I think the only thing you can
8 really see from this is the chimney and the roof. (J).
9 Q (K), yes.
10 A (K), you can see the second unit with the entry
11 door. The entry was supposed to be offset with a
12 one-foot-wide glass door, double door set and a wide glass
13 door to even out the front, and it's not there. The upper
14 window is also not there. And I had comments about the
15 windows; they're lots of variety.
16 The picture on --
17 Q (L).
18 A -- (L) depicts the front of the house, and that's
19 Peter Ball in the corner on the left side. It just shows
20 the condition of the lot, a little bit of some of the
21 elements, the fascias varying, the rooflines varying. The
22 picture at the lower shot shows the house in the back. This
23 is from my home, and you can see the various heights of the
24 roofs, and you can, excuse me, see the various finishes and
25 construction methods.

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1 (M), it shows some of the new siding, some of the
2 new trim. It shows -- the second floor is covered in the
3 roof paper. You can see the Tyvek that's been added on the
4 very far left-hand side to the garage, second floor, and the
5 tarp. And the lower picture is just another, it's another
6 view of kind of the same thing.
7 (N) is a side view. It shows you the, a little
8 bit of the family room and the drainage mechanism. It shows
9 the tarps, some of the windows. You get a little bit of the
10 railing from the new deck, and you see the tarp and the
11 floor. And then the picture on the bottom of (n) shows the,
12 basically the back of the house from May 24.
13 And (o) is kind of a side view of, it's a back --
14 if you're standing, looking at the back, it is the back left
15 side of the house with the garage side, with the chimney
16 that we're using as a reference to the, the added roof. The
17 only thing that you can't see is there's about two or three
18 different Hardie board sidings right now, colors.
19 Q Okay. Now, did you take these photographs?
20 A I did.
21 Q Okay. And when did you take these photographs?
22 A I tried to date them. They're April 2014, and
23 then some of them are May 2014.
24 Q Okay. And you've basically just described pretty
25 much what these photos depict. So I won't go through that

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1 with you right now, but do they accurately depict what you
2 saw at the time that you took them?
3 A Yes.
4 Q Okay. Now, did anything unusual happen at the
5 time that you took any of these photographs?
6 A Yeah. I was --
7 MS. ROBESON: Well, wait. Before we get there,
8 can we get them admitted?
9 MS. ROSEN: Sure. Absolutely. I'm sorry.
10 MS. ROBESON: Okay. Do you have any objections,
11 Mr. Mohammadi?
12 MR. MOHAMMADI: I don't have an objection. Just
13 with respect to (j), I'm not really sure you can tell
14 anything off of that, but with respect to everything else,
15 no objection.
16 THE WITNESS: Yeah.
17 MS. ROSEN: Yes, (j) you can't really see that
18 much. It's just part of the package, so to speak.
19 MS. ROBESON: Well, do you want to --
20 MS. ROSEN: We can remove it. It doesn't really
21 do anything, one way or the other.
22 MS. ROBESON: Okay. So all of 82, except for (j),
23 is admitted.
24 (Exhibits No. 82(a) through
25 82(i) and 82(k) through 82(o))

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1 were received in evidence.)
2 MS. ROSEN: Okay. I'm just going to make a big
3 line through (j).
4 BY MS. ROSEN:
5 Q Okay. Now, did anything unusual happen at any
6 time when you took any of these photographs?
7 A Just in May.
8 Q Okay. Can you tell the Hearing Examiner what
9 happened in May when you were taking these photographs, the
10 ones taken in May?
11 A I drove up Vantage Court to take some pictures,
12 and I was confronted by Peter Ball.
13 Q And what did Peter Ball say to you?
14 A Oh, wow. He called me a cunt --
15 MR. MOHAMMADI: Objection.
16 THE WITNESS: -- and a bitch.
17 MR. MOHAMMADI: Objection.
18 MS. ROBESON: Basis?
19 MR. MOHAMMADI: Relevance.
20 MS. ROBESON: I think it goes -- relevance?
21 MS. ROSEN: Well, I mean, I think it, you know,
22 this is a dispute, and there's also issues between -- there
23 have been issues between these neighbors. They've indicated
24 in their documents that they want to bring up some old court
25 cases. It also would go to, you know, that she was trying

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1 to take pictures for this case, and I don't see any reason
2 to not say what happened while she trying to take pictures
3 for this case.
4 MS. ROBESON: So are you saying it goes to bad
5 faith? Is that what you're saying?
6 MS. ROSEN: It goes to bad faith, absolutely.
7 That definitely would.
8 MS. ROBESON: Yes, I'll let it in. I'll give it
9 the weight it deserves; let me just put it that way.
10 BY MS. ROSEN:
11 Q I asked, what did Mr. Ball say to you?
12 MS. ROBESON: It's in the record.
13 THE WITNESS: Yeah, it's in the record.
14 MS. ROBESON: Is it in the record? Yes.
15 MS. ROSEN: Yes, I think only part of it got in
16 the record, though.
17 MS. ROBESON: What?
18 MS. ROSEN: I think only part of it got into the
19 record.
20 MS. ROBESON: Oh, okay. Go ahead.
21 MS. ROSEN: Let her finish.
22 BY MS. ROSEN:
23 Q What happened when Mr. Ball approached you?
24 A Well, he just started yelling these obscenities
25 and, you know, kind of in a threatening manner. I moved

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1 over -- I backed away because, you know, he just, he
2 wouldn't stop, and I picked a unique way to get him to stop.
3 I bowed and curtsied.
4 MS. ROBESON: You what? Oh, I heard you. Okay.
5 THE WITNESS: It worked.
6 BY MS. ROSEN:
7 Q Okay. And at the time you were taking these
8 photographs, were you on Mr. Ball's property?
9 A No. I never -- I don't even think I was within 15
10 feet of the edge of the roadside of the easement.
11 Q And what was your reason for taking these
12 photographs?
13 A Well, I heard that they were -- I was asked to go
14 and get current pictures because they were not supposed to
15 be doing any construction and I could hear them and they
16 were.
17 MS. ROBESON: On what basis were they not supposed
18 to be doing any construction?
19 THE WITNESS: I think the only thing that they
20 were allowed to do is anything related to water --
21 MS. ROBESON: But by what authority?
22 THE WITNESS: -- water work. I think it was the
23 CCOC --
24 MS. ROSEN: My recollection is that in March, when
25 we had -- I think it was March, when we had a hearing

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1 here --
2 MS. ROBESON: Pre-hearing conference.
3 MS. ROSEN: Pre-hearing conference, that you had
4 indicated --
5 MS. ROBESON: I see. I had asked them, yes.
6 MS. ROSEN: -- that they shouldn't be doing more
7 construction, and --
8 MS. ROBESON: Okay.
9 MS. ROSEN: -- so they were doing it.
10 MR. MOHAMMADI: I would note that you didn't say
11 they can't do construction --
12 MS. ROBESON: That --
13 MR. MOHAMMADI: -- you said that they shouldn't.
14 MS. ROBESON: That's correct. Okay. So go ahead.
15 MS. ROSEN: Okay.
16 THE WITNESS: So that's, that's the reason I took
17 the pictures.
18 BY MS. ROSEN:
19 Q Okay. Would it also be fair to say that you were
20 taking photographs for, in preparation for this hearing?
21 A Yes.
22 Q Okay. Okay. I'm going to ask you now to look at,
23 let's see, photographs which have been marked as Exhibit 83.
24 A Okay.
25 Q Okay. Can you please identify those photographs?

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1 A This is the right side -- if you're facing the
2 front, it's on the right side of the house.
3 MS. ROBESON: So this is the garage side?
4 THE WITNESS: Yes.
5 MS. ROBESON: Okay.
6 THE WITNESS: And it shows, again, the, the roof
7 difference. It shows a window missing. It shows the window
8 on the upper right side on the front of the house, above the
9 garage. If you're standing at the garage, there's supposed
10 to be a window and a balcony with a door --
11 MS. ROBESON: Well, before you get into that --
12 THE WITNESS: Sorry.
13 MS. ROBESON: -- what I need you to do at this
14 point is authenticate them.
15 THE WITNESS: Okay.
16 MS. ROBESON: So just tell me if this fairly --
17 that you took the picture.
18 THE WITNESS: I took the picture.
19 MS. ROBESON: And just describe -- you've already
20 described what it is.
21 THE WITNESS: Okay.
22 MS. ROBESON: And let me get them admitted before
23 you start saying what you want to say about them. Okay?
24 THE WITNESS: Okay.
25 MS. ROBESON: So the next two pictures?

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1 THE WITNESS: (B) is the front of the house.
2 MS. ROBESON: And do they -- well --
3 THE WITNESS: They do.
4 MS. ROBESON: -- I don't want to steal your
5 thunder.
6 MS. ROSEN: That's okay.
7 THE WITNESS: They do.
8 BY MS. ROSEN:
9 Q Do they accurately depict what you saw at the time
10 you took the pictures?
11 A They do. (C) is a distant, little bit more
12 distant version of (a), but I, I took the pictures. (D) is
13 the picture I took in May. (E) is the same as (a). (F), I
14 think (f) and (b) are the same, but I took the picture.
15 MR. MOHAMMADI: It looks like they're the same.
16 The first four and the last four look to be the same, if I'm
17 not mistaken.
18 THE WITNESS: Yeah. I think, I think (g) and --
19 (g) and (c) are the same.
20 MS. ROBESON: Is this exhibit --
21 MS. ROSEN: It's 83 --
22 MS. ROBESON: Okay.
23 MS. ROSEN: -- (a) through (h), it looks like.
24 THE WITNESS: And then --
25 MR. MOHAMMADI: It looks to me like there's just

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1 the same thing produced twice. So I think that (a) and (e)
2 correspond, (b) and (f) correspond, (g) and (c) correspond,
3 and (d) and (h) correspond. So --
4 THE WITNESS: Yeah.
5 MR. MOHAMMADI: I think it's really just four
6 pictures, but --
7 MS. ROBESON: All right.
8 BY MS. ROSEN:
9 Q Okay. Do these photographs accurately depict what
10 you saw at the time that you took them?
11 A Yes.
12 Q Okay. And you took all these photographs?
13 A I did.
14 Q And all of the commentary and typewritten is all
15 by you?
16 A Right.
17 Q Okay.
18 MS. ROSEN: All right. I will just introduce
19 Exhibit 83 to be admitted.
20 MS. ROBESON: Any objection?
21 MR. MOHAMMADI: No objections.
22 MS. ROBESON: All right. They're admitted.
23 (Exhibits No. 83(a) through
24 82(h) were received in
25 evidence.)

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1 MS. ROSEN: All right. Now, Mr. Gibson is here.
2 So I'm just going to have her authenticate the last --
3 MS. ROBESON: Okay.
4 MS. ROSEN: -- pairing, and I guess we'll put
5 Mr. Gibson on.
6 BY MS. ROSEN:
7 Q All right. Could you please identify a document
8 marked as Exhibit 84?
9 A Yes. This is the, basically the right side of the
10 house with the window noted. It's not located in the places
11 per the plans, but there was a window kind of constructed.
12 Q Okay. And did you take these photographs --
13 A I did.
14 Q -- marked as this exhibit? And when did you take
15 them?
16 A In August --
17 Q Okay. And do they --
18 A -- 2013.
19 Q Do the photographs accurately depict what you saw
20 at the time that you took them?
21 A They did.
22 MS. ROSEN: Okay. I'll move to admit Exhibit 84
23 into evidence.
24 MS. ROBESON: Any objection?
25 THE WITNESS: Oh, it shows --

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1 MR. MOHAMMADI: No.
2 THE WITNESS: Sorry.
3 MS. ROBESON: Any objections?
4 MR. MOHAMMADI: No objection.
5 THE WITNESS: Okay.
6 MS. ROBESON: Okay. They're admitted.
7 (Exhibit No. 84 was received
8 in evidence.)
9 MS. ROSEN: Okay. Thank you. Okay. I think now
10 I'm going to go ahead and put Mr. Gibson on.
11 MS. ROBESON: Okay. That's fine.
12 MS. ROSEN: Okay. Just give me one second to get
13 my bearings.
14 MS. ROBESON: Do you want to take a five-minute
15 recess and come back at 11:30?
16 MS. ROSEN: That would be helpful, just so I can
17 get my --
18 MS. ROBESON: Really five minutes, though. Okay.
19 MS. ROSEN: No, I'm not going anywhere. I just
20 want to get documents, if that. Once they get out of
21 order --
22 (Whereupon, at 11:21 a.m., a brief recess was
23 taken.)
24 MS. ROBESON: Okay. We're back on the record.
25 MS. ROSEN: Okay.

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1 MS. ROBESON: Mr. Gibson, please raise your right
2 hand.
3 (Witness sworn.)
4 MS. ROBESON: All right. Go ahead.
5 DIRECT EXAMINATION
6 BY MS. ROSEN:
7 Q Okay. Can you please state your name and address
8 for the record?
9 A Peter Gibson, 8709 Hidden Hill Lane, Potomac,
10 Maryland 20854.
11 Q Okay. And are you a member of the Potowmack
12 Preserve Board of Directors?
13 A Yes.
14 Q Okay. And what is your position?
15 A Vice president.
16 Q And how long have you been on the board?
17 A Since 2007.
18 Q Okay. And how long have you been vice president?
19 A Oh --
20 Q Approximately.
21 A -- two years maybe, year and a half. I don't
22 recall exactly when I was elected, but --
23 Q Okay. And what is your occupation?
24 A I work for GE Capital. I'm in the business of
25 health care finance.

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1 Q Okay. And what is your general educational
2 background?
3 A I have a liberal arts education. I do not have
4 any graduate degrees.
5 Q Okay. And are you familiar with the construction
6 at 10600 Vantage Circle?
7 A Yes.
8 Q And how are you familiar with it?
9 A I'm familiar with it through, you know, my
10 involvement on the board and, you know, the various legal
11 actions and CCOC actions that have, that have been in place,
12 you know, since my involvement on the board. So I've been
13 intimately involved.
14 Q Okay. And have you also, have you ever visited
15 the property itself?
16 A Yes.
17 Q Okay. And were you on the board of directors when
18 it approved the construction application that included
19 constructing a new roof at this property?
20 A Yes.
21 Q Okay. And when was that construction application
22 approved? Do you recall?
23 A It was the, you know, it was the approval for the,
24 you know, for the overall construction. I think it was
25 summer 2011, May 2011.

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1 Q Okay. All right. I'm going to show you a
2 document which was marked in this case as Exhibit 77 and in
3 a previous case as Complainant's Exhibit 2, and if you
4 could --
5 A Uh-huh.
6 Q -- take a look at that document and identify it if
7 you recognize it.
8 A Yes, I do recognize it. This was the, the plans
9 that were used by the board to evaluate and ultimately
10 approve Mr. Ball's application.
11 Q Okay. All right. I'm going to show you a
12 document -- I'm going to show you a document marked as
13 Exhibit 74. If you could take a look at that document and
14 see if you recognize what that is.
15 A This appears to be the application that was
16 submitted for approval for the, for the construction project
17 that's currently underway.
18 Q Okay. Now I'm going to turn your attention to the
19 second page of that document. Can you identify what that
20 document is?
21 A This is the actual, you know, HOA application form
22 that is, that is required to be submitted with all
23 architectural committee applications.
24 Q Okay. So it would be fair to say that if somebody
25 wants to submit for an architectural change, they need --

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1 that's part of the application form that has to be
2 submitted?
3 A Yes.
4 Q Okay. Okay. Do you know Peter Ball?
5 A Yes.
6 Q Okay. And how do you know him?
7 A Through the interactions with the board. You
8 know, he had attended, you know, many board meetings over
9 the years, and I've met with him personally at his, at his
10 home several times to discuss, you know, the various, you
11 know, architectural issues and applications that, that he,
12 that he submitted. So I've known him for several years,
13 since 2011 actually.
14 Q Okay. And with regard to this particular, this
15 particular case, the portion of the application that deals
16 with the roof --
17 A Uh-huh.
18 Q -- how many times have you -- first of all, had
19 you ever met with Peter Ball at his property in connection
20 with this ongoing roof project?
21 A Yes.
22 Q Okay. Do you recall, when was that?
23 A It was in September of 2013. We met a couple
24 times. I met with him once by myself on the 10th and then
25 with Raj Barr and Lee Alford a few days later.

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1 Q Okay. And prior to that time, in connection,
2 let's say, for example, with other aspects of the
3 construction project, had you ever met with him at the
4 property also?
5 A Yes. I don't recall the exact dates, but you
6 know, the construction has been going on for, for quite some
7 time.
8 Q Okay. Approximately, if you know, about how many
9 times have you met with Peter Ball, whether by yourself or
10 with other board members, at his property concerning his
11 ongoing construction?
12 A The current construction or any previous
13 construction?
14 Q Well, start with the current construction.
15 A The current construction, two, maybe three times.
16 Q Okay. And if you were including previous
17 construction, approximately how many times?
18 A It'll be an additional three times, probably.
19 Q Okay. Now, with regard to the, these meetings in
20 general, if you can answer this question, what was the
21 purpose of having these on-site meetings? Why were these
22 meetings had?
23 A You know, it would depend on which meeting
24 specifically you were referring to, but there were -- on
25 several occasions, when I met with Peter by myself, it was a

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1 means of being a facilitator and trying to, you know, trying
2 to, to, you know, help move the process along and be, you
3 know, an intermediary, I guess, you know, between, you know,
4 between the board and the, and Peter, you know, not on a, as
5 an official capacity per se, but you know, there wasn't,
6 oftentimes, wasn't a lot of, you know, discussion, you know,
7 between the board and Peter. So I was trying to help, you
8 know, facilitate things and, you know, keep things moving
9 along.

10 Q Okay. Now, with regard to the -- I want to put
11 this focus on the September 2013 meeting --

12 A Uh-huh.

13 Q -- concerning the roof. You said, you indicated
14 that you met with Peter Ball by himself at one point in
15 September?

16 A Yes.

17 Q Okay. And who initiated that meeting?

18 A I think, I think Peter did. I think, you know, we
19 mutually -- I think it happened after there was a board
20 meeting where the project was discussed, and we decided
21 afterwards it would make sense to, you know, to have me come
22 by and, you know, take a look at the progress that he'd made
23 and talk about the construction that had been, you know,
24 ongoing to that point.

25 Q Okay. Were you requested to go to that meeting by

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1 the board, or was it something you just did on your own?

2 A No, it's something I did on my own.

3 Q Okay. So what happened at that, if you recall,
4 what discussions did you have with Peter Ball at that
5 meeting at his property, just between you and he?

6 A That meeting, which was, I believe, on the 10th,
7 you know, he made a fair amount of progress on the overall
8 construction, and at that point, there was some, there was
9 some debate at the board level and from neighbors as to
10 whether the construction at that point was in compliance
11 with the approved plans.

12 So I wanted to meet with him and, you know, take a
13 look at the progress that he made and, you know, talk about
14 sort of what was, you know, what was, what was approved and
15 what wasn't. And so, you know, we kind of walked around the
16 house, and he showed me, you know, what had been done, and
17 for the circumstances where the construction was not in
18 compliance with what was approved, he provided an
19 explanation for, you know, why that was the case, and we,
20 you know, we had discussions about sort of, you know, each,
21 each aspect of the construction, and that was, you know,
22 that was the basic purpose.

23 Q Let me ask you, do you have any background in
24 construction?

25 A No.

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1 Q Okay. So, for example, do you know how to read
2 construction plans?

3 A No.

4 Q Okay. Architectural drawings?

5 A No. I mean, I can, you know, I can look at them
6 and sort of, you know, figure out what they, what they say,
7 but I have no formal, no formal education, no formal
8 training. So, you know, I know enough just to be dangerous
9 but no, no real, you know, details or nuances.

10 Q Okay. Now, you referenced that there was a second
11 meeting out at the property in September. Who was present
12 at that meeting?

13 A Mr. Ball, myself, Raj Barr, and Lee Alford, who
14 was the, who's the chair of the architectural committee.

15 Q Okay. And can you tell, describe what was
16 discussed at that meeting?

17 A After the -- after I met with Peter myself, I, you
18 know, I wanted to, I thought it would be helpful to have,
19 you know, Raj and Lee, someone else from the board, you
20 know, come to, you know, as a, you know, secondary, you
21 know, source of review and to, you know, to see, you know,
22 the progress that he made, and at that point, at that
23 meeting the primary focus of the conversation was the roof
24 above the garage and the roof above the foyer.

25 It actually wasn't apparent to me at my, at my

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1 visit on the 10th, just because, you know, I'm unfamiliar
2 with, you know, construction details, but it didn't -- I
3 didn't, you know, see that as an issue, but when Raj and Lee
4 were at the meeting, it immediately was apparent to them,
5 you know, Raj, in particular, as an architect, that the
6 construction above the garage and the foyer was very much
7 out of scope with the approved plans, and that was the
8 primary focus of the conversation, you know.

9 I know Peter talked about, sort of explained the
10 construction in terms of, I don't remember the exact
11 details, but it had something to do with the pitch of the
12 roof, and his explanation for why it was built the way that
13 it was, was because it -- something to do with pitch. I
14 didn't quite follow, but you know, that was, that was his,
15 his explanation. And, you know, Raj and Lee and I -- you
16 know, Raj, primarily, you know, talked about how it was,
17 that part of the construction was, was definitely out of
18 scope and how it needed to be, to be brought back into
19 compliance with the approved plans, and that was the thrust
20 of the message and the, you know, the --

21 MR. MOHAMMADI: Objection as to what Mr. Raj Barr
22 said. I know hearsay is technically admissible, but --

23 MS. ROBESON: Well, we can admit hearsay if it's,
24 if it's relatively reliable. I'm going to let it in and
25 give it the weight it deserves.

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1 BY MS. ROSEN:
2 Q Okay. Was the owner of this property, Michael
3 Ball, ever present at any of those on-site meetings?
4 A No.
5 Q Okay. Had you ever met Michael Ball before?
6 A No.
7 Q Okay. Did you ever tell Peter Ball, at any point
8 in time, that you were authorized by the board to approve
9 any changes to the approved construction applications?
10 A No.
11 Q And did you ever express any opinions to him about
12 the construction on his property?
13 A Yes.
14 Q Okay. And what opinions did you express?
15 MR. MOHAMMADI: Objection.
16 MS. ROBESON: Basis?
17 MR. MOHAMMADI: He's not an expert.
18 MS. ROBESON: Well, he's telling his opinion as a
19 layperson. It's not --
20 MS. ROSEN: Yes, I'm going to, I'll withdraw the
21 question.
22 MS. ROBESON: All right.
23 MS. ROSEN: I'm going to withdraw it.
24 BY MS. ROSEN:
25 Q To the extent that you had communications with

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1 Peter Ball concerning the construction on his property, were
2 you acting on behalf of the board or were you just basically
3 acting yourself?
4 A I was, I was not an official spokesman for the
5 board. I was not acting on behalf of the board. I was
6 trying to facilitate things between Peter and the board; so
7 -- but, you know, I was never sort of granted authority by
8 the board to go and, you know, speak on their behalf. It
9 was more of a means of trying to, you know, trying to, you
10 know, keep the peace and keep things moving and, you know,
11 facilitate the, facilitate progress.
12 MS. ROSEN: Okay. Just got to give me a second.
13 I seem to have -- God knows where I put my documents.
14 MR. MOHAMMADI: The ones you just gave me?
15 MS. ROSEN: Yes. Am I losing my mind today? I
16 guess I am. Oh, here they are. I'm sorry. I just clipped
17 them into the rest of --
18 BY MS. ROSEN:
19 Q All right. Mr. Gibson, I'm going to show you a
20 document which will be marked as Exhibit --
21 MS. ROSEN: What exhibit are we up to now? I
22 think we're 109. Is that correct?
23 MR. MOHAMMADI: 109.
24 BY MS. ROSEN:
25 Q Okay. I'm going to show you a document which I'm

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1 going to mark as Exhibit 109.
2 (Exhibit No. 109 was marked
3 for identification.)
4 THE WITNESS: Uh-huh.
5 BY MS. ROSEN:
6 Q If you could take a look at that document and
7 identify it if you recognize it.
8 A This is an e-mail from myself to Peter Ball,
9 written on October 24th, about the -- do you want me to just
10 identify it or --
11 Q Yes. If you could just -- you sent an e-mail to
12 Peter Ball. Why was that e-mail sent to him? What was
13 the --
14 A Yeah, you know, this took place, you know, after,
15 you know, after the meeting on September, I think it was the
16 14th, with Raj and Lee, myself, and Peter. I believe there
17 was a letter sent from the board to Mr. Ball, you know,
18 encouraging him to bring the construction back --
19 MS. ROBESON: Well, wait. Before you testify on
20 it, so this is an e-mail you sent to Mr. Barr?
21 THE WITNESS: Mr. Ball.
22 MS. ROSEN: No, Mr. Ball.
23 MS. ROBESON: Ball.
24 MS. ROSEN: Peter Ball.
25 THE WITNESS: Peter Ball, yeah.

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1 MS. ROBESON: Okay. Do you have any objections --
2 MR. MOHAMMADI: No objections.
3 MS. ROBESON: -- before we get into this? Okay.
4 It's admitted then. It'll be 109, June 9th, or e-mail from
5 Gibson to Peter Ball, October 24th, 2013. Okay. Go ahead.
6 (Exhibit No. 109 was received
7 in evidence.)
8 THE WITNESS: So the purpose of the e-mail was to
9 give Mr. Ball my opinions and thoughts about the
10 construction above the garage and the foyer, and you know,
11 this was after the meeting with Lee and Raj and myself and
12 after a letter was sent to Peter, you know, regarding the
13 observed noncompliant construction. And so between that
14 point in September and the drafting of this e-mail, it
15 seemed, you know, from Mr. Ball's standpoint, he was trying
16 to figure out kind of what the next step should be, and it
17 was, you know, clear from the board's standpoint that the
18 next step should be to bring the construction back into
19 compliance.
20 So this was an e-mail along those lines, you know,
21 suggesting that he focus on the roof above the foyer and
22 above the garage as the primary, you know, points of focus
23 that need to be, that need to be corrected, because I was
24 telling him that, you know, in my opinion, you know, that
25 this was obviously a serious issue for the board and not

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1 something the board was going to, you know, change its
2 perspective on, so you know, he should move forward and make
3 those changes.
4 BY MS. ROSEN:
5 Q Okay. I'm going to show you a document which is
6 marked as Exhibit 110. If you can look at that and see if
7 you can identify that.
8 A This is an e-mail from Peter Ball to me on
9 September 16th.
10 MS. ROBESON: Any objection, Mr. Mohammadi?
11 MR. MOHAMMADI: I'm just trying to -- one second
12 here. I don't think so.
13 MS. ROBESON: All right. It will be admitted. Go
14 ahead, Mr. Gibson.
15 (Exhibit No. 110 was received
16 in evidence.)
17 THE WITNESS: And it's, it's an e-mail, you know,
18 from Mr. Ball, saying, requesting a meeting with me,
19 suggesting that he has some information that will sort of
20 clear up the matter. I said -- he says, I'm asking this to
21 be unofficial, I'm not asking for any promises or
22 concessions. I think this is just along the lines of our
23 prior communications and meetings.
24 BY MS. ROSEN:
25 Q Okay. I'm going to ask you to identify this

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1 e-mail, which will be marked as Exhibit 111.
2 (Exhibit No. 111 was marked
3 for identification.)
4 MS. ROBESON: Thank you.
5 THE WITNESS: It's an e-mail from me to Mr. Ball
6 on November 12th, 2013, and --
7 BY MS. ROSEN:
8 Q Okay. If you could just describe what that
9 e-mail --
10 A Yeah. He's --
11 MS. ROBESON: Well, first, do you have any
12 objections, Mr. Mohammadi?
13 MR. MOHAMMADI: Just one moment. That was 111?
14 MS. ROSEN: Yes.
15 THE WITNESS: Yeah.
16 MS. ROSEN: Yes.
17 THE WITNESS: It's a, it's a --
18 MR. MOHAMMADI: No objections.
19 MS. ROBESON: Okay. So that'll be an e-mail from
20 Gibson to Ball dated 11/12/13. Go ahead, Mr. Gibson.
21 (Exhibit No. 111 was received
22 in evidence.)
23 THE WITNESS: It's a response to an e-mail from
24 Mr. Ball, asking to meet with me or to talk with me, and I'm
25 saying I'd be happy to talk with you but I don't want to

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1 give you any specific guidance since I'm not an architect.
2 Obviously, the nature of the request was the construction.
3 BY MS. ROSEN:
4 Q Okay. So, basically, is it fair to say you were
5 trying to, you know, use e-mail and other times making clear
6 to Mr. Ball that, you know, you were not going to be
7 advising him on how to do any construction or anything of
8 that nature?
9 A Right.
10 MS. ROBESON: Well, Ms. Rosen, it is direct. So I
11 got it.
12 MS. ROSEN: Okay.
13 BY MS. ROSEN:
14 Q Okay. I'm going to ask you to identify a document
15 which I've marked as 112.
16 MS. ROBESON: Thank you.
17 BY MS. ROSEN:
18 Q Can you identify that document?
19 A It's an e-mail from me to Peter Ball dated
20 September 11th, 2013.
21 Q Okay.
22 MS. ROBESON: Okay. Mr. Mohammadi, any
23 objections?
24 MR. MOHAMMADI: No objection.
25 MS. ROBESON: Before you start, did you put the

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1 pink underlining on this or --
2 MS. ROSEN: I did. I was going to direct his
3 attention to the highlighting.
4 MS. ROBESON: Okay. All right.
5 (Exhibit No. 112 was received
6 in evidence.)
7 BY MS. ROSEN:
8 Q Mr. Gibson, I'm going to just direct your
9 attention to the underlining in pink. Okay. Do you see
10 where it starts --
11 A Yeah.
12 Q -- but that it would be much harder to correct
13 after the issuing roof were installed. Can you tell the
14 Hearing Examiner why you let Peter Ball know that?
15 A Yeah. This is -- you know, during, during the
16 construction, you know, process, several, you know, people
17 in the community, you know, brought it to the board's
18 attention that the addition above the garage and the foyer
19 was, was way larger than approved and looked to be, to be
20 out of scope, and so I wanted to go and take a look at it
21 and, you know, talk to him about this, about this concern.
22 Q Okay.
23 (Exhibit No. 113 was marked
24 for identification.)
25 BY MS. ROSEN:

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1 Q I'd ask you to identify a document that's just
2 been marked as 113.
3 MS. ROBESON: 113, yes. Thank you.
4 MS. ROSEN: You're welcome.
5 THE WITNESS: This is an e-mail from me to Peter
6 Ball dated December 20th, indicating that I had received a
7 letter and some architectural plans that he dropped off at
8 my house and suggesting to him that he provide some more
9 detail and a list of items that explains and describes the
10 differences between the originally approved plans and the
11 plans that were, that he dropped off at my house, because
12 they were different.
13 MS. ROBESON: Okay. So this would be e-mail from
14 Gibson to Peter Ball dated 12/20/2013.
15 (Exhibit No. 113 was received
16 in evidence.)
17 THE WITNESS: Yes.
18 BY MS. ROSEN:
19 Q Okay. All right. I'm going to go to the plans.
20 You're referring to plans that were dropped off at your
21 house. What exactly was dropped off at your house and when
22 was it dropped off?
23 A It was a set of rolled-up plans and a letter, and
24 it was dropped off at some point in mid-December 2013.
25 Q Did you ask to have these things dropped off?

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1 A No.
2 Q Okay. And how did you receive them?
3 A They were, if I recall, they were on my front
4 doorstep when I got home.
5 Q Okay. Do you know who delivered them to your
6 front doorstep?
7 A I assume Peter Ball did.
8 Q Okay. Did it indicate that it was he who
9 delivered them?
10 A No.
11 Q Okay. And now was there an architectural
12 application form with that, with those documents that were
13 dropped at your doorstep?
14 A No.
15 Q Okay. Did you consider that to be an
16 architectural application, what was dropped at your door?
17 A No.
18 Q Okay. And what did you do with those documents
19 that were dropped at your door?
20 A I eventually gave them to Raj Barr.
21 Q Okay.
22 MS. ROSEN: Court's indulgence for one second.
23 BY MS. ROSEN:
24 Q Okay. Now, you had referred to a letter that was
25 sent by Raj to the Balls on September 15th concerning the

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1 roof, is that correct?
2 A Yes, I did.
3 Q And is that a letter that Raj was authorized to
4 send on behalf of the board?
5 A Yes. I mean, that's part of -- he's authorized to
6 correspond on behalf of the board.
7 MR. MOHAMMADI: I'm sorry. What was the date? I
8 didn't hear that.
9 MS. ROSEN: September, around September, I think
10 it was September 15th of 2013, the letter. It's already
11 been introduced in, but I couldn't get my hand on it. Okay.
12 MS. ROBESON: Was it the 15th?
13 MS. ROSEN: I could be wrong. I'm just kind of --
14 MR. MOHAMMADI: I don't know which letter. Are
15 you talking about Exhibit 79?
16 MS. ROBESON: Do you have --
17 MS. ROSEN: Yes, it's Exhibit -- I'll just show
18 him Exhibit 79. I wasn't able to get my hand on it before.
19 So --
20 MS. ROBESON: That'll be helpful.
21 BY MS. ROSEN:
22 Q Okay. I'm going to ask you to identify a document
23 which has been marked as Exhibit 79. If you could take a
24 look at that document and tell us if you recognize it.
25 A I do.

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1 Q Okay. And what is that document?
2 A It's a letter from, from Raj to Peter Ball. It's
3 a follow-up from the meeting that we had with him on the, on
4 the 14th, stating that the construction is out of compliance
5 with the approved plans and, in essence, you know, asking
6 him, telling him that, you know, he needs to bring the
7 construction back into compliance.
8 Q Okay. Does the contents of that letter accurately
9 depict the concerns that were brought up at the meetings you
10 had with Peter Ball with regard to the roof height and other
11 issues?
12 A Yes.
13 Q Okay.
14 MS. ROBESON: Did the board see that letter before
15 it was sent? You're on the board, right?
16 THE WITNESS: I'm on the board, yes. I don't
17 recall whether the board saw a draft of it before it was,
18 before it was sent or not.
19 MS. ROBESON: Well, how did you know then -- well,
20 I'll leave it for --
21 BY MS. ROSEN:
22 Q Were you aware, as a board member, that Raj Barr
23 was going to send a letter to Peter Ball concerning the
24 roof?
25 A Yes.

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1 Q Okay. And, to the best of your knowledge, were
2 the other board members aware of the circumstances, aware
3 that -- were the other board members, to the best of your
4 knowledge, aware that a letter was going to go out to Peter
5 Ball concerning the issues about the roof?
6 MR. MOHAMMADI: Objection. It's leading.
7 MS. ROBESON: Sustained. But, to your knowledge,
8 the board members didn't see that letter?
9 THE WITNESS: Before it went out?
10 MS. ROBESON: Yes.
11 THE WITNESS: I don't think so. I don't recall
12 whether there was a draft sent around with the board, but --
13 MS. ROBESON: Did you ever take a vote on it as a
14 board?
15 THE WITNESS: I don't think so.
16 BY MS. ROSEN:
17 Q Do you know whether there was discussion among the
18 board, in general, about the roof around that time period?
19 A Yes.
20 Q Okay. And how do you know that?
21 A Well, I just recall -- as a board member, I
22 remember there was a lot of discussion about it.
23 MS. ROBESON: Well, when you say discussion, was
24 this discussion at meetings or was this e-mails and things
25 like that?

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1 THE WITNESS: Both.
2 MS. ROBESON: Okay.
3 THE WITNESS: Can I elaborate on something?
4 MS. ROBESON: It's up to your attorney.
5 BY MS. ROSEN:
6 Q What is it?
7 MR. MOHAMMADI: Your Honor --
8 MS. ROBESON: Okay. Wait. You can't do that.
9 THE WITNESS: You can't do that.
10 MS. ROSEN: Okay. I don't know.
11 MS. ROBESON: Okay. Yes, you may. Go ahead.
12 THE WITNESS: You know, after the, after the
13 meeting with Lee and Raj and myself and Mr. Ball, you know,
14 Lee and Raj and I, you know, got together, and you know, he
15 said, you know, we need to send a letter to, you know, to
16 Mr. Ball, and so that's how I knew that the letter was going
17 to be sent. I don't know whether there was additional --
18 MS. ROBESON: I understand.
19 THE WITNESS: -- you know --
20 MS. ROBESON: I understand.
21 THE WITNESS: -- correspondence between the rest
22 of the board, but the three of us spoke and said, you know,
23 we need to get a letter to him soon, ASAP, because, you
24 know, it's out of compliance and et cetera, et cetera.
25 BY MS. ROSEN:

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1 Q Okay. And if you can tell, why was there concern
2 about -- why was the board concerned about Mr. Ball
3 continuing to construct a roof that was --
4 MR. MOHAMMADI: Objection, Your Honor. Leading.
5 MS. ROBESON: You have -- okay. It is an
6 administrative hearing. Can you ask it another way?
7 MS. ROSEN: Okay. Let me think.
8 BY MS. ROSEN:
9 Q Did the board have any concerns about the ongoing
10 construction of the roof in September of 2015?
11 A Yes.
12 Q Okay. And what were those concerns?
13 A There had been, there had been multiple complaints
14 from neighbors and community members about -- you know, once
15 the trusses and the roof went up, you know, there were
16 complaints from the neighbors and community members about
17 that which is what precipitated the, you know, the meeting
18 at the house and then, you know, the, you know, determining
19 that it was out of, out of compliance with the, with the
20 approved plans which then prompted the, you know, the letter
21 to be sent.
22 Q Okay. As a practical matter, would it be, would
23 it have been more difficult -- well, no. As a practical
24 matter, would it have made more sense to allow construction
25 that the board was concerned about to continue rather than

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1 warn Mr. Ball?
2 MS. ROBESON: Okay. Okay. All right. Why did
3 you send the letter -- it is hard -- why did you send the
4 letter without waiting for a board meeting?
5 THE WITNESS: Because the --
6 MS. ROBESON: Is that okay, Mr. Mohammadi?
7 MR. MOHAMMADI: I'm fine with it.
8 THE WITNESS: Because --
9 MS. ROBESON: It's not yes or no.
10 MR. MOHAMMADI: I understand.
11 THE WITNESS: Do I answer it?
12 MS. ROBESON: Yes.
13 THE WITNESS: Because the construction above the,
14 above the garage and above the foyer had begun and we didn't
15 want Mr. Ball to continue and finish the work because it
16 would be more expensive and more of a pain to have to remove
17 it or change it later than at that particular point in time,
18 when it wasn't complete.
19 MS. ROBESON: How often does your board meet?
20 THE WITNESS: It kind of depends on what's, on
21 what's going on. You know, we --
22 MS. ROBESON: So you don't have a regular meeting
23 schedule?
24 THE WITNESS: Well, I mean, we meet, you know, on
25 a minimum, sort of quarterly basis, but you know, there'll

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1 be additional meetings if something else is happening or if,
2 you know, there's other issues going on, but there, you
3 know, there's not a sort of set we meet on a certain day of
4 every month, you know. There isn't a, you know, a specific,
5 no rhythm like that.
6 BY MS. ROSEN:
7 Q And with regard to the construction of the roof,
8 what did Mr. Ball do or not do concerning the roof
9 subsequent to September 15th of 2013?
10 A As far as I know, you know, construction to that
11 point, it had stopped and there was no, there has been, I
12 don't believe, any additional work on the roof since then.
13 Q If you recall, do you know if there came a time
14 around March of 2014 that construction continued on the
15 roof?
16 A I have not been over there recently; so I can't, I
17 can't speak to that.
18 Q Okay. Now, with regard to other construction, not
19 the roof, but the other construction that was being done by
20 Peter Ball, was Peter Ball told to stop any other
21 construction, or warned?
22 A No. He was never told to stop anything --
23 Q Okay.
24 A -- per se. He was just told to bring the
25 construction into compliance.

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1 Q Okay.
2 MS. ROSEN: Okay. I don't think I have any
3 further questions.
4 MS. ROBESON: All right. Cross-examination.
5 MR. MOHAMMADI: Thank you.
6 CROSS-EXAMINATION
7 BY MR. MOHAMMADI:
8 Q Good morning, Mr. Gibson. You stated you were on
9 the board when the application from the Balls was approved,
10 is that correct?
11 A Yes.
12 Q And that was on May 10, 2011, right?
13 A I believe so, yes.
14 Q Okay. In what capacity did you serve at that
15 time?
16 A I was an, I believe I was an at-large board member
17 at that point. I was not the vice president at that point.
18 Q No specific title, like secretary, vice president,
19 treasurer --
20 A Right.
21 Q -- nothing like that --
22 A Correct.
23 Q -- just board member? Okay. And a vote was taken
24 on that?
25 A Yes.

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1 Q Prior to that application being approved in 2011,
2 do you know when the actual application was submitted?
3 A I think it was originally submitted in 2008.
4 Q Okay. And were you a board member at that time?
5 A Yes.
6 Q Okay. And just a board member at large again?
7 A Yes.
8 Q Okay. Do you recall the process that the board
9 went through in approving and not approving the application
10 in 2008 and then subsequent revisions to that application?
11 A Generally, yes.
12 Q Generally? What do you mean generally?
13 A Well, I mean, I recall what the -- you know, the
14 application was originally submitted. There were, there was
15 the request for additional information, I believe, request
16 for some materials to be provided. It was an iterative
17 process that -- it wasn't a, you know, complete application
18 at one point. It was, it was sort of completed over time,
19 as I recall.
20 Q Okay. Do you recall if, that the application was
21 actually rejected at one point?
22 A I don't recall, actually.
23 Q Okay. If an application is rejected, isn't it
24 true that the next process is to submit a new application if
25 you --

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1 A Yes.
2 Q And pursuant to your own testimony, if a new
3 application needs to be submitted, it needs to have all the,
4 you know, forms and everything else attached to it again?
5 A A new application, yes, should have all the, all
6 the requisite documentation.
7 Q And, to your knowledge, the only time that that
8 initial form that you showed -- I think it was
9 January/February 2008 -- that form was submitted with
10 the first application; is that fair to say?
11 A I believe so.
12 Q And no further applications, including that form,
13 were submitted to you?
14 A To me or to the board?
15 Q Or to the board. When I said you, I meant the
16 board. Excuse me.
17 A As far as complete applications?
18 Q Correct.
19 A Yeah, I think that's right.
20 Q Okay. And if an application is submitted and
21 approved and subsequent changes are going to be made to the
22 application, is it your testimony that those changes need to
23 be submitted in the same way as if a new application was
24 being submitted?
25 A I'm not sure, actually. If there are --

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1 MS. ROSEN: Well, if he's not sure, he's not sure.
2 MS. ROBESON: Just --
3 THE WITNESS: Yeah.
4 MS. ROBESON: No. Let him answer.
5 BY MR. MOHAMMADI:
6 Q Okay. You're not sure?
7 A Right.
8 Q Okay. And what would you need to look at to be
9 sure?
10 A Can you clarify? What do you mean what would I
11 need to --
12 Q Well, is there a guideline or procedures in place
13 that you could look at so you can see what the actual
14 process would be, or not?
15 A There are guidelines in place for a new
16 architectural submission.
17 Q Okay. Now, I'll go back to my question. My
18 question was, if an existing project is already approved and
19 changes want to be made to that project, are you aware of
20 what the procedures would be to make that requested change?
21 A There would be a, something submitted in writing
22 that identified what changes were being, you know, what
23 specific changes were being requested, and if there were
24 changes in materials, there'd need to be materials
25 submitted, you know, a thorough explanation of what the,

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1 what the changes were.
2 Q And your testimony right now about the process,
3 what is that based off of? Is it your experience or is
4 it --
5 A My experience.
6 Q Okay. And you're a board member, right, like we
7 just --
8 A I am.
9 Q -- like we discussed?
10 A Yes.
11 Q Does this come from something the board has
12 decided to implement?
13 A I think it's just general practice. I don't think
14 there's -- to my knowledge, there isn't a specific, you
15 know, written protocol for subsequent changes to an
16 application.
17 MR. MOHAMMADI: Your Honor, I don't recall. You
18 asked for this previously in an e-mail, the procedures
19 related to architectural control committee. I don't know --
20 MS. ROBESON: And you provided them.
21 MR. MOHAMMADI: I provided them via e-mail. I
22 don't know if they have -- I don't know what exhibit number
23 that is, is, I guess, what I'm trying to say. I think, 69
24 and 70 maybe.
25 MS. ROBESON: I think it's 70.

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1 MR. MOHAMMADI: 70? Okay.
2 BY MR. MOHAMMADI:
3 Q All right. I am showing you what's been
4 previously marked as Exhibit No. 70. Do those look like the
5 architectural committee procedures on the first two pages?
6 A It looks like it.
7 Q Okay. And if you'll turn to the last page, the
8 third page, those are the architectural committee
9 guidelines, right?
10 A Yes.
11 Q Do those appear to be the procedures and
12 guidelines in place at least up until the end of 2013?
13 A Yes.
14 Q Okay. And nothing in those procedures talks about
15 what needs to be done if you want to make changes, right, in
16 terms of the way the application should be submitted?
17 A I would have to read this to answer that.
18 Q Okay.
19 A Shall I do that?
20 Q Well, let me -- I don't want to take too much
21 time. I guess, to the best of your knowledge, you're not
22 aware of any procedures in place that state exactly how
23 changes are to be requested, are you?
24 A I'm not personally aware, no.
25 Q Okay. I think you walked in kind of late after

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1 Ms. Gowan's testimony, but I think Ms. Gowan testified that
2 the only change that was approved after the initial 2011
3 approval of Mr. Ball's property was something to do with
4 brick. Do you recall that?
5 A No.
6 Q Okay. So you're not aware of the board ever
7 approving a type of brick that was to be used that was a
8 change from the original application?
9 A I don't recall.
10 Q Okay. Would that approval have come from the
11 board, or how would that have happened?
12 MS. ROSEN: Well, I'm going to object. It's
13 speculative. He just says he doesn't recall. So --
14 MS. ROBESON: Well, he can answer.
15 THE WITNESS: I mean, it probably would have come
16 from the architectural committee --
17 BY MR. MOHAMMADI:
18 Q Okay.
19 A -- or if the, you know, pursuant to the, you know,
20 to the, to the procedures, if, you know, there were, there
21 were concerns, then it would be kicked up to the board.
22 Q Okay. Now, just to clarify, when that -- and I
23 know you don't know whether there was, the brick was ever
24 approved or not -- but had the brick been actually approved,
25 you're not aware of any other applications that were filed,

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1 right, the form that you were talking about? Correct?
2 A Correct.
3 Q Okay. So even if the brick was approved, that
4 brick didn't include an application; that brick change
5 didn't include an application, right? You haven't seen
6 any --
7 MS. ROBESON: To your knowledge.
8 THE WITNESS: Yeah, to my knowledge, no. I mean,
9 again, I don't recall the change in brick; so I don't, I
10 don't recall the, you know, the documents that were, that
11 accompanied it.
12 BY MR. MOHAMMADI:
13 Q Mr. Gibson, you are aware of a previous CCOC case
14 filed against the Balls?
15 A Yes.
16 Q And I think that's 73-12.
17 A I'll take your word for it.
18 Q Okay. And that issue was a deck, right?
19 A Yes.
20 Q Okay. Now, there was an order in that decision?
21 A There was.
22 Q And the order required a new application to be
23 submitted in line with what is being built, is that correct?
24 MS. ROSEN: Well, I'm going to object. The
25 order --

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1 MS. ROBESON: If you --
2 MS. ROSEN: -- speaks for itself.
3 MS. ROBESON: If you know. Actually, I'm going to
4 sustain that objection. You can ask him -- because it does
5 speak, the order does speak for itself --
6 MR. MOHAMMADI: Okay.
7 MS. ROBESON: -- unless you have other, some other
8 relevance of asking him what we already know.
9 BY MR. MOHAMMADI:
10 Q Well, do you know if a new application was
11 submitted afterwards? After the hearing, did the Balls
12 submit a new application pertaining to the deck?
13 A After the CCOC hearing?
14 Q Correct. After the CCOC decision, I should say.
15 A Decision. I don't know if there was a new
16 application submitted or not.
17 Q Okay. If one was submitted, as a board member,
18 you would know about that?
19 A Yeah.
20 Q Okay. And did the order specify a deadline to
21 submit a new application?
22 MS. ROSEN: Objection. I mean, this isn't
23 relevant. This is another case.
24 MS. ROBESON: Well, I'm going to let him answer
25 because I think that -- can you just --

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1 MR. MOHAMMADI: It goes to two things. It goes
2 to --
3 MS. ROBESON: Yes, I'm --
4 MR. MOHAMMADI: -- credibility, and it also goes
5 to their own procedures with respect to the application.
6 MS. ROBESON: That's what I'm getting. So I am
7 going to let him answer.
8 MS. ROSEN: Well, I think they have to -- they
9 would have to do what the order says that they have to do.
10 MS. ROBESON: Yes, but the question is, is he
11 aware. That's the question. Correct, Mr. Mohammadi?
12 MR. MOHAMMADI: Correct.
13 MS. ROBESON: Okay.
14 BY MR. MOHAMMADI:
15 Q Are you aware whether they submitted a new
16 application after the CCOC decision?
17 A I'm not sure.
18 Q Okay. Not sure. Are you aware --
19 A I'm assuming they did because it was ordered by
20 the CCOC. So --
21 MS. ROBESON: Okay. But you don't have personal
22 knowledge?
23 THE WITNESS: I don't, I don't recall, no.
24 MS. ROBESON: Okay.
25 BY MR. MOHAMMADI:

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1 Q And pursuant to -- again, whether you, if you know
2 or not -- did the board ever meet to approve any
3 applications after April 2014?
4 MS. ROBESON: 2014?
5 MR. MOHAMMADI: Yes.
6 MS. ROBESON: Okay. Go ahead.
7 THE WITNESS: After --
8 BY MR. MOHAMMADI:
9 Q So in the last three months, did the board ever
10 meet to approve any of the applications submitted by the
11 Balls?
12 A The board met to discuss, and the CCOC ruling was
13 discussed at a board meeting. I know that.
14 Q Okay. Do you recall whether votes were taken?
15 A I don't recall.
16 Q Are you aware that the board did approve the new
17 application submitted by the Balls with respect to the deck?
18 A For the deck, yeah.
19 Q Okay. So you're aware that the application was
20 approved, but you don't know how that happened; is that fair
21 to say?
22 A I don't recall the specifics, which board meeting,
23 you know, it occurred at, what the vote was, but I know that
24 the, the deck issue is, is behind us at this point.
25 Q Okay. And just one more question with respect to

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1 the deck issue, and I know it's behind you guys, you don't
2 know whether, well, since you have not seen any new forms or
3 applications -- no form was provided with that application,
4 correct?
5 A I don't, I don't know. I can't --
6 Q Okay. All right.
7 A -- I don't know.
8 Q With respect to -- and let me just find the
9 exhibit; it makes it a little easier. I think you testified
10 that at some point in December there was some plans that
11 were left at your door and you assume it was from Peter
12 Ball?
13 A Yes.
14 Q Showing you what's been marked as Exhibit No. 19,
15 I mean, excuse me, 90, is that, is that the letter that was,
16 that was left at your front door?
17 A Yes.
18 Q Okay. And if you can flip to the next two pages,
19 do those appear to be the plans that were submitted?
20 A I don't recall.
21 Q Okay. Were they on an eight by 11-and-a-half
22 piece of paper like this --
23 A No.
24 Q -- or were they bigger?
25 A They were big. They were rolled up. Like, like

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1 that size.
2 MS. ROBESON: When you say that, you're referring
3 to?
4 BY MR. MOHAMMADI:
5 Q A large-scale drawing, right?
6 A Yeah. Right. Right, something about that size.
7 Q Okay.
8 MS. ROBESON: So it's a 36 by -- I can't remember
9 the dimensions.
10 MR. MOHAMMADI: 36 by 24.
11 MS. ROBESON: Okay.
12 UNIDENTIFIED SPEAKER: Or 30 by 24.
13 MS. ROBESON: All right. Thank you.
14 BY MR. MOHAMMADI:
15 Q Okay. Just, then, going back to the first
16 application that was approved, the May 2011 --
17 A Uh-huh.
18 Q -- approval --
19 A Right.
20 Q -- did you see any plans submitted with that?
21 A With the application?
22 Q With the application or subsequently.
23 A Well, there were, there were plans submitted in
24 conjunction with the application, yes.
25 Q Okay. And then isn't it true that subsequently,

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1 additional plans were provided upon the board's request?
2 UNIDENTIFIED SPEAKER: No.
3 THE WITNESS: No. I don't know whether additional
4 plans were. I know there may have been some additional
5 information requested, but I don't know whether there were
6 additional plans requested.
7 BY MR. MOHAMMADI:
8 Q Well, I guess, let me ask it differently then.
9 Isn't it true that changes were requested; so changes were
10 made to plans and new plans were submitted?
11 A I don't know whether that was the case.
12 Q Okay. And you said that eventually the plan was
13 approved?
14 A Yes.
15 Q Right. The plans that were approved, were they on
16 an eight by 11 piece of paper or were they something bigger?
17 A Eight by 11.
18 Q Okay. So that's the only thing that you saw?
19 A Yes.
20 Q Okay. Are you aware of, that actual larger plans
21 were submitted?
22 A I don't know whether they were since, you know,
23 the original application was earlier. You know, the plans
24 that the board had for that, for that meeting and that vote
25 were e-mailed. So they were, you know, they were smaller.

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1 Q All right. So, again, I'm going to direct your
2 attention to Exhibit No. 77. This is, this is what we're
3 talking about, the May --
4 A Right.
5 MS. ROBESON: 2011.
6 THE WITNESS: Right. Yeah.
7 BY MR. MOHAMMADI:
8 Q -- the May '11 approval. And these are the plans
9 that we're talking about, right?
10 A Yes.
11 Q These were the one that's were actually approved?
12 A Yes. These were the ones that were, that were
13 submitted, were provided to the board, you know, before the,
14 for the board meeting.
15 Q Do you know whether every single plan that was
16 submitted was approved or just these?
17 A I don't know what other plans were submitted; so I
18 can only speak to these.
19 Q Okay. So you don't know whether more plans were
20 submitted alongside these or not? You don't know?
21 A I don't know.
22 Q Okay.
23 MR. MOHAMMADI: Sorry, I just want to make sure I
24 stay organized.
25 BY MR. MOHAMMADI:

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1 Q Now, I think you testified that you had at least
2 two site visits; is that fair to say?
3 A In September?
4 Q In September of this --
5 A Yes.
6 Q -- of last year, excuse me.
7 A Right. Yes.
8 Q You had been to the property before, but the two
9 recent ones were in September?
10 A Yes.
11 Q Right. And the first one was on September 10th,
12 2013?
13 A I believe so, yeah.
14 Q And you're saying you went there in an unofficial
15 capacity, right?
16 A I mean, I'm a, I'm a board member, but I didn't go
17 there instructed by the board to go and negotiate or --
18 so --
19 Q I think what you testified is the purpose that you
20 went there is to see what was sort of the issues that
21 neighbors were complaining about --
22 A Right.
23 Q -- and you wanted to see if you could facilitate
24 some kind of, you know, way to fix basically everything --
25 A Sure.

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1 Q -- resolution --
2 A Yeah.
3 Q -- is that fair? Okay. Did you inform Mr. Ball
4 that you were doing this, that this is the -- that was your
5 purpose of coming to the property?
6 A Probably.
7 Q Okay.
8 A I think it was understood, you know, why.
9 Q Well, let me ask you --
10 A No. Actually, yes, yes, I did, because I think
11 there was an e-mail that was entered earlier that, that
12 stated that I had learned -- that the board learned, had
13 learned from neighbors and folks in the community that the
14 construction was out of compliance, and so I wanted to meet
15 with him to discuss that and look at the, and look at the
16 construction. So --
17 Q Okay.
18 A -- yes, he knew what the, what the purpose was.
19 Q And did he know, did he also -- well, strike that.
20 Did you tell him that you were there in an
21 unofficial capacity?
22 A I don't know whether I discussed my capacity at
23 all. I just -- we talked about why I was coming to --
24 Q Right.
25 A -- to meet with him.

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1 Q Well, I'm just trying to understand. I mean,
2 Mr. Ball knows you're a board member, right?
3 A He does.
4 Q And so would he have known, based on something you
5 did, that you were not here on behalf of the board but sort
6 of personally?
7 MS. ROSEN: Objection. It's speculative as to
8 what Mr. Ball would have known. To know what Mr. Ball would
9 have known, you have to ask Mr. Ball. I mean --
10 MR. MOHAMMADI: I'll ask it a little differently.
11 MS. ROBESON: Well, you already asked if he told
12 him, and he said no. You've already asked Mr. Gibson
13 whether he informed Mr. Ball that it was an unofficial
14 capacity, correct? And you said no, correct?
15 THE WITNESS: Right.
16 MR. MOHAMMADI: Okay. I'll move on.
17 BY MR. MOHAMMADI:
18 Q Now, you sent an e-mail after that, the following
19 day, I believe -- let me just try to find it for you --
20 Exhibit No. 112. You sent this e-mail the following day,
21 right? Did I get the date right, September 11th, 2013?
22 A Yes.
23 Q So that was the day after your unofficial visit?
24 A Yes.
25 Q Okay.

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1 A Yes.
2 Q Now, in your testimony you stated that when you
3 visited the house on September 10th, 2013, you didn't really
4 notice any issues with the roof, right?
5 A Right.
6 Q Okay. But then on September 11th, when you sent
7 this e-mail the following day, you note that there's issues
8 with the roof?
9 A Yes.
10 Q Okay. So how did that come about?
11 A I talked to Raj after my visit and told him that,
12 you know, I went over and looked at the house, and he said,
13 did you notice anything with the roof, and I said, no. And,
14 you know, Raj said that there, that it was out of scope, out
15 of compliance, and that there were issues with it.
16 Q Okay. And so that's not on personal knowledge;
17 that's just based off of something somebody else told you --
18 A Right.
19 Q -- specifically, the president of the board?
20 A Yes --
21 Q Okay.
22 A -- based on feedback from other people.
23 Q And who are these other people?
24 A Complaints from neighbors.
25 MS. ROBESON: Which neighbors?

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1 MR. MOHAMMADI: Yes. Thank you.
2 THE WITNESS: Randi Joiner. I believe there was
3 an e-mail from her that expressed her concerns, and then
4 anecdotally other, you know, other neighbors had complained.
5 I don't --
6 MS. ROBESON: That's anecdotal. How about
7 Ms. Gowan?
8 THE WITNESS: I'm sure that was, that was the
9 case, but I was referring more to non-board members.
10 BY MR. MOHAMMADI:
11 Q Ms. Gowan is a neighbor, right, as well?
12 A Yes. Yeah.
13 Q Okay. So she complained about it as well; is that
14 fair to say?
15 A Yes.
16 Q Okay. All right. Going back to Randi Joiner,
17 Ms. Joiner, it's my understanding she's an attorney?
18 A Yes.
19 Q Okay. She's not an architect or engineer or
20 anything to do with construction, right?
21 A No.
22 Q Okay. And what was her complaint, specifically?
23 A That the, you know, the roof -- that the house
24 looked enormous and that the, that trusses had been placed
25 on top of the existing roof and that that seemed unorthodox

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1 and that it just seemed, the construction seemed, seemed
2 huge and --
3 Q Placing trusses on a roof is not a per se
4 violation, is that correct, of any of the rules or
5 procedures or guidelines?
6 A No.
7 Q A house looking enormous is not a violation of any
8 rules, procedures, guidelines; is that fair to say?
9 A No.
10 Q Okay. So none of the things Ms. Joiner said, her
11 concerns, are actually, technically violations; is that fair
12 to say? It's just a complaint.
13 A Right, an observation, yes.
14 Q All right. And based on that complaint from one
15 neighbor and, I guess, Ms. Gowan maybe as well, the board
16 decided to act and come do some local site visits -- well,
17 one official site visit, one unofficial, send letters,
18 et cetera?
19 A The complaint from Randi and from other neighbors
20 came to the board, and the, the notifying Mr. Ball about
21 the, about the concerns about the construction were not
22 based purely on Ms. Joiner's feedback, but Raj, as an
23 architect and as a recipient of this information, then, you
24 know, came to the conclusion, based on his, I'm assuming,
25 his knowledge of architecture and the approved plans, that

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1 it was out of scope. So it wasn't based on Ms. Joiner's
2 feedback.
3 Q Okay. It wasn't just Ms. Joiner?
4 A Exclusively, right.
5 Q Well, let me ask you this: Besides Mr. Barr, what
6 other architects have looked at the property from the -- on
7 the board's behalf, have looked at the property?
8 A None.
9 Q Okay. So the only person that the board ever sent
10 over to see whether there's any violations of the property
11 was Mr. Barr?
12 A As far as architects are concerned, yeah.
13 Q Okay. Well --
14 A Yes.
15 Q Okay.
16 MS. ROBESON: Did the board send him over? Did
17 they specifically take a vote?
18 THE WITNESS: I don't, I don't know. I don't
19 think so.
20 BY MR. MOHAMMADI:
21 Q Well, let me, okay, so let me elaborate on that.
22 The only time that you're aware of Mr. Barr going over
23 there, after the roof complaints started, was on September
24 15, 2013, where you were present and Lee Alford and Mr. --
25 A Correct.

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1 Q -- Peter Ball were present, right? And then a
2 follow-up -- I'm sorry, September 14th, excuse me, right?
3 A Yes, whatever the date, whatever the date was,
4 yes.
5 Q And the following day a letter was sent, which we
6 also, which we also discussed, right?
7 A Right.
8 Q Okay.
9 MR. MOHAMMADI: One moment, Your Honor.
10 BY MR. MOHAMMADI:
11 Q As a board member, the HOA -- after each meeting,
12 minutes are prepared, is that correct?
13 A Correct.
14 Q And then the following board meeting, the previous
15 meetings are voted on and approved or changes are made?
16 A Right.
17 Q Okay. So I'm showing you what's been previously
18 marked and admitted as Exhibit No. 92.
19 A Okay.
20 Q Is this a compilation of meeting minutes?
21 A It --
22 MS. ROSEN: I think you need to ask him if he's
23 ever seen that document before.
24 MS. ROBESON: Well --
25 MR. MOHAMMADI: Well, I guess I can ask,

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1 specifically -- they vote and he's a board member; so the
2 presumption is he's seen them all.
3 MS. ROBESON: Well, ask him.
4 BY MR. MOHAMMADI:
5 Q Have you seen every single minutes that the board
6 prepares?
7 MS. ROSEN: That's also a draft, not a --
8 MS. ROBESON: Ms. Rosen, you have redirect; so you
9 can bring that out.
10 MS. ROSEN: Okay.
11 THE WITNESS: Presumably, you know, if there was
12 -- if I was ever not present at a board meeting and then a
13 subsequent board meeting, I wouldn't, I wouldn't see them.
14 BY MR. MOHAMMADI:
15 Q Okay. But if the board minutes show that you were
16 present before and you were present at the next one, you
17 would have seen them --
18 A Sure.
19 Q -- because you voted to approve them --
20 A Sure.
21 Q -- right?
22 A Right. Right.
23 Q Okay. Could you flip to the, I guess, the second
24 page maybe, I'm sorry, third page? Okay. On the third
25 page, there's a meeting from July 17, 2013?

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1 A Yes.
2 Q Okay. And then the next meeting does not occur
3 until October 7, 2013; is that fair?
4 A I'm assuming that this is a compilation of all the
5 minutes and all the meetings, yes.
6 Q Okay. So, to the best of your recollection, was
7 there a meeting between July 17, 2013, and October 7, 2013?
8 A I don't recall.
9 Q Okay.
10 A I mean, if this is a compilation of all the, of
11 all the meeting minutes, then it looks as though there
12 wasn't a meeting.
13 Q Okay. To your recollection, there was no board
14 meeting or board vote to send yourself, Lee Alford, and Raj
15 Barr over on September 14, 2013, to look at the property; is
16 that fair to say?
17 A Yes.
18 Q Okay. And so it's no way that Mr. Barr was there
19 on the board's behalf if there wasn't a board approval of
20 it, correct?
21 A Well, no. No, I wouldn't -- I don't think that's
22 a fair characterization. Just because the board didn't vote
23 for us to go there doesn't mean that he wasn't there on, in
24 official capacity.
25 Q Okay. So sometimes board members can act on their

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1 own and it is official capacity, and sometimes they can act
2 on their own and it's not official capacity?
3 A It depends on the nature of the meeting. It
4 depends on the substance of the meeting.
5 Q How would a regular member know whether this is
6 official or unofficial?
7 A Well, it would be stated.
8 Q But you didn't state to him that it was
9 unofficial, is that fair to say, when you visited the first
10 time? That's what you --
11 A Right.
12 Q -- testified, right? Now, you have no real
13 background in reading any plans or things like that?
14 A Right.
15 Q Right. So when you looked at the plans that were
16 approved, you don't really know whether the roof is being
17 raised or not raised, right?
18 A As far as the plans are concerned?
19 Q Correct.
20 A No, because --
21 MS. ROBESON: Which plans? The --
22 THE WITNESS: Which plans?
23 MS. ROBESON: Exhibit 77?
24 MR. MOHAMMADI: Correct, 77.
25 THE WITNESS: It doesn't, it doesn't indicate that

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1 the, that the roof height is being raised.
2 BY MR. MOHAMMADI:
3 Q Okay. But my question is, looking at these plans,
4 you wouldn't be able to tell whether it's being raised or
5 not? From --
6 MS. ROSEN: He just testified --
7 BY MR. MOHAMMADI:
8 Q -- reading plans, you wouldn't be able to tell,
9 right?
10 A I wouldn't be able to tell, right.
11 Q Okay. So did you at any point, you know, during
12 any -- strike that.
13 At any point, during any of the board meetings,
14 did you ever gain personal knowledge that the roof was
15 raised?
16 A You mean that the, that Mr. Ball had increased the
17 height of the roof?
18 Q Correct.
19 A I knew it by looking at it.
20 Q Okay. And at any point, did you receive personal
21 knowledge that the raising of the roof was not in
22 conformance with the submitted approved plans?
23 A Yes. I was told that.
24 Q You didn't come to that conclusion on your own;
25 you were told that?

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1 A Right.
2 Q Okay. And who told you that? Mr. Barr?
3 A Mr. Barr, right.
4 Q Okay. And Ms. Gowan as well?
5 A Probably, yes.
6 Q Okay.
7 MS. ROBESON: No good deed goes unpunished,
8 Mr. Gibson.
9 THE WITNESS: That's, that's right.
10 BY MR. MOHAMMADI:
11 Q Okay. I want to ask you some specific questions
12 about these exhibits that were just admitted.
13 MS. ROBESON: Are these the e-mails? Is that what
14 you're referring to?
15 MR. MOHAMMADI: Yes, starting at 109.
16 BY MR. MOHAMMADI:
17 Q Okay. Take a look at this e-mail chain, starting
18 on October 24, 2013.
19 A Yes.
20 Q Okay. Can you take a look at the second
21 paragraph?
22 A Uh-huh.
23 Q You stated that the construction are generally in
24 line with what the, what is expected, although not
25 completely, and are not of significant concern?

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1 A Right, not of significant concern to Raj and me.
2 Q Okay. And that was on October 24, 2013?
3 A Right.
4 Q You also state in the third paragraph, new roof
5 should be basically built on top of the previously existing
6 roof; is that fair to say?
7 A Yes.
8 Q Can you explain to me how you can build a roof on
9 top of an already existing roof without raising that roof
10 height?
11 A Without raising the roof height?
12 Q Correct. Do you know?
13 A No. I mean, this is, the message here -- and,
14 again, I preface this with this is my personal opinion and
15 he knows I'm not an architect -- is that the, putting the, a
16 truss on top of the existing roof, from what I was told, was
17 an unorthodox manner and that -- so my suggestion was that
18 it should be built differently.
19 Q And I think you stated later, in the next
20 sentence, should be built as a --
21 A Instead of putting a truss up, maybe you should
22 stick-build the new roof.
23 Q Okay. And I think there was some testimony from
24 Mr. Barr about trusses versus stick-built as well, if you
25 recall? That's fine.

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1 A Yeah.
2 Q Okay.
3 MS. ROBESON: He, I don't --
4 THE WITNESS: Yeah.
5 MS. ROBESON: Yes.
6 THE WITNESS: There might have been. I'm just --
7 MS. ROBESON: You weren't here for the first
8 hearing, were you?
9 THE WITNESS: I was, but it was --
10 MS. ROBESON: Oh.
11 THE WITNESS: -- there was a lot discussed. So --
12 BY MR. MOHAMMADI:
13 Q That's fine, but your understanding, you're not
14 familiar with these terms, you know, trusses and stick-built
15 and things like that, right? That's --
16 A Well, I know what a truss is. I know what
17 stick-built is.
18 Q Okay. But your understanding is that something
19 should have been built on top of the roof and not in this
20 manner, that a truss was just put up there, right?
21 A Again, I mean, it's -- this is my personal
22 opinion, and it was clear to me that the way that it had
23 been built to date wasn't, wasn't compliant and so it should
24 be built in a different way. So that was my, that was my
25 suggestion, but obviously, I'm, I mean, I'm -- it's my

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1 personal opinion. I'm not an architect, not a builder, no.
2 MS. ROBESON: Were you passing on input that you
3 had received from other board members --
4 THE WITNESS: No. The --
5 MS. ROBESON: -- to differentiate between, or did
6 you rely on other board members to differentiate trusses and
7 stick-built?
8 THE WITNESS: I know, I know the difference
9 between the two --
10 MS. ROBESON: Yes.
11 THE WITNESS: -- and I was, I was told that the --
12 MS. ROBESON: I guess why I'm confused is we do a
13 lot of land use and zoning cases and --
14 THE WITNESS: Right.
15 MS. ROBESON: -- I can't, I fail to see the
16 distinction between trusses and stick-built, but I could be
17 wrong. So I guess I'm wondering why you would make that
18 distinction, because you can raise the roof height -- well,
19 I'll let --
20 THE WITNESS: By stick-building it too, right.
21 Right, I understand.
22 MS. ROBESON: Yes. So my question is, were you
23 basing your distinction from information provided by
24 others --
25 THE WITNESS: Yes.

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1 MS. ROBESON: -- honestly?
2 THE WITNESS: Yes. The feedback that I'd heard
3 was that --
4 MS. ROBESON: From?
5 THE WITNESS: From, from Raj, and Randi Joiner
6 also mentioned it, that putting a truss literally on top of
7 an existing roof was an unorthodox and atypical way of
8 building a roof, and that, and that my understanding was
9 that in doing so, that had contributed to the, to the
10 height, to the excessive height of the construction. So
11 that was --
12 MS. ROBESON: Okay.
13 THE WITNESS: -- that was what my comments were
14 based on.
15 MS. ROBESON: And just to be fair, is it fair to
16 say that you were trying to mediate?
17 THE WITNESS: Yes. Yes.
18 MS. ROBESON: All right.
19 THE WITNESS: That's why it says, you know, maybe
20 you should stick-build it. You know, I'm just, I'm throwing
21 out suggestions: you know, these are the concerns, these
22 are the issues, you know, they need to be addressed, and --
23 MS. ROBESON: All right.
24 THE WITNESS: So --
25 BY MR. MOHAMMADI:

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1 Q Mr. Gibson, I think I may have asked this already
2 but slightly different. The board and the architectural
3 committee is not concerned with the manner in which a house
4 is built, right? That's, that's just, you have to follow
5 the code, essentially?
6 A Right.
7 Q Right?
8 A Sure.
9 Q What they care about is the appearance and the
10 conformity with the rest of the neighborhood, right?
11 A Or that it's being built according to the approved
12 plans.
13 Q Okay. The approved plans say nothing about using
14 trusses or stick-built or any other method, right?
15 A Right.
16 Q And really, when you submit these plans, or when a
17 homeowner submits these plans, they're not required to show
18 the method used to build --
19 A Right.
20 Q -- to build any of the changes, correct?
21 A Right.
22 Q Okay. So although Mr. Barr and maybe Ms. Gowan
23 and other, Ms. Joiner or whoever else did not like that
24 trusses were laid on top of a roof rather than
25 stick-building it, that's not the board's or the

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1 architectural committee's concern; is that fair to say?
2 A Right, no.
3 Q Okay. All right. Since this has been admitted,
4 I'm going to -- and these other e-mails have not been
5 addressed, but I'm going to go ahead and address them.
6 There's an e-mail from you on the second page, says,
7 Thursday, October 10, 2013, and the message is on the last
8 page. It says, Peter -- well, could you read that, please?
9 MS. ROBESON: Well, does he have to? Can you just
10 ask him the -- which e-mail?
11 MR. MOHAMMADI: It's on the very last page. It's
12 the October 10th e-mail from Peter Gibson to --
13 MS. ROBESON: Is this --
14 MR. MOHAMMADI: It's Exhibit 109. Excuse me.
15 MS. ROBESON: Okay. And why don't you just ask
16 your question.
17 MR. MOHAMMADI: Okay.
18 BY MR. MOHAMMADI:
19 Q You were not present at the CCOC hearing?
20 A No.
21 Q Okay. And you gave notice to Mr. Ball that you
22 were not going to be present, right?
23 A Right.
24 Q And why didn't you appear?
25 A I wasn't asked to be there.

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1 Q Okay. Did Mr. Ball ask you to be there? Isn't it
2 fair to say that he did ask you to be there?
3 MS. ROSEN: Objection. What is the relevance of
4 this? If he wanted him there, he could have subpoenaed him.
5 MS. ROBESON: Mr. Mohammadi, what is the
6 relevance?
7 MR. MOHAMMADI: Well, it sort of goes to the bad
8 faith here. Okay? And let me --
9 MS. ROBESON: No, don't sigh.
10 MS. ROSEN: I'm sorry.
11 MR. MOHAMMADI: The way it plays into it --
12 MS. ROBESON: We've got bad-faith claims on both
13 sides; so we're going to give him a fair hearing. Okay. Go
14 ahead.
15 MR. MOHAMMADI: The way this plays into it is, as
16 you may have noticed, Mr. Gibson was trying to mediate
17 throughout. Okay?
18 MS. ROBESON: Yes.
19 MR. MOHAMMADI: And so his goal was to try to get
20 an amicable resolution --
21 MS. ROBESON: Correct.
22 MR. MOHAMMADI: -- throughout. I think that
23 testimony has come out in direct. I haven't asked a lot
24 about it, but it came out in direct. Mr. Ball was working
25 with him as well. Okay? And Mr. Ball requested him to be

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1 there because Mr. Ball believed that he would have a neutral
2 view on things, that he would have a fair view on things,
3 because he did not believe, and we don't believe, Mr. Barr
4 and Ms. Gowan have that view. That's the whole bad-faith
5 claim that we have.
6 MS. ROBESON: I understand.
7 MR. MOHAMMADI: He wanted Mr. Gibson to be
8 present, asked him to be present, and in the e-mail, it
9 says, our attorney advised us not to be present. So I want
10 to understand why he was told not to be there. It's not
11 that -- the e-mail does not say, I decided not to come. It
12 says, my attorney said not to be present.
13 MS. ROSEN: That's not what it says. Number --
14 MS. ROBESON: No cross talk.
15 THE WITNESS: It actually says --
16 MS. ROBESON: Where --
17 THE WITNESS: -- our attorney wants, wants two
18 people there.
19 BY MR. MOHAMMADI:
20 Q Right.
21 A She wants Raj, Raj and Lynn there.
22 Q Right.
23 A It didn't say, I don't want you there. It just
24 said, you know, this is -- there's a hearing and there's
25 witnesses or, you know, whomever, and our attorney said Raj

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1 and Lynn --
2 MS. ROBESON: Well, why did you not go?
3 THE WITNESS: Because -- I don't know. I had
4 other, something else going on. I mean, I wasn't required
5 to be there, and I don't recall what the -- I don't recall
6 whether I had something else going on, but you know, I
7 wasn't, I wasn't required to be there. But I wasn't, put it
8 this way, I wasn't instructed not to go, put it that way.
9 MR. MOHAMMADI: Okay. That's what I wanted to,
10 that was --
11 MS. ROBESON: The gist of your question.
12 MR. MOHAMMADI: Gist of it. I wanted to see if he
13 was told not to appear and --
14 MS. ROBESON: I understand.
15 MR. MOHAMMADI: -- if so, by who.
16 MS. ROBESON: I understand.
17 BY MR. MOHAMMADI:
18 Q So just to clarify for the record, you were not --
19 you weren't told to not be there, correct?
20 A Right.
21 Q Okay.
22 A Right.
23 Q Okay. I'm showing you what's been marked as
24 Exhibit No. 110.
25 A Uh-huh.

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1 Q Just to clarify, what is the date of this e-mail?
2 A September 16th.
3 Q Okay. And this was two days after the site visit
4 that happened with the two other board members?
5 A Correct.
6 Q Okay. Okay.
7 MR. MOHAMMADI: Just Court's indulgence. I'm
8 sorry.
9 MS. ROBESON: Yes.
10 BY MR. MOHAMMADI:
11 Q Exhibit No. 113, in that e-mail you basically
12 confirm receipt of the, of the new plans that were submitted
13 by Mr. Ball, right, along with the letter?
14 A Right.
15 Q I think you had testified that you later submitted
16 it to Mr. Barr at some point?
17 A Yes.
18 Q Okay. Do you recall when you did that?
19 A It was sometime in January.
20 Q Okay. Is there a reason you waited several weeks
21 before submitting it to Mr. Barr?
22 A No. You know, I got it right before the, right
23 before the holidays, and I got busy, and we traveled over
24 the holidays. We went skiing in early January, and I just,
25 I just didn't get it to him.

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1 Q Just didn't have the time, basically?
2 A Yeah. I mean, it was, in my -- if I can provide
3 some background here?
4 Q Sure.
5 A You know, we, after, you know, after we met in
6 September, you know, my suggestion to Peter was, you know,
7 get an architect, get an architect to review the approved
8 plans, review the newly submitted plans that, you know, that
9 you -- or have an architect, you know, look at what you
10 built, look at the approved plans, and get a professional
11 opinion as to how you can fix it, how you can bring it back
12 into compliance, and that was my, my personal suggestion.
13 And so when he provided, or he dropped off these
14 plans, I considered them as sort of, you know, an extension
15 of that, of that conversation, that this was evidence that,
16 you know, I'm making progress, I'm, you know, I've got an
17 architect, you know, we've, you know, taken a look at plans,
18 and -- but I never considered this as an official new
19 application to be considered by the board. I mean, you
20 know, we were in litigation. I mean, it was -- the horse
21 was way out of the barn. It was not, I mean, it was not a,
22 it was not a new application.
23 Q You didn't consider it to be a new application?
24 A Right.
25 Q Okay.

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1 A Right.
2 Q And you were present when Mr. Barr testified,
3 correct?
4 A Yes.
5 Q You heard all of his testimony?
6 A I was here for it, yeah.
7 Q And from what you remember, okay, do you recall
8 Mr. Barr stating that if a nonconforming application is
9 provided, the board gets back to the homeowner, saying
10 what's nonconforming and how to fix it --
11 A Yeah.
12 Q -- is that fair?
13 A Yeah.
14 Q Okay. That was never done with the December --
15 December 16, 2013 application; the board never got, to this
16 day, hasn't gotten back to Mr. Ball about how to fix and
17 bring it to conformity, right?
18 MS. ROSEN: I'm going to object to the terminology
19 of a 2013 application because Mr. Gibson has never referred
20 to that as an application.
21 MS. ROBESON: Why don't you rephrase it. Did
22 the --
23 BY MR. MOHAMMADI:
24 Q 2013 submission of the letter and the drawings,
25 the board never rejected them, never provided any feedback

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1 on how to fix it, never provided any feedback on how to make
2 it an official application; is that fair?
3 A It was -- yes, that is true, because it was never
4 considered an application.
5 Q Okay. And do you recall Mr. Barr stating that if
6 something's not considered an application, the homeowner
7 would be notified that it's not an application and this is
8 what you need to do to fix it?
9 A I, yes, I recall him saying that if someone
10 submits -- and he was referring to a new application -- and
11 if it was incomplete, that the homeowner would be
12 instructed, you know, what's required to complete it and
13 what they need. That was in the context of, you know, Joe
14 Smith submits a brand-new application and there's a couple
15 things missing. You go back to Mr. Smith and tell him, this
16 is what you need to complete it. That's what he was
17 referring to.
18 Q Is there a reason why this is considered a, you
19 would consider a new application versus just a change from
20 his original proposal?
21 A I didn't consider it as either.
22 Q What did you consider it as then?
23 A Evidence that he had spoken to an architect and
24 that he had some plans and that, you know, he was, you know,
25 hopefully moving towards, you know, rectifying the

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1 noncompliant construction.
2 Q So you considered that basically sort of a waste;
3 it didn't mean anything in the context of, for the board?
4 A I didn't see it as an official application per se.
5 Q Or an unofficial application?
6 MS. ROSEN: I think this has been asked and
7 answered.
8 THE WITNESS: I mean, I --
9 MS. ROBESON: Let him, let him answer, and then
10 we're going to move on.
11 MR. MOHAMMADI: Okay.
12 THE WITNESS: Have I, has it, has my --
13 MS. ROBESON: Did you consider it an official or
14 any kind of -- any kind of request to change his, to change
15 the approval?
16 THE WITNESS: I'm sure Mr. Ball considered,
17 considered it a request, but --
18 MS. ROBESON: Well, that's not the question. The
19 question is, did you?
20 THE WITNESS: No. No.
21 MS. ROBESON: Okay. And why not?
22 THE WITNESS: Because it was -- because, in the
23 context of our previous e-mails and previous conversations
24 where I had suggested to him, you should get an architect to
25 review this -- and I don't believe I said, get an architect

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1 to review this so that you can submit a new application; it
2 was just, you need to get, you know, an architect to help
3 you figure out how to fix this, because, you know, clearly,
4 the history between the board and us --
5 MS. ROBESON: Well, say --
6 THE WITNESS: -- like, him just, him submitting
7 plans himself, in my opinion, was what they're --
8 MS. ROBESON: Well, I guess my question is, how
9 does somebody amend an approval? Does this mean that nobody
10 can ever amend an approval? No. Mr. Barr, please stay
11 back, or you can sit up with your attorney, but don't speak.
12 THE WITNESS: I don't know whether there's ever
13 been a request to amend an approval before. So there's no,
14 you know, prior --
15 MS. ROBESON: Well, what about the brick? I think
16 we've beaten a dead horse here. Mr. Mohammadi --
17 MR. MOHAMMADI: That's fine. I'll move on.
18 MS. ROBESON: -- it's 1 o'clock.
19 MR. MOHAMMADI: I'm almost done. Give me five
20 minutes.
21 MS. ROBESON: Okay.
22 MR. MOHAMMADI: Five minutes.
23 BY MR. MOHAMMADI:
24 Q I just want to go back to one of the questions I
25 asked. Unfortunately, I don't have multiple copies of this.

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1 So this would be 114, I think.
2 MS. ROBESON: Is this a new exhibit?
3 MR. MOHAMMADI: New exhibit, yes.
4 MS. ROBESON: I hope it has --
5 MS. ROSEN: Let me --
6 MS. ROBESON: Have you ever seen that, Mr. --
7 MS. ROSEN: Let me look at it and see if I've ever
8 seen it.
9 MR. MOHAMMADI: This was provided in discovery,
10 came straight from my discovery packet, which is why I don't
11 have extra copies of it.
12 MS. ROSEN: This actually relates to the other
13 case. I'm not sure how relevant it is, but --
14 MS. ROBESON: Are you objecting?
15 MS. ROSEN: Well, I'd like a proffer as to what
16 the point of this is. This is --
17 MS. ROBESON: Mr. Mohammadi, do you want to
18 proffer?
19 MR. MOHAMMADI: I asked questions about the
20 approval process. Here's the evidence that something was
21 submitted. I'm trying to see if this is it, if he's seen
22 it, if any actions were taken. I was referencing a --
23 MS. ROBESON: Is it Mr. Ball's application?
24 MR. MOHAMMADI: Correct. It's addressed to
25 Mr. Gibson.

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1 MS. ROBESON: Okay. You can ask if he's ever seen
2 it.
3 MR. MOHAMMADI: Right.
4 MS. ROSEN: It's a letter, not an application.
5 BY MR. MOHAMMADI:
6 Q Have you seen this --
7 MS. ROBESON: The letter, yes.
8 BY MR. MOHAMMADI:
9 Q Have you seen this April 22nd, 2014, letter
10 before?
11 MS. ROBESON: Well, first, let me mark it. Do we
12 have --
13 MS. ROSEN: Do you have an extra copy for me or --
14 MR. MOHAMMADI: I unfortunately do not. Like I
15 said, I don't have --
16 MS. ROSEN: Weren't you supposed to do that?
17 MS. ROBESON: Hopefully we'll get to lunch soon.
18 So I'm marking it as 114.
19 (Exhibit No. 114 was marked
20 for identification.)
21 MR. MOHAMMADI: Thank you.
22 MS. ROSEN: Just going to request that as we go
23 on, that just as I've made extra copies for the hearing for
24 everybody --
25 MS. ROBESON: Yes.

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1 MS. ROSEN: -- that Mr. Mohammadi do the same. I
2 think he was requested to do that last time.
3 MS. ROBESON: We may have to do duplicate files.
4 Go ahead.
5 MR. MOHAMMADI: Your Honor, this is, like I said,
6 this is just for impeachment purposes. I don't have every
7 document that we produced, duplicates.
8 MS. ROBESON: Okay. All right. Just, let's go.
9 BY MR. MOHAMMADI:
10 Q Have you seen this document before?
11 A I'll be honest with you --
12 MS. ROBESON: That would be good.
13 THE WITNESS: -- I don't, I don't -- no, I don't
14 recall seeing this. This is not familiar to me.
15 BY MR. MOHAMMADI:
16 Q You've never seen this before? Okay.
17 A This is April of -- I think I was out of the
18 country on April 22nd, not sure.
19 Q This would be 115.
20 MS. ROBESON: Do you have any objections,
21 Ms. Rosen?
22 MS. ROSEN: I don't think it's relevant, but this
23 is, once again, going to the other CCOC case and the
24 post-order activities --
25 MS. ROBESON: Okay.

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1 MS. ROSEN: -- I'll put it that way.
2 MR. MOHAMMADI: 115, I think.
3 MS. ROBESON: What's -- well, wait a minute.
4 MR. MOHAMMADI: 114 was the e-mail from April --
5 the letter, April 22nd, 2014.
6 MS. ROBESON: Oh, yes.
7 MR. MOHAMMADI: I haven't moved to admit it since
8 he didn't identify it, but I think you did mark it.
9 MS. ROBESON: Okay. So this is, this will be
10 marked as, letter to the Balls from Mr. Barr, dated 5/15/14.
11 (Exhibit No. 115 was marked
12 for identification.)
13 BY MR. MOHAMMADI:
14 Q Mr. Gibson, have you seen this letter? Well,
15 could you identify this letter, first of all?
16 A It's a letter to Peter and Michael Ball from, from
17 the board, dated April -- no, it's an e-mail, actually, oh,
18 sent by e-mail on May 15th.
19 Q Have you seen this before?
20 A Probably. I don't -- actually, I'm sure it was
21 sent to me.
22 Q You don't recall whether you've seen this before
23 or not?
24 A Yes. Yes, I have, actually.
25 Q Okay.

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1 MR. MOHAMMADI: Move to admit 115.
2 THE WITNESS: Yeah.
3 MS. ROBESON: Any objections? Tell me the
4 relevance of this again.
5 MR. MOHAMMADI: Again, this is for impeachment
6 purposes. He testified he doesn't remember taking any votes
7 regarding approval of a new, the new drawings that were
8 submitted pursuant to this previous CCOC where the letter
9 specifically says the board voted. Again --
10 MS. ROBESON: I see. Okay.
11 MR. MOHAMMADI: -- it's about the procedures --
12 MS. ROBESON: Okay.
13 MR. MOHAMMADI: -- are they following it, what are
14 they saying, all of that.
15 MS. ROBESON: I'll let it in. I'll let it in.
16 (Exhibit No. 115 was received
17 in evidence.)
18 BY MR. MOHAMMADI:
19 Q Okay. Isn't it fair to say that the letter states
20 that the board voted to accept certain things and rejected
21 certain other things?
22 A It says that, yes.
23 Q Okay.
24 MR. MOHAMMADI: No further questions.
25 MS. ROBESON: Okay. Redirect, Ms. Rosen?

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1 MS. ROSEN: Okay. I'll be very brief.
2 REDIRECT EXAMINATION
3 BY MS. ROSEN:
4 Q Mr. Gibson, if somebody wants to make proposed
5 changes to an application, do they have to submit that
6 request before they go ahead and actually make the changes?
7 A Yes.
8 Q Okay. And similarly, if somebody wants to do any
9 type of architectural changes to their property, would it be
10 fair to say that they're required to submit the application
11 and get the approval before they actually make the changes?
12 A Yes.
13 Q Okay. Now, in Mr. Ball's case, is it fair to say
14 that Mr. Ball made changes and didn't get prior approval to
15 make the changes?
16 MR. MOHAMMADI: Objection.
17 MS. ROBESON: Basis?
18 MR. MOHAMMADI: I don't think he ever testified
19 that he has knowledge of any changes that were made; that he
20 was told from people that changes were made, but he didn't
21 testify about it that he knew.
22 MS. ROBESON: Are you personally aware that he
23 made changes to the original plan?
24 THE WITNESS: Yes.
25 MS. ROBESON: Not based on what somebody else told

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1 you?
2 THE WITNESS: Based on what he told me.
3 MS. ROBESON: Oh, based on what Mr. Ball told you?
4 THE WITNESS: Yes.
5 MS. ROBESON: Okay.
6 BY MS. ROSEN:
7 Q Okay. So --
8 MS. ROBESON: And what were the changes?
9 THE WITNESS: The, when I -- the meeting on
10 September --
11 MS. ROBESON: 10th?
12 THE WITNESS: -- September 10th, when we sort of
13 walked around the property and we talked about, you know,
14 the various additions and the changes that were made, and I
15 recall him saying that there were, there were several
16 changes that he said he, you know, he had to make -- I think
17 he called them field changes -- because of, you know, issues
18 with, I don't know, topography or the, the, you know,
19 permitting office, you know, you couldn't do things a
20 certain way, but -- so we talked about what, you know, what
21 things didn't comply with the, with the approved plans.
22 MS. ROBESON: Was the roof one of the changes?
23 THE WITNESS: That was not one that we discussed,
24 no. It was other things.
25 MS. ROBESON: Okay. All right. Go ahead,

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1 Ms. Rosen.
2 MS. ROSEN: Okay.
3 BY MS. ROSEN:
4 Q You testified about the, about the trusses that
5 were placed on, that Mr. Ball placed on top of the roof.
6 Was your concern, or was the concern the truss itself or was
7 it the height of the roof?
8 A It was the height of the roof.
9 Q Okay. So, basically, your concern with the --
10 your concern is not the use of a truss, so to speak; it's
11 the, what is the result, the height of the roof?
12 A Right.
13 Q Okay.
14 A Yes.
15 Q Okay. And prior to the application being approved
16 in May of 2011, do you recall, were you at, were you present
17 at the board meetings that led up to that approval?
18 A Yes.
19 Q Okay. And do you recall discussions at those
20 board meetings of Mr. Ball's application, generally?
21 A I don't recall specifics, but I'm sure there was
22 discussion of his application.
23 Q Okay, because I think you testified earlier that,
24 you know, the application, there were, before it was finally
25 approved, there were some, you know, various requests for

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1 information, things of that nature. Prior to the approval
2 of the application, at any meeting that you were present at,
3 do you recall ever hearing any discussion or being told by
4 Mr. Ball that the roof would be, height would be raised?
5 A No.
6 MS. ROSEN: Okay. I think that's it, no further
7 questions.
8 MS. ROBESON: Okay. Any recross? Just on what
9 she just asked him.
10 RECROSS EXAMINATION
11 BY MR. MOHAMMADI:
12 Q Exhibit 109.
13 R Right.
14 Q Right? That last sentence on the third paragraph
15 says -- you're not, you're not talking about the concern
16 being the height. You just said it, not -- so it doesn't
17 look as tall or massive as it currently does, right?
18 A Are you talking about the underlined part or --
19 Q No.
20 MS. ROBESON: Well, tall, isn't tall height,
21 Mr. Mohammadi?
22 MR. MOHAMMADI: Well, what I'm trying to, let me
23 -- I'll ask it a little differently. Okay?
24 BY MR. MOHAMMADI:
25 Q In this e-mail you state that -- I'll read it:

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1 Instead of putting a truss up, maybe you stick-build a new
2 roof so that it isn't a tall/massive as it currently is.
3 A That's a typo. It should be, isn't as tall slash
4 massive as it currently is.
5 Q Okay. That doesn't say that it was never supposed
6 to be raised. That's just saying it's raised too much. Is
7 that fair to say?
8 A Yeah. I mean, it's -- I'm referring to the
9 current height of the roof. I'm not, you know, referring to
10 the, to whether it's, to whether it should be a certain
11 height --
12 Q And just --
13 A -- but just that it's taller than it should be.
14 Q And just to be clear, the board, the board is here
15 today in this case because they believe Mr. Ball built not
16 in accordance with the plan and the plans showed that the
17 roof would not be raised, correct? That's the issue, that
18 the plans showed that the roof would stay the same height?
19 A Yes.
20 Q Okay. And not that it was --
21 MS. ROBESON: Okay. That's --
22 MR. MOHAMMADI: Fair.
23 MS. ROBESON: -- I got it. Okay.
24 MR. MOHAMMADI: Nothing further.
25 MS. ROBESON: All right. Thank you, Mr. Gibson.

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1 MS. ROSEN: You are now excused.
2 THE WITNESS: You're welcome.
3 MS. ROBESON: You may be excused.
4 THE WITNESS: All right.
5 MS. ROBESON: It's 10 after 1:00. So we're going
6 to break for lunch until 2 o'clock, and we'll resume with
7 Ms. Gowan's testimony. Seeing that it's kind of slow
8 getting through witnesses, I have two more dates. Hopefully
9 we will not need them, but look at your calendars over the
10 break: 7/24 and 7/31; both, Thursdays.
11 (Whereupon, at 1:10 p.m., a luncheon recess was
12 taken.)
13 MS. ROBESON: We are back on the record, and we
14 are going to resume the direct examination of Ms. Gowan.
15 Ms. Gowan, you're still under oath, and I'll let --
16 MS. ROSEN: Just let her get her bearings.
17 DIRECT EXAMINATION (Resumed)
18 BY MS. ROSEN:
19 Q Are you ready?
20 A Yes.
21 Q Okay. Ms. Gowan, you've just heard testimony,
22 previously, with regard to Peter Gibson referring to
23 questions about why, whether or not there was a board vote
24 on, around -- to send out the September 15th, 2013, letter.
25 Okay. Do you recall whether or not there was an actual

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1 board vote taken to send out that letter, which was actually
2 previously marked as Exhibit 79?
3 A No, there wasn't on this issue.
4 Q Okay. Can you explain why, for example, there was
5 not a board vote before this letter was sent out?
6 A There was a couple of things. Excuse me. One is
7 that there was so many complaints, and the other is that
8 there was, apparently, you know, a large load of trusses
9 brought to the property. So the question was, is if, you
10 know, if this is a big problem -- and it looked like it was
11 -- we needed to do something about it now before it became
12 even bigger. And it would have been a big problem for us to
13 deal with, as well as a big problem for the owner to deal
14 with, because let's, if they were going to put trusses
15 across the whole roof -- I mean, returning used trusses is,
16 you know, difficult, and if they're custom-made and if, it
17 looked like he only got a partial order and it was wrong,
18 then he would have the chance to stop the rest of the order
19 -- it would be a significant savings on their part until we
20 clarified it, but from everything that it looked like, it
21 looked like that the roof was out of sync with the approved
22 plans and they were in the midst of constructing it across.
23 So --
24 Q Okay. Now, generally in connection with this, you
25 know, with this ongoing construction at the Balls' property,

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1 did the board -- to the best of your knowledge, did Dr. Barr
2 have the authority to send out this letter to act on behalf
3 of the board in this area?
4 A Our understanding, yes, the whole board.
5 Q Okay.
6 MS. ROBESON: Well, what gives rise to that
7 understanding?
8 THE WITNESS: It's written in the bylaws and the
9 covenants that allows -- that gives him kind of like the,
10 what is it, CEO kind of rights to speak for us, and we did
11 speak to him about the issue of the roof, and he sent out a
12 letter.
13 MS. ROBESON: Okay. Do you know where in your
14 covenants it says that?
15 THE WITNESS: No. I'd have to look. I, I have
16 seen it recently --
17 MS. ROBESON: Yes. Okay.
18 THE WITNESS: -- but I'd, I'd have to look.
19 MS. ROBESON: All right. That's fine.
20 BY MS. ROSEN:
21 Q As a practical matter, I mean, were there any
22 practical considerations? For example, does the board take
23 into account practical considerations in an ongoing
24 construction project; i.e., can the board hold a meeting
25 every time something happens on somebody's ongoing

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1 construction project?
2 A Well, I think it'd be difficult because of the --
3 we don't have a very, very large board, but we have several
4 members, and it would be really difficult to get all of them
5 together within a couple of days, or something, to vote on
6 it and send out a letter. You know, we kind of take the
7 stand that we want to kind of be somewhere in the middle.
8 If we think there is a problem or if it looks very obvious
9 that there is a problem, we try to notify the homeowner and
10 let them know not to continue on the area that, where,
11 that's in question until we can come back and, and view it,
12 and my understanding is that's what was done.
13 Q Did any board member, to the best of your
14 knowledge, at any meeting or otherwise, make any objection
15 to this letter having been sent out?
16 A No, I don't recall that.
17 Q Okay. Now, you previously testified about a --
18 that at some point, Mr. Ball made out, I'm going to say,
19 like a change application for brick, which was approved. Do
20 you recall that testimony?
21 A I wasn't on the board, but I've seen the document.
22 Q Okay. Now, with regard to that document, I guess
23 when he wanted to change the, make a change to the brick,
24 was there anything else that was also applied for for a
25 change, if you recall?

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1 A It was the brick, siding, and I don't recall the
2 third, but it was on a formal application, and I've seen
3 it --
4 Q Okay.
5 A -- as I've gone through some documents.
6 Q Okay. So is it your testimony then that that was
7 made -- that was a formal application for that change that
8 Mr. Ball made?
9 A Yes.
10 Q Okay. Okay. Now, there was a recent CCOC order
11 where Mr. Ball was required to make a submission to get
12 approval on, I think it was for a deck and a couple other
13 items. Are you familiar with that?
14 A Yes.
15 Q Okay. I'm just going to show you --
16 MS. ROSEN: This hasn't -- I mean, I don't know
17 how you want to do this. This is just a copy of the
18 decision and order of 73-12. I mean, it's not marked, but I
19 guess it's already, you've taken judicial notice of it.
20 MS. ROBESON: Yes. It's --
21 MS. ROSEN: Okay.
22 MS. ROBESON: -- I've taken official notice. So
23 just --
24 MS. ROSEN: Okay.
25 MS. ROBESON: -- you can just refer to it --

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1 MS. ROSEN: Okay.
2 MS. ROBESON: -- by what it, by description.
3 BY MS. ROSEN:
4 Q Okay. Now, with regard to that case, the
5 association was ordered, within 30 days -- actually, the
6 respondents were ordered to resubmit a complete application
7 with regards to the deck, storage, shed room, or garden wall
8 to get approval for the existing noncompliant changes, is
9 that correct?
10 A Yes.
11 Q Okay. And what was submitted by Mr. Ball?
12 A It was a roll of plans, and it said on it, deck
13 only.
14 Q Okay. Did it contain an application form?
15 A No.
16 Q Okay. But did the board of directors go ahead and
17 vote to approve that deck anyhow?
18 A We did.
19 Q Okay. And can you explain why the board approved
20 that, even though it didn't have an application form?
21 A Well, I'd have to go and look at the timing, but I
22 think it was really close between the time of this order
23 coming out and the time that we had to make a decision. So
24 Peter Ball came to our meeting, and we looked at the plans,
25 and we voted on it as part of the, meeting the requirements

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1 for the CCOC.
2 Q Okay. Would it be fair to say that you were not,
3 you didn't want to, for example, tell Mr. Ball, you know,
4 hey, you need to put this form in, because you were more
5 concerned about following a CCOC order?
6 A We were, and that's basically how we handled it.
7 Q Okay.
8 MS. ROSEN: Okay. I'm sorry. Which exhibit
9 number are we up to now?
10 MS. ROBESON: We are up to, 116 is the next one.
11 MS. ROSEN: Okay.
12 BY MS. ROSEN:
13 Q Okay. Ms. Gowan, I'm going to ask you to take a
14 look at that document, which has been marked as 116. Just
15 take a look at it and just generally explain what it is.
16 A These are all the deficiencies or discrepancies.
17 Q Okay. Is this something that you -- first of all,
18 did you prepare this document?
19 A I did.
20 Q And what is the document?
21 A It's, it's kind of like a punch list, and I
22 developed it last October.
23 MS. ROBESON: Okay. Just a second. Any
24 objections, Mr. Mohammadi?
25 MR. MOHAMMADI: Yes. Yes. I think -- this might

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1 be subject to cross -- but it appears to be just something
2 that Ms. Gowan prepared for herself versus anything else
3 that would be submitted by the board or otherwise. So,
4 although it's authenticated, I just don't see what the
5 relevance is.
6 MS. ROBESON: I'm going to let it in subject to
7 your cross-examination. I can see the relevance. It's what
8 she, what she says are the noncompliance issues. So I'm
9 going to let it in, but it's subject to cross-examination.
10 Before we go forward, where is Michael Ball?
11 (Exhibit No. 116 was received
12 in evidence.)
13 MR. MOHAMMADI: Oh, I'm sorry. I spoke to
14 Ms. Rosen. Neither one of us plans to call him. We let him
15 go. I did not --
16 MS. ROBESON: Okay. You --
17 MR. MOHAMMADI: -- clear it with you.
18 MS. ROBESON: Yes.
19 MR. MOHAMMADI: I apologize about that.
20 MS. ROBESON: You need to let -- because I'm
21 sitting here, going -- okay.
22 MR. MOHAMMADI: I can call him to --
23 MS. ROBESON: So you're in agreement with that?
24 MS. ROSEN: Well, Mike --
25 MS. ROBESON: And my concern is this: He has a

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1 right to cross-examine. I --
2 MR. MOHAMMADI: I understand.
3 MS. ROBESON: -- don't want him to come in at some
4 point and say, I should have been able to cross-examine
5 everybody.
6 MR. MOHAMMADI: And he --
7 MS. ROBESON: So if you, as his attorney, are
8 waiving that right on his behalf for the time that he is not
9 there, I will accept that and I will hold you to it.
10 MR. MOHAMMADI: That's fine.
11 MS. ROSEN: Yes, my position is, basically, that
12 if he chooses not to be here, then that speaks for itself.
13 I don't --
14 MS. ROBESON: All right.
15 MS. ROSEN: That's all I can say.
16 MS. ROBESON: All right. Continue, Ms. Gowan.
17 BY MS. ROSEN:
18 Q Okay. Ms. Gowan, if you could just basically
19 just, you know, like I said, describe what this document is
20 and why you prepared it.
21 A This was prepared for the CCOC hearing, and --
22 MS. ROBESON: The 73-12?
23 THE WITNESS: Yes, ma'am, 73-12.
24 MS. ROBESON: But then why -- okay. All right. I
25 get it. I get it.

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1 MS. ROSEN: Because it got kicked out into here.
2 MS. ROBESON: Okay.
3 THE WITNESS: And --
4 BY MS. ROSEN:
5 Q Okay. Is it fair to say, for example, I mean, we
6 did a supplement to this complaint, and is this basically
7 reflective of your analysis of the supplement of what you
8 considered to be the deficient, or deviations?
9 A It is.
10 Q Okay. All right. I'm going to turn to what the
11 supplements -- I'm just going to go down the supplement.
12 One of the issues that was in the supplement was the removal
13 of the open shed. Could you -- and we have, we have --
14 MS. ROBESON: Now, wait. This is the supplemental
15 complaint that you tried to file with the CCOC --
16 MS. ROSEN: Right.
17 MS. ROBESON: -- in 73-12 and you did file here?
18 MS. ROSEN: Yes.
19 MS. ROBESON: Okay. I'm just --
20 BY MS. ROSEN:
21 Q Okay. I'm going to have you -- do you have the
22 supplement in front of you?
23 A Yeah, right here.
24 Q Okay. Let's start with No. 1, the removal of the
25 open shed.

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1 MS. ROSEN: And if you need -- we have various
2 photographs that have been introduced into evidence and --
3 MS. ROBESON: Well, I've got one set of large
4 plans. I think they're not admitted yet, though, 88.
5 MS. ROSEN: Okay.
6 MS. ROBESON: It's helpful to me to work with
7 plans, but is there anything in the --
8 MS. ROSEN: Well, I think the plans that you have
9 are plans that we have contended are not the approved
10 plans --
11 MS. ROBESON: Oh, that's right.
12 MS. ROSEN: -- those are plans that they've
13 submitted. I would, I believe there's, you know, there may
14 be a -- I'm trying to remember off the top of --
15 MS. ROBESON: Is there a plot plan that was
16 submitted in Exhibit 77, which is what you do consider the
17 correct plans?
18 THE WITNESS: There should be.
19 MS. ROSEN: Well, 77, I believe --
20 MS. ROBESON: I thought it was more than just
21 elevations.
22 MS. ROSEN: Yes, there were other things in --
23 MS. ROBESON: There's a basement -- can you mark
24 it on --
25 THE WITNESS: I can.

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1 MS. ROBESON: If you go to Exhibit 77, there is,
2 whatever floor plan -- the best there is, is floor plans.
3 Can you mark the general location of the shed, I mean, the,
4 I'm sorry, yes, the shed that you're referencing here on one
5 of these, on, on my official copy?
6 THE WITNESS: Okay.
7 MR. MOHAMMADI: Do you want us to approach?
8 MS. ROBESON: Yes. Okay. So which shed is --
9 where approximately is the shed from 73-12 --
10 THE WITNESS: Okay.
11 MS. ROBESON: -- that you wanted removed?
12 THE WITNESS: The open shed is right here.
13 MS. ROBESON: Okay. So can you mark that on
14 this --
15 THE WITNESS: It's --
16 MS. ROBESON: -- exhibit, 77? Just write Open
17 Shed --
18 THE WITNESS: Okay. And it's --
19 MS. ROBESON: -- 73-12.
20 THE WITNESS: -- it's equal to the first floor.
21 MS. ROBESON: You mean it's at grade with the
22 first floor?
23 THE WITNESS: It is.
24 MS. ROBESON: Okay. So we need the first-floor
25 plan.

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1 THE WITNESS: It is from here to here, and it's
2 right, it's all --
3 MS. ROBESON: Okay. And then write --
4 THE WITNESS: Open Shed? Okay.
5 MS. RO: -- Shed, Shed --
6 THE WITNESS: Shed 1?
7 MS. ROBESON: No. Just write Shed, yes, Shed 1,
8 73-12.
9 BY MS. ROSEN:
10 Q So that's the open shed that we're referring to?
11 MR. MOHAMMADI: This is the shed from the previous
12 case?
13 MS. ROSEN: Well, I'm trying to get, what I want
14 her, I just -- what makes more sense is, I'm talking about
15 the open shed in the supplement.
16 BY MS. ROSEN:
17 Q Is that where the open shed is?
18 MS. ROBESON: Oh.
19 THE WITNESS: I'm sorry.
20 MS. ROBESON: No, that's okay, but let me ask you,
21 is this where the shed in 73-12 is?
22 THE WITNESS: No. That's the shed under the deck.
23 MS. ROSEN: Okay. So that's --
24 THE WITNESS: That's the shed under the deck and
25 that's here. That's under the deck.

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1 MS. ROBESON: Okay. So that's, so I'm crossing
2 out --
3 THE WITNESS: Yes.
4 MS. ROBESON: -- I'm crossing out 73-12 for the
5 record.
6 THE WITNESS: Okay.
7 MS. ROBESON: Now, write Shed 2, which is --
8 THE WITNESS: Okay.
9 MS. ROBESON: -- the one under the deck.
10 MR. MOHAMMADI: Your Honor, if you go to Basement
11 Plan, I think it shows it. Go back one more, other way.
12 MS. ROBESON: Hold on. Hold on. Wait. Go --
13 MR. MOHAMMADI: First page. I think that's --
14 THE WITNESS: That's it.
15 MR. MOHAMMADI: -- that's what they're
16 referencing.
17 THE WITNESS: Yes.
18 MS. ROBESON: Okay. So this is the shed from
19 73-12?
20 THE WITNESS: Right.
21 MS. ROBESON: So put Shed 2.
22 THE WITNESS: 73-12, does that help?
23 MS. ROBESON: Right.
24 THE WITNESS: Okay.
25 MS. ROBESON: Okay. So then the open shed that

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1 you referred to is Shed 1, shown on the lower floor plan of
2 Exhibit 77?
3 THE WITNESS: Right, and then --
4 MS. ROBESON: Okay.
5 THE WITNESS: -- there's another shed.
6 MS. ROBESON: Is that in the violation anywhere?
7 MS. ROSEN: Yes.
8 MS. ROBESON: Okay. Well, why don't -- can you
9 locate that, roughly, on this drawing?
10 THE WITNESS: It is --
11 BY MS. ROSEN:
12 Q Is it the enclosed shed at laundry room?
13 A Right in here. It takes the whole --
14 MS. ROBESON: Okay. Put Shed 3.
15 THE WITNESS: Okay.
16 MS. ROBESON: Okay. All right. Thank you. Do
17 you have it, Mr. Mohammadi?
18 MS. ROSEN: Let me just --
19 MS. ROBESON: I can send, I'll have our secretary,
20 we marked --
21 MR. MOHAMMADI: That's enclosed shed?
22 MS. ROBESON: Yes. I'll have her send you copies
23 of this marked. We marked another document too.
24 THE WITNESS: I know. I'm sorry.
25 BY MS. ROSEN:

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1 Q I know. It's like -- it's not your fault.
2 MS. ROBESON: Do you have it?
3 MS. ROSEN: Yes, I got it.
4 MS. ROBESON: Okay.
5 MS. ROSEN: I just wanted to, so we can all be on
6 the same page.
7 MS. ROBESON: Yes. All right. Thank you.
8 BY MS. ROSEN:
9 Q Okay. Now with regard, let's just start, with
10 regard to this open shed, why is the association seeking it
11 to be, for it to be removed?
12 MS. ROBESON: And the open shed is Shed 1.
13 MS. ROSEN: Shed 1.
14 THE WITNESS: Right. Well, overall, it's not on
15 the approved plans. So the approved plans show it as being
16 removed. The other issue --
17 MS. ROBESON: So are you saying it exists on the
18 property now?
19 THE WITNESS: Yes.
20 MS. ROBESON: Okay. Okay. But let me just ask
21 you, is that a noncompliance, because he's not finished yet?
22 THE WITNESS: It never had a permit to be
23 constructed.
24 MS. ROBESON: Well, that's a county issue.
25 THE WITNESS: And it never -- I, I couldn't find

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1 any evidence of it, and I asked the previous secretary, and
2 there was no evidence of it ever being --
3 MS. ROBESON: Of what?
4 THE WITNESS: Of the open shed ever being approved
5 by the HOA.
6 MS. ROBESON: Okay.
7 THE WITNESS: There is a -- there was a permit
8 done in 2002 to make changes, and that appears to be because
9 it, it was built over the buildable lot allowance.
10 MS. ROBESON: The setback or the lot line? The
11 setback?
12 THE WITNESS: The setback, and it was --
13 MS. ROBESON: So Shed 3 violates the setback?
14 THE WITNESS: Yes. It did. It has no wall and
15 that's why we -- we just refer to it as the open shed.
16 MR. MOHAMMADI: Wait.
17 BY MS. ROSEN:
18 Q Is that Shed 3 or Shed 1? I thought Shed 1 is the
19 open shed.
20 MR. MOHAMMADI: I thought Shed 1 is the open shed,
21 and Shed 3 is the closed shed.
22 THE WITNESS: Oh, it's --
23 MS. ROBESON: Which shed violates the setback? 3?
24 THE WITNESS: Shed 1.
25 MS. ROBESON: Shed 1 violates the setback?

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1 THE WITNESS: Right.
2 MS. ROBESON: The zoning setback?
3 THE WITNESS: Right.
4 MS. ROBESON: And can you provide any details on
5 that, or -- because this is your complaint. So I guess the
6 question is --
7 THE WITNESS: There was a permit, 280512, in June
8 of 2002 to repair the shed.
9 MR. MOHAMMADI: Your Honor, I'd just, for the
10 record, I'm not sure what she's reading, if it's an exhibit
11 or --
12 MS. ROSEN: It's not an exhibit. It's just her
13 own notes.
14 MS. ROBESON: Well, I just want to find out what
15 they're trying to say. What are you reading from?
16 THE WITNESS: I did a time line, and I compiled --
17 MS. ROBESON: So it's your own notes?
18 THE WITNESS: -- I compiled some copies of --
19 MS. ROBESON: Okay. I'm going to let --
20 THE WITNESS: -- permits.
21 MS. ROBESON: Oh, okay. Are they --
22 THE WITNESS: Yes.
23 MS. ROBESON: Okay. Now, you can refresh your
24 memory. Tell me what's wrong with the shed. It violates
25 the setbacks?

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1 THE WITNESS: It was never officially permitted to
2 be constructed by the county --
3 MS. ROBESON: But that's a county issue.
4 THE WITNESS: -- it was never presented or
5 approved by the homeowners association, and right now,
6 according to the approved plans, the plans show it as being
7 removed.
8 MS. ROBESON: Okay. Okay. Keep going.
9 BY MS. ROSEN:
10 Q Okay. Number 2, we have -- I'm going to turn your
11 attention to the supplement to the original complaint, and
12 No. 2 is removal of enclosed shed at laundry room; approved
13 plans show this as being removed. Can you --
14 A Right. It's --
15 Q -- explain what that is?
16 A It doesn't show -- what apparently --
17 Q First of all, to clarify, is that Shed 3?
18 A That's Shed 3.
19 Q Okay.
20 MS. ROBESON: Okay.
21 THE WITNESS: And apparently, this little closet
22 area in the laundry room was enlarged to make the shed, and
23 according to the approved plans, it shows it as being
24 reverted back to just a closet to the laundry room. I
25 couldn't find any permit for that shed either, and no one

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1 can find me anything that shows --
2 MS. ROBESON: Okay. You mean no, no HOA permit?
3 THE WITNESS: No HOA approval, no county permit.
4 MS. ROBESON: Okay, but the county is not the gist
5 of this case.
6 THE WITNESS: Right. Right, I understand.
7 MS. ROBESON: So let's get back to Shed -- uh-oh,
8 I just let it go.
9 THE WITNESS: 1.
10 MS. ROBESON: 1. How do you know that violates
11 the BRL, the building restriction line, the setback?
12 THE WITNESS: When I talked to the county -- I
13 actually met with them -- they told me that, I guess, I
14 think the neighbor, the original neighbor had complained,
15 that they thought that --
16 MS. ROBESON: What original neighbor? That lived
17 in your house?
18 THE WITNESS: No, that lived in the Millers' house
19 at 10602 Vantage Court. I live on a corner, the Balls --
20 MS. ROBESON: Of Crossing Creek.
21 THE WITNESS: -- live here, and they live here.
22 MS. ROBESON: Okay.
23 THE WITNESS: So apparently there was, because the
24 county records everything, there was a --
25 MS. ROBESON: Well, some would say.

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1 MR. MOHAMMADI: I will --
2 THE WITNESS: There was some verbiage about --
3 MR. MOHAMMADI: Objection.
4 MS. ROBESON: Yes. Basis? Stop talking.
5 MR. MOHAMMADI: Again, I know this is an
6 administrative hearing, but it's all hearsay what a county
7 told her. So --
8 MS. ROBESON: Well, we do generally let that in at
9 these hearings --
10 MR. MOHAMMADI: I understand, but just noting it
11 for the record.
12 MS. ROBESON: -- but I will say that's a county
13 violation. So I need to separate out what's a violation of
14 approved plans and what is a county violation.
15 THE WITNESS: Yes. I understand.
16 MS. ROBESON: Because, you know, you can call DPS,
17 Department of Permitting Services, for zoning violations.
18 So keep going. So according to you, the county told you
19 that violated the setbacks?
20 THE WITNESS: Well, they didn't tell me. They,
21 they actually had a number in there where somebody had
22 complained that it didn't meet setback. They came out and
23 looked. It didn't meet setback. So there had to be an
24 adjustment, and that's around about the date that the
25 repair-the-shed permit was put in. And what they basically

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1 did was remove the wall, because now there's nothing to
2 gauge the -- but the long and --
3 MS. ROBESON: Which wall?
4 THE WITNESS: They removed the face wall of the
5 whole shed.
6 MS. ROBESON: You mean the exterior wall closest
7 to, is it your property?
8 THE WITNESS: No. It's to 10602 Vantage Court --
9 MS. ROBESON: Okay. So --
10 THE WITNESS: -- the other neighbor.
11 MS. ROBESON: -- they moved the longest exterior
12 wall. Are there two exterior walls for depth?
13 THE WITNESS: They came back, they meaning --
14 MS. ROBESON: Who's they?
15 THE WITNESS: Peter Ball put in for a fence
16 extension, I think, 2013, and what he did is he closed off
17 the front so that, you know, when you drive by, you're not
18 looking into the back of his property. And so he has that
19 fence, and then he put another fence inside -- we have a
20 picture -- that straddles the width of the shed.
21 MR. MOHAMMADI: Objection. Maybe I'm confused,
22 but I don't see the relevance of this to the shed. The
23 issue is the open shed.
24 MS. ROBESON: This is the shed in -- this is Shed
25 1, correct?

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1 THE WITNESS: Yes.
2 MS. ROBESON: And this is part of your
3 supplemental complaint?
4 THE WITNESS: Yes.
5 MS. ROSEN: Yes. I think --
6 MS. ROBESON: Okay.
7 MS. ROSEN: I do have two photographs. It might
8 be illustrated, but they were ones that were given to
9 Mr. Mohammadi by the e-mail last night and this morning. I
10 don't know if you want to see them or not, if they're any
11 assistance --
12 MS. ROBESON: Do you object?
13 MR. MOHAMMADI: I maintain the same objection.
14 MS. ROBESON: Okay. Well, we'll wait until
15 rebuttal --
16 MS. ROSEN: That's fine.
17 MS. ROBESON: -- if you want to bring them in
18 then. Okay. Let me --
19 MS. ROSEN: We'll just work with our other photos.
20 MS. ROBESON: -- let me do this: The longest
21 exterior facade of the shed or wall of the shed is gone,
22 correct?
23 THE WITNESS: Yes.
24 MS. ROBESON: So what are the two -- I guess one
25 extends from the garage, each end of the side of the garage?

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1 THE WITNESS: It's really just exterior fencing.
2 MS. ROBESON: Okay.
3 THE WITNESS: It's held up by wood members --
4 MS. ROBESON: Okay.
5 THE WITNESS: -- posts, sort of.
6 MS. ROBESON: Okay. And what's wrong with that?
7 THE WITNESS: Well, the original shed was never
8 approved by the homeowners association. It was
9 constructed --
10 MS. ROBESON: So there's no Shed 1, or -- yes,
11 Shed 1 --
12 THE WITNESS: Right.
13 MS. ROBESON: -- approval?
14 THE WITNESS: Right. And then on the approved
15 plans, it shows it as being removed.
16 MS. ROBESON: Okay. All right. Keep going.
17 THE WITNESS: So they, themselves, are proposing
18 to remove Shed 1.
19 MS. ROBESON: So they removed part of Shed 1,
20 but --
21 THE WITNESS: They have not removed any of Shed 1.
22 MS. ROBESON: I thought you said, you called it
23 the open --
24 THE WITNESS: Oh, I'm sorry. They removed the
25 face of the wall in 2002.

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1 MS. ROBESON: Okay. All right. So all they have
2 now are two -- is it like a board-on-board fence?
3 THE WITNESS: It's a stockade fence --
4 MS. ROBESON: Yes. Okay.
5 THE WITNESS: -- that they're using, and then they
6 have the roof, and they have some posts holding the roof up.
7 BY MS. ROSEN:
8 Q Ms. Gowan, I showed you photographs that were
9 actually taken by Peter Ball's expert witness. Do any of
10 those photographs -- I think we looked at. I think some of
11 them at least may show something of this shed area that
12 you're referring to. If you could take a quick look at them
13 and see if --
14 A This is a fence that's erected on this side.
15 MS. ROBESON: No, you can't say this side. So --
16 THE WITNESS: Oh, I'm sorry.
17 MS. ROBESON: -- tell me what photograph --
18 THE WITNESS: Okay.
19 MS. ROBESON: -- you're looking at. Is that in
20 the record?
21 MR. MOHAMMADI: Yes, I'm seeing it. I just --
22 MS. ROSEN: Yes, this is one of --
23 MR. MOHAMMADI: No, none of them are in the
24 record.
25 MS. ROSEN: -- this is one of the ones that they

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1 gave -- these are one of the ones that were taken by his
2 expert.
3 MR. MOHAMMADI: Can you do it this way, Ms. --
4 well, I don't want to try to find every single one
5 independently, unless you have them, but --
6 MS. ROSEN: Well, I only have two copies of them.
7 I didn't, wasn't able to make three color copies.
8 MS. ROBESON: Mr. Barr, I don't want you giving
9 lists or anything else to the witness.
10 MR. MOHAMMADI: Just for the record, what I did --
11 after our hearing last time, you asked me to separate --
12 I've narrowed it down to about seven or eight or 10.
13 MS. ROBESON: Yes.
14 MR. MOHAMMADI: I have that partial, what I called
15 partial pictures, and then the remaining complete set are
16 these, and our preliminary issues were with respect to the
17 pictures that I provided. If they're all coming in -- and I
18 know there was an objection -- if they're all coming in, I
19 propose to just admit them this way rather than piecemeal.
20 It'll just make it easier.
21 MS. ROSEN: Well, the ones that I'm agreeing to
22 admit, basically, are the ones taken of the subject
23 property. I have no problem with doing that, not other
24 properties.
25 MS. ROBESON: Do you have them separated out?

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1 MS. ROSEN: I have --
2 MR. MOHAMMADI: Not by subject property versus --
3 MS. ROBESON: Okay. Can you -- where did your
4 expert go? He just left. Is that --
5 MS. ROSEN: I can --
6 MS. ROBESON: -- your expert back there in the
7 blue shirt?
8 MR. MOHAMMADI: Yes, Mr. Schwartz. I didn't know
9 he left. He probably went to the bathroom.
10 MS. ROSEN: I can give you the ones --
11 MS. ROBESON: Yes.
12 MS. ROSEN: -- that are of the subject property,
13 and then if you want to -- because that's basically --
14 MS. ROBESON: Okay.
15 MS. ROSEN: -- what I have, because I have a set
16 that I can give --
17 MS. ROBESON: Pick a picture that shows this shed,
18 please.
19 MR. MOHAMMADI: I don't have an objection to any
20 of the ones she picks. Okay?
21 MS. ROBESON: Okay.
22 MR. MOHAMMADI: I just want to, for sake of --
23 MS. ROBESON: No, I don't want to do it that
24 way --
25 MR. MOHAMMADI: -- 6,000 exhibits --

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1 MS. ROBESON: -- though. I understand, but --
2 MS. ROSEN: No, I understand. That's why --
3 MR. MOHAMMADI: Okay.
4 MS. ROBESON: -- at the moment, I want to get,
5 figure out what she's trying to say. I understand what
6 you're saying --
7 MR. MOHAMMADI: Okay. No problem.
8 MS. ROBESON: -- and in a perfect world -- okay.
9 So let's mark that. Is this one 117?
10 MR. MOHAMMADI: Yes.
11 THE WITNESS: Okay. So --
12 BY MS. ROSEN:
13 Q Wait until I've even --
14 A Okay. Okay.
15 MS. ROBESON: Okay. So this is 117. Ms. Gowan,
16 can you describe this?
17 (Exhibit No. 117 was marked
18 for identification.)
19 THE WITNESS: This is Shed No. 3.
20 MS. ROBESON: Okay. This is Shed 3 by the laundry
21 room?
22 THE WITNESS: Right.
23 MS. ROBESON: Okay. All right. Continue. You
24 can't leave.
25 UNIDENTIFIED SPEAKER: I'm here for two days.

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1 MS. ROBESON: I know. Go ahead.
2 THE WITNESS: As soon as you leave, everybody
3 needs you.
4 MS. ROBESON: I know.
5 THE WITNESS: Okay. But this is Shed No. 2, and
6 it's got a --
7 MS. ROBESON: Wait. 2 or 3?
8 THE WITNESS: Or, I'm sorry, this is Shed No. 3.
9 I'm --
10 MS. ROBESON: 3.
11 THE WITNESS: -- trying not to confuse --
12 BY MS. ROSEN:
13 Q When we say Shed No. 3, describe what so we know
14 what we're looking at. Is it the brown structure?
15 A This is the brown structure, and it's in a
16 different Hardie board and a different color.
17 MS. ROBESON: So your objection to 3, Shed 3, is
18 that it was never approved by the HOA. Is that your
19 objection?
20 THE WITNESS: Yes, and the main objection is, or
21 the main issue with this is that it shows it as being cut
22 back and made, I gather, into the original laundry room
23 storage. Right now it protrudes out on the sides, and it
24 shows it clearly here as being cut back.
25 BY MS. ROSEN:

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1 Q When you say it shows it, it shows it on what?
2 The approved plan?
3 A On the approved plan.
4 MS. ROBESON: Originally that side on the approved
5 plan was flush with the garage?
6 THE WITNESS: Right.
7 MS. ROBESON: Okay.
8 THE WITNESS: And it shows it as going back to
9 that.
10 MS. ROBESON: Okay. We got one shed down. Let's
11 move to -- do we have a picture of Shed 1 or what remains of
12 Shed 1?
13 THE WITNESS: We do, but --
14 MS. ROSEN: The only one I, we have as a good one
15 is the one that he's at this point objecting to. You know,
16 that's the only clear one that I've got.
17 MS. ROBESON: Mr. Mohammadi, why are you objecting
18 to -- show him the photo.
19 MS. ROSEN: He has them. I've given him the
20 photos.
21 MS. ROBESON: So are you objecting to this photo
22 coming in of Shed --
23 MR. MOHAMMADI: I'm objecting because of
24 timeliness issues. Everything's been provided. Like I
25 said, I got this at 6:00 p.m. last night. There've been

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1 objections about --
2 MS. ROBESON: Who took these pictures?
3 MR. MOHAMMADI: Not us. They were just -- I don't
4 know who took the pictures. I just received them yesterday.
5 MS. ROSEN: Well, Ms. Gowan had taken them, but
6 that's, you know, that's the best I have.
7 MS. ROBESON: Mr. Expert, you can go back and get
8 coffee.
9 MR. SCHWARTZ: I just did already. I'm just
10 trying to -- do you mind, it's like 69 in here, can I get
11 this off or -- it's cold.
12 MS. ROBESON: Go ask Ellen Forbes to turn it up.
13 Okay.
14 BY MS. ROSEN:
15 Q Any of the other photos that you took now --
16 MS. ROBESON: Is there any photos that are in the
17 record that show this shed?
18 BY MS. ROSEN:
19 Q Do any of the other photos in here show it?
20 A Let me look.
21 MS. ROSEN: All right. Maybe she can take and
22 look and see if we can find one in there.
23 MS. ROBESON: Well, if it's going to take a --
24 I'll tell you what. At this point, why don't you give the
25 photos to Mr. Barr and have him look through, and we'll just

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1 proceed with --
2 MS. ROSEN: Wait. We have one. Okay.
3 MS. ROBESON: And what --
4 THE WITNESS: It's not great, but we got one.
5 MS. ROBESON: I don't care. What is it?
6 MS. ROSEN: All right. Hold on one moment. It's
7 Exhibit --
8 BY MS. ROSEN:
9 Q Is it this one?
10 A Yeah.
11 MS. ROSEN: Exhibit 84(a).
12 MS. ROBESON: So that is which shed? Shed 1?
13 MS. ROSEN: That's the --
14 THE WITNESS: That would be shed --
15 MS. ROBESON: The remains of Shed 1?
16 THE WITNESS: Yes.
17 MS. ROBESON: All right.
18 MR. MOHAMMADI: I'm sorry. 84(a), you said?
19 MS. ROSEN: Yes.
20 MS. ROBESON: And your objection is that it should
21 have been removed?
22 THE WITNESS: Right.
23 MS. ROBESON: Okay. Now, do you want to take on
24 Shed 2, or was that part of the CCOC?
25 MS. ROSEN: I don't think Shed 2 was part of --

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1 THE WITNESS: Yeah.
2 MS. ROSEN: -- our supplemental complaint. I
3 believe it's only --
4 MS. ROBESON: Okay. Then we'll skip Shed 2. All
5 right.
6 THE WITNESS: Yeah.
7 MS. ROBESON: Anything else you want to say about
8 the sheds?
9 THE WITNESS: The fencing at Shed 1, on the
10 downhill side, next to Shed 3, was not approved and that
11 also needs to be removed.
12 BY MS. ROSEN:
13 Q Is that part of the supplement?
14 A Yes. It's not shown on the plans at all.
15 Q What I'm asking you is if that -- is that on the
16 supplement, and if so, where is it at?
17 A It's not. It's not added to No. 1.
18 Q Okay. But is it part of anything else in the
19 supplement?
20 MS. ROBESON: Is it in your supplemental
21 complaint, which is Exhibit -- are you going to do the
22 supplemental complaint in order, Ms. Rosen?
23 MS. ROSEN: Yes, I'm trying to do it in order --
24 MS. ROBESON: Okay. Let's do that then.
25 MS. ROSEN: -- because I think that's the most

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1 logical way to do it.
2 MS. ROBESON: We'll keep that on hold.
3 MS. ROSEN: All right. All right.
4 THE WITNESS: I don't think that it is. I don't
5 think that it is.
6 MS. ROBESON: You don't think it's in there?
7 THE WITNESS: Uhn-uh.
8 BY MS. ROSEN:
9 Q All right. Number 3 on the supplemental
10 complaint.
11 A That is, the brick veneer facade on the front of
12 the original house is to be corrected and match the brick
13 style around the windows, as shown on the approved plan, or
14 be removed; windows to be replaced to match the approved
15 plans.
16 Q With the photographs that have been introduced
17 into evidence already, which you took, perhaps if you can
18 explain to the Hearing Examiner what the, what the defect is
19 with the brick veneer facade and what needs to be done. Is
20 it easier, do you want to use the photos that were, some
21 photos that were taken by the --
22 A Yeah.
23 Q -- respondent? All right. Choose --
24 A That'd be great.
25 Q -- the photos that illustrate --

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1 A Okay.

2 Q -- the ones that were taken by the expert for --

3 MS. ROBESON: Are they admitted yet?

4 MS. ROSEN: These are the photos that were taken

5 by --

6 MS. ROBESON: No, I'm just asking. Do you have

7 any objection if we use these, Mr. Mohammadi?

8 MS. ROSEN: I've indicated --

9 MS. ROBESON: Mr. Mohammadi?

10 MR. MOHAMMADI: They're my pictures. I want them

11 all admitted, and she's basically picking the ones she wants

12 to use. So I don't have an --

13 MS. ROBESON: That's fine. Everything's going to

14 get in. It may not be exactly the way you want it in, but I

15 want to get through and figure out what she's complaining

16 about.

17 MR. MOHAMMADI: As I said, with respect to any

18 photographs we submitted, I don't have any objections to any

19 of them coming in.

20 MS. ROBESON: Okay. Then we're on. That's 118

21 and that is a -- that photo depicts what? Brick veneer on

22 the front facade?

23 (Exhibit No. 118 was marked

24 for identification.)

25 MR. MOHAMMADI: I don't know what photo they're --

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1 they haven't picked one yet.

2 THE WITNESS: This depicts brick veneer around

3 basically a trimmed window, where it has --

4 MS. ROBESON: Well, just say what, where is

5 that --

6 THE WITNESS: Okay.

7 MS. ROBESON: -- on the house?

8 THE WITNESS: It is on the original living room,

9 on the lower floor plan.

10 MS. ROBESON: Okay, facade of original living room

11 shown on lower floor plan of Exhibit 77.

12 THE WITNESS: Right.

13 MS. ROBESON: Okay.

14 THE WITNESS: The approved plan doesn't show the

15 keystone at the top.

16 MS. ROBESON: What's the keystone?

17 THE WITNESS: Right here above the window. It

18 just shows a running bond.

19 MS. ROBESON: Wait. I don't know what that means.

20 THE WITNESS: Okay. It's this, where the bricks

21 are turned vertical.

22 MS. ROBESON: Right.

23 THE WITNESS: That's the --

24 MS. ROBESON: That's the keystone?

25 THE WITNESS: Yes, and only the window is recessed

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1 with minor trim, not the double trim here.

2 MS. ROBESON: Okay. I'm looking at the front

3 elevation of Exhibit 77 --

4 THE WITNESS: I bet that's it.

5 MS. ROBESON: -- and I'm looking at 118, and I --

6 how can you tell that window is not recessed? Look at, look

7 at the --

8 THE WITNESS: The --

9 MS. ROBESON: -- front elevation of 77.

10 THE WITNESS: Okay. On -- when I look at this, I

11 mean, the brick, the brick surrounds the window with just

12 the trim and the window itself, not a wide --

13 MS. ROBESON: You mean not the wood --

14 THE WITNESS: Not the wood --

15 MS. ROBESON: -- or whatever it is?

16 THE WITNESS: -- all the way around, not the

17 double trimming at the bottom, and the windows trimmed out

18 like this is shown on an earlier plan that dates back to

19 December of 2011 when they originally replaced the windows

20 and this was even bigger. So what they did, I, I, it

21 appears, is they did the --

22 MS. ROBESON: December 2011? I thought the plan

23 was approved in May 2011.

24 THE WITNESS: So they did the windows -- they

25 replaced the windows in December of 2011, and they did the

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1 trim, and then they came back and did the brick, and they

2 just pulled it away.

3 MS. ROBESON: I see, I see -- okay. Go through

4 the time line of this with me. So I thought we were here

5 about the May 2011 plan, which is this, and you're saying

6 that conforms to a prior version, not the approved --

7 THE WITNESS: No, this doesn't conform. The only

8 thing that was brought up at the last meeting was the, the

9 shed and the deck.

10 MR. MOHAMMADI: Objection.

11 MS. ROBESON: Wait. I'm confused.

12 MS. ROSEN: Okay. Let me -- all right.

13 MS. ROBESON: Is your objection that you're

14 confused?

15 MR. MOHAMMADI: Yes. I don't know what last

16 meeting means.

17 MS. ROBESON: Okay. Ms. Rosen, take her through

18 it.

19 MS. ROSEN: Okay.

20 BY MS. ROSEN:

21 Q This is the approved plan that you're looking at,

22 which is Exhibit 77, correct?

23 A Yes.

24 Q And your testimony is that this window area, this

25 brick doesn't conform with this plan, is that correct?

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1 A Correct.

2 Q Okay. Now, can you just explain why, why it does
3 not conform to the plan?

4 A This is a sliding window. It's a two-pane window.
5 The trim is wrong. The trim around the window is wrong.
6 The keystone is wrong.

7 Q Okay. So you're basically saying that those
8 things do not comply with this plan?

9 A Right.

10 Q Okay. Now, with regard to the brick veneer
11 facade, you indicate in this supplement that it's to be
12 corrected to match the brick style around the windows, as
13 shown on the approved plan, or be removed. What do you
14 mean?

15 A The keystone is wrong.

16 MS. ROSEN: Your Honor, we can use this other
17 photo.

18 THE WITNESS: The brick needs to come into the
19 window with only the trim around the immediate window, and
20 the window needs to match what, the size of what is shown on
21 the plan.

22 MS. ROBESON: Okay. I understand.

23 MS. ROSEN: Okay.

24 MS. ROBESON: I understand that.

25 THE WITNESS: And the windows, just from looking

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1 at this, don't have the extra trim inside of the glass area.
2 In the elevation they just show them as being plain, just
3 plain glass.

4 MS. ROBESON: Okay. Which do you like better?

5 THE WITNESS: Well, the plainer because it kind of
6 fits in with the rest of the homes and because it fits and
7 matches what appears to have been proposed in the plan. My
8 outlook really is, what is the difference between what was
9 proposed and the plan, not what I per se like.

10 MS. ROBESON: Okay. Now, Ms. Rosen, you just
11 handed me a photograph. Can you tell me what this photo is?

12 BY MS. ROSEN:

13 Q This photograph.

14 A This photograph shows the living room --

15 MR. MOHAMMADI: Just Court's indulgence. Let me
16 find it so I have a --

17 THE WITNESS: Sure.

18 MR. MOHAMMADI: -- copy as well.

19 MS. ROBESON: And this is another photograph taken
20 by the respondent's expert?

21 MS. ROSEN: That's correct, yes.

22 MS. ROBESON: Okay, 119. Okay. If you can just
23 describe this for me.

24 (Exhibit No. 119 was marked
25 for identification.)

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1 THE WITNESS: This is the elevation -- again, the
2 living room with the bedroom above, and again, the windows
3 don't match; the brick doesn't match on the veneer. The
4 other part that it does show is the, I think it's called the
5 sitting room on the plan. Oh, sitting -- I got the plan.

6 MS. ROBESON: I thought it was called an office.

7 THE WITNESS: New office, you're right, it is.
8 The new office elevation, it --

9 MS. ROBESON: Okay. I'm going to stop you for one
10 second. I'm labeling this, photo of front facade of living
11 room and office, okay, just for the record. All right. I'm
12 sorry. Go ahead.

13 THE WITNESS: Just shortly, the office area is,
14 was supposed to be set back three 10, three feet 10 inches,
15 and it's obviously a lot further back than that. The --
16 there is an opening where there's supposed to be a crawl
17 space. So you'd have to --

18 MS. ROBESON: What's that?

19 THE WITNESS: It's the opening at the very bottom
20 of the page, here. I'm sorry.

21 MS. ROBESON: That's okay.

22 THE WITNESS: Can you see it?

23 MS. ROBESON: Yes.

24 THE WITNESS: It's a very -- it's a large opening,
25 and on the approved plans, it's a crawl space; so it's

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1 enclosed. There's no opening there. And on the second
2 floor, that whole area is supposed to be recessed --

3 MS. ROBESON: Wait. Hold on. Okay. Go ahead.

4 THE WITNESS: That whole area is supposed to be
5 recessed with French doors and a railing.

6 MS. ROBESON: Well, it does look like the window
7 is recessed.

8 THE WITNESS: It's, it's -- on the approved plans,
9 it shows that the exterior wall comes forward and aligns
10 with the first-floor facade and that the rest of that area
11 is open, just recessed a foot and six inches back, total.
12 It has --

13 MS. ROBESON: Wait. The lower floor -- I'm sorry.
14 Go ahead. So you're -- is the second story supposed to be
15 set back from the first story?

16 THE WITNESS: Yes.

17 MS. ROBESON: Because he could still put a French
18 balcony in there and it would look like this, but you're
19 saying the upper story --

20 THE WITNESS: The upper story is supposed to --
21 well, the whole addition is shortened from the front. It's
22 supposed to be three foot 10 inches from the face side of
23 the brick veneer living room space --

24 MS. ROBESON: How far do you think it is?

25 THE WITNESS: It looks eight to 10 feet.

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1 MS. ROBESON: Okay. So you think that the
2 first-floor setback should be three feet and it looks eight
3 to 10?
4 THE WITNESS: The plans show it as three-foot-10.
5 MS. ROBESON: Okay.
6 THE WITNESS: And they did not install the crawl
7 space. They opened up the whole area underneath the first
8 floor.
9 MS. ROBESON: Okay. And then can you just clarify
10 for me, I'm flipping between the upper and lower floor
11 plans, the second story of the office -- that's the rear --
12 was that, are you saying you think that should have been set
13 back as well?
14 THE WITNESS: That's also set back. It has a,
15 like a --
16 MS. ROBESON: Set back from the first story?
17 MS. ROSEN: Which page are you looking on?
18 THE WITNESS: Yes. It has a, like a fake-ish
19 balcony look. It's a very shallow balcony.
20 MS. ROBESON: Okay. I am looking at --
21 THE WITNESS: Front --
22 MS. ROBESON: -- I guess it would be the upper --
23 the lower and the upper floor plan.
24 THE WITNESS: Okay.
25 MS. ROBESON: Now, I don't, I can't read the

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1 little teeny print, but --
2 BY MS. ROSEN:
3 Q Okay. On --
4 MS. ROBESON: -- are they, what I'm trying to get
5 at, are they supposed -- is the front facade of those two
6 stories, absent any balcony, are they supposed to be flush,
7 because it looks like they are flush to me?
8 THE WITNESS: The upper floor -- the floor area is
9 above and flush with the office below. The --
10 MS. ROBESON: Yes, and your position is that's not
11 what the plans say?
12 THE WITNESS: That's not what's been built out.
13 MS. ROBESON: And what do you base that on?
14 THE WITNESS: It's supposed to be two walls coming
15 out with the balcony, and --
16 MS. ROBESON: Oh, you know what I need? I need
17 the left elevation. That's front. That's rear. Okay. I
18 see the left elevation.
19 THE WITNESS: Okay.
20 MS. ROBESON: So --
21 THE WITNESS: So when you're looking at it from
22 the side, you don't notice that there's a balcony there
23 because that whole side comes forward and aligns with --
24 MS. ROBESON: Which side? Looking at it from
25 the --

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1 THE WITNESS: When you're looking at the left-side
2 elevation.
3 MS. ROBESON: Yes. Point to where you're talking
4 about.
5 THE WITNESS: The balcony is in this area, but the
6 wall comes forward, and then the balcony, the whole balcony
7 is set back.
8 MS. ROBESON: Okay. So you're not supposed to see
9 a balcony?
10 THE WITNESS: Not from the side, no.
11 MS. ROBESON: And when you say this, you're,
12 looking at Exhibit 77, left-side elevation, you're referring
13 to the nearest bump-out --
14 THE WITNESS: Right.
15 MS. ROBESON: -- on the, to the right? Okay. All
16 right.
17 THE WITNESS: And then the railing goes all the
18 way across, and you can see that on front elevation, and
19 it's the same kind of design applied to the area on the very
20 right of the garage. It's the same design element.
21 MS. ROBESON: I see that, although I've also seen
22 -- well, you keep -- I have seen what they call French
23 balconies that do have just this little teeny step-out --
24 THE WITNESS: Uh-huh.
25 MS. ROBESON: -- but okay, I understand what

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1 you're saying now; so thank you for that. Thank you for
2 clarifying that.
3 THE WITNESS: The other difference is, is that the
4 windows, while --
5 MS. ROBESON: On the office bump-out?
6 THE WITNESS: The office bump-out. The window
7 height on the first floor is supposed to align with the
8 window height of the living room --
9 MS. ROBESON: And they --
10 THE WITNESS: -- and it doesn't.
11 MS. ROBESON: Okay.
12 THE WITNESS: They're totally different sizes,
13 different windows.
14 MS. ROBESON: Okay.
15 THE WITNESS: Totally different. And then for
16 both of them -- hoping I'm not jumping around, let me know
17 -- if you go back to the left-side elevation --
18 MS. ROBESON: Okay.
19 THE WITNESS: -- the overhang is four --
20 MS. ROBESON: Now, when you say overhang --
21 THE WITNESS: Okay. It's way, it's the top of the
22 roofline where it --
23 MS. ROBESON: Oh, so you're pointing to --
24 THE WITNESS: Right.
25 MS. ROBESON: -- on the right-hand side --

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1 THE WITNESS: Right, when all of them --
2 MS. ROBESON: -- the beginning of the eave there?
3 THE WITNESS: Right. All of them are shown as
4 being shallow, and what exists is not shallow.
5 MS. ROBESON: Okay. And do you have a picture of
6 that or --
7 THE WITNESS: Same picture.
8 MS. ROBESON: Same picture. I see. Okay.
9 THE WITNESS: Okay. So it's kind of all of it in
10 a nutshell.
11 MS. ROBESON: Okay.
12 THE WITNESS: Oh, the only last thing is that the
13 brick veneer wasn't added at the bottom right, across the
14 front here.
15 MS. ROBESON: I can't see here.
16 THE WITNESS: I'm sorry. It's where the opening
17 is. That was supposed to be a brick knee wall.
18 MS. ROBESON: Oh, where, okay, where it's open?
19 THE WITNESS: Right.
20 MS. ROBESON: Is it still cinder block?
21 THE WITNESS: Yes, I believe so. As of a week or
22 something ago, it was cinder block.
23 MS. ROBESON: Right, but we --
24 THE WITNESS: It's supposed to be --
25 MS. ROBESON: -- I asked him to stop construction.

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1 So he wouldn't put that on except for, what's missing is the
2 opening, right? He wouldn't have put the brick on that
3 portion of the facade yet, correct?
4 THE WITNESS: Not if you told him he couldn't,
5 shouldn't have.
6 MS. ROBESON: Well, if I gently suggested that he
7 stop construction, he wouldn't have put that brick on,
8 right?
9 MS. ROSEN: Well, I'm not sure that she could
10 answer that --
11 MS. ROBESON: Yes, that's true, good point.
12 MS. ROSEN: -- you know, what he would have done
13 or not done.
14 MS. ROBESON: So, but what you're saying is that
15 the cinder block should be completely enclosed; there
16 shouldn't be an opening?
17 THE WITNESS: Right, not in the front, and it's --
18 MS. ROBESON: Okay.
19 THE WITNESS: -- supposed to be covered in brick.
20 MS. ROBESON: I see what you did. You're just
21 going through everything that at present is not in
22 compliance --
23 THE WITNESS: Right.
24 MS. ROBESON: -- correct?
25 THE WITNESS: Right.

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1 MS. ROBESON: Okay. So the thing now is that the
2 cinder block is open; there's no facade there, okay --
3 MS. ROSEN: Okay.
4 MS. ROBESON: -- or no enclosure. Okay.
5 THE WITNESS: Right.
6 MS. ROBESON: Okay.
7 BY MS. ROSEN:
8 Q Okay. And No. 4 on the supplement, okay, refers
9 to, brick knee wall is to be lowered to match approved
10 plans --
11 A Okay.
12 Q -- on all sides.
13 A We do have some previous documents that show that.
14 So that might --
15 Q Okay. Previous photographs that were already --
16 A Yeah. That might help.
17 Q Okay. So if you can tell us which photograph.
18 A Well, it's not a very good one; cars are there,
19 rats. Okay. I've got one that's kind of there. Wow.
20 MS. ROBESON: How about just describing --
21 THE WITNESS: Oh, sorry. Timing's everything.
22 MS. ROBESON: That's okay.
23 BY MS. ROSEN:
24 Q Which exhibit?
25 A It's Exhibit 82, and it could be (a). (A) is

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1 fine.
2 Q 82(a), and it looks like -- is it 82(d) also?
3 A Yes.
4 Q Okay.
5 A And then there's --
6 Q No. Wait until she gets there.
7 A Okay.
8 MS. ROBESON: I'm sorry. Okay. I have it. I see
9 it.
10 THE WITNESS: The brick veneer in the front at the
11 garage is too high. It shows --
12 BY MS. ROSEN:
13 Q If you can refer to the portion of the plan --
14 A Okay.
15 Q -- at the same time as the photo so that the
16 Hearing Examiner could follow it.
17 MS. ROBESON: So you're looking at the front
18 elevation?
19 THE WITNESS: Yes.
20 MS. ROBESON: And it shows siding except for --
21 THE WITNESS: You have --
22 MS. ROBESON: -- I don't have a scale on here.
23 THE WITNESS: It's real faint, and it's just
24 something that, you know, I'm used to seeing. If you look
25 at the garage doors, the real close lines at the bottom,

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1 there's three of them, and then it shows --
2 MS. ROBESON: Yes, I --
3 THE WITNESS: That's the three courses of brick
4 and then a cap.
5 MS. ROBESON: Okay.
6 THE WITNESS: And then it's supposed to be the
7 same -- if you go to left elevation, you'll see the brick --
8 MS. ROBESON: Okay.
9 THE WITNESS: -- real low across the sides --
10 MS. ROBESON: Yes.
11 THE WITNESS: -- and it's much higher.
12 MS. ROBESON: Okay.
13 THE WITNESS: The only area that I could see where
14 the brick matches the plans, or appears to match the plans,
15 is the very back.
16 MS. ROBESON: Okay.
17 THE WITNESS: Let me see. I got it. In the same
18 grouping of pictures, picture (f), as in Frank, shows the
19 brick, the high brick veneer knee wall on the garage, and
20 that's --
21 MS. ROBESON: Okay.
22 THE WITNESS: -- that's supposed to be lower.
23 MS. ROBESON: I see it.
24 THE WITNESS: Okay.
25 MS. ROBESON: I mean, I see what you're

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1 describing. Okay.
2 BY MS. ROSEN:
3 Q Okay. Moving down the list on the supplement, you
4 have, all new windows and doors to match approved plans.
5 Are there any existing windows and doors that have been
6 constructed that don't match the approved plans?
7 A I had to go through and really look at it. To get
8 to the short of it, the original -- let me pull up the --
9 basically, there's at least seven different sizes and three
10 or four styles.
11 Q When you say that, are you talking about on the
12 approved plans it was, or --
13 A That were put in. On the approved plans, there's
14 three, four -- I think I wrote down, and I can go back and
15 look. The short of it is, in the back of the house, the
16 windows across the back on the 2002 addition are shown as --
17 MS. ROBESON: Wait. 2002 addition, what's that?
18 THE WITNESS: That's these windows here.
19 MS. ROBESON: So you're --
20 THE WITNESS: They're unchanged.
21 MS. ROBESON: -- talking about the second-story --
22 THE WITNESS: Right.
23 MS. ROBESON: -- line of windows --
24 THE WITNESS: Right. This is --
25 MS. ROBESON: -- in the main portion of the

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1 house --
2 THE WITNESS: Right.
3 MS. ROBESON: -- not the bump-out? Okay.
4 THE WITNESS: Right. So these are basically shown
5 as remaining, as is.
6 MS. ROBESON: Yes. Okay.
7 THE WITNESS: So, you know, they were -- they're
8 shown on the plans; they were included; they're accepted.
9 The basement, this window is shown as remaining, and this
10 window is shown as remaining. Okay?
11 MS. ROBESON: Okay. So, and what's your position?
12 They're not remaining?
13 THE WITNESS: So, because they're shown on the
14 plans, in the approved plans, they're still there. They're,
15 you know, I didn't see any discrepancy there --
16 MS. ROBESON: Okay.
17 THE WITNESS: -- as to what was installed. The
18 door in the back is shown as being changed to a six-panel
19 door, and right now that hasn't been done.
20 MS. ROBESON: Okay. When you say -- is that the
21 door on the bump-out, the new office, or is that the door
22 over to the left?
23 THE WITNESS: The door in the middle is --
24 MS. ROBESON: Or in the middle?
25 THE WITNESS: -- is either, I mean, it -- I'm not

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1 dead certain what it is used for. It looks like an office
2 or an apartment --
3 MS. ROBESON: Oh, I see.
4 THE WITNESS: -- or both, but it's, it's a door in
5 the middle, and --
6 MS. ROBESON: And it hasn't been changed to --
7 THE WITNESS: It hasn't been changed.
8 MS. ROBESON: -- match the door as shown on here?
9 THE WITNESS: Right.
10 MS. ROBESON: Okay.
11 THE WITNESS: This area here is that shed, and
12 that was --
13 MS. ROBESON: Wait. You have to tell me what
14 area. You're --
15 BY MS. ROSEN:
16 Q What shed are you referring to?
17 MS. ROBESON: -- you're pointing to the area --
18 THE WITNESS: I'm sorry.
19 MS. ROBESON: -- under -- I think what you're
20 pointing to is the deck.
21 THE WITNESS: Right.
22 MS. ROBESON: Okay. By the chimney, by --
23 THE WITNESS: That's Shed 2.
24 MS. ROBESON: -- on the left-hand side of the rear
25 elevation.

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1 THE WITNESS: Right.
2 MS. ROBESON: Okay.
3 THE WITNESS: And right now that whole area was
4 basically deemed to be removed. So --
5 MS. ROBESON: Because of the CCOC case?
6 THE WITNESS: Right. And --
7 MS. ROBESON: What about the deck? I thought he
8 got part of --
9 THE WITNESS: The deck is, is to remain.
10 MS. ROBESON: Okay. So you're saying, but --
11 okay.
12 THE WITNESS: And the -- right now, even though
13 the way that it's built out, it doesn't match the approved
14 plans, the doors.
15 MR. MOHAMMADI: Objection. I don't -- I thought
16 this was all part of the other case. I don't know why it's
17 coming up now.
18 MS. ROBESON: I think what she's doing is
19 categorizing the -- is this in the supplemental complaint?
20 THE WITNESS: Not the shed, no. I'm really --
21 MS. ROBESON: Okay.
22 THE WITNESS: -- talking about this door.
23 MS. ROBESON: Which door? Which door?
24 THE WITNESS: The door in the middle.
25 MS. ROBESON: The middle door. Okay.

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1 THE WITNESS: Right.
2 MS. ROBESON: We have the middle door then.
3 THE WITNESS: Okay.
4 MS. ROBESON: So keep going with the windows.
5 THE WITNESS: Okay.
6 MS. ROBESON: Why don't you go through the windows
7 that don't, you say, don't conform.
8 THE WITNESS: Okay. The windows that don't
9 conform are on the additions. They appear a little smaller
10 or a little shorter, and I say that because they, when you
11 look at the back elevation and then you look at the side
12 elevation, when you look at what's been installed, they
13 don't match. They look like they're the same maybe
14 manufacturer; they don't look to be the same size.
15 MS. ROBESON: Well, just as a, take the front
16 windows on the, on the new, I forget what it is, above the
17 study -- I think it's now a master bedroom or something --
18 anyway --
19 THE WITNESS: Yeah, something.
20 MS. ROBESON: No, I didn't mean that in a
21 derogatory manner.
22 THE WITNESS: No. Well, I understand.
23 MS. ROBESON: Okay. Take those windows, which I'm
24 looking at Exhibit 119. Okay. So why do you think the
25 upper-story windows don't conform?

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1 THE WITNESS: They're, according to what I look at
2 on the plan, you know -- and it's difficult because there
3 was never any specs supplied -- but the windows --
4 MS. ROBESON: Well, there's no dimensions. That's
5 the hard part. There's --
6 THE WITNESS: Oh.
7 MS. ROBESON: -- no scale.
8 THE WITNESS: I know. That makes it worse.
9 MS. ROBESON: Well, we'll get to that later.
10 THE WITNESS: But these --
11 MS. ROBESON: Or at least on these drawings.
12 THE WITNESS: True. The window in the lower
13 section of the office appears to be the same size as the
14 upper window in the bedroom, and I mean --
15 MS. ROBESON: And you're just doing that by --
16 THE WITNESS: -- this window --
17 MS. ROBESON: -- a visual comparison?
18 THE WITNESS: Right.
19 MS. ROBESON: Okay.
20 THE WITNESS: So it's -- and so they don't look
21 like they're the same size, and according to what I'm
22 looking at on the elevation, it appears they should be.
23 And --
24 MS. ROBESON: You know, I keep thinking, if you
25 get specifications, you don't even know if the cut sheets

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1 are going to tell you what you want, because the original
2 drawing isn't to scale.
3 THE WITNESS: The cut sheets, the only thing that
4 it helps is that at least you can see how many different
5 types of windows that someone's using in the construction
6 and the finish --
7 MS. ROBESON: Well, it gives you the panes --
8 THE WITNESS: -- but it doesn't give --
9 MS. ROBESON: -- or the mullions, but it's not
10 going to give you the size.
11 THE WITNESS: Right, it doesn't give you the size.
12 So what I had to do was to go and compare the elevations,
13 and the appearance is that this window appears --
14 MS. ROBESON: Wait. This window is the --
15 BY MS. ROSEN:
16 Q Which window in the plan?
17 A In the upper bedroom.
18 MS. ROBESON: Upper floor of the new -- the
19 addition, above the office, above the office?
20 THE WITNESS: It's the, the window --
21 MS. ROBESON: I think it's a master bedroom.
22 THE WITNESS: -- I'll help you with this.
23 MS. ROBESON: It's a master --
24 THE WITNESS: It's the --
25 MS. ROBESON: -- it's got hatch marks. I guess --

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1 THE WITNESS: It's the --
2 MS. ROBESON: -- it's a master bedroom.
3 THE WITNESS: It's the master bedroom. It's right
4 above the living room. It appears that the window that is
5 used in, it just says bedroom -- it's right, it's in front
6 of, it's the front side of the house, in front of master
7 bedroom -- those windows appear to be the same size window
8 that's used on the --
9 MS. ROBESON: Lower level of the office --
10 THE WITNESS: Right, and --
11 MS. ROBESON: -- what is marked as the office.
12 THE WITNESS: Right.
13 MS. ROBESON: Okay.
14 THE WITNESS: And the other windows, the side
15 windows and the back windows for the office.
16 MS. ROBESON: Okay.
17 THE WITNESS: And it just looks like it wasn't.
18 MS. ROBESON: Okay. So you visually compared
19 based on the proportions of the existing windows, and then
20 some, you say, were to have been the same proportion and
21 they aren't, in your --
22 THE WITNESS: Correct.
23 MS. ROBESON: -- your testimony is? Okay.
24 THE WITNESS: Correct. And it looks --
25 MS. ROBESON: What other windows? Are there other

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1 windows that you're saying --
2 THE WITNESS: I'd have to look and see if the
3 windows on the other side of the garage, but if you -- when
4 you look at the elevation, you can see that these two
5 windows match, these two appear to match, these two doors
6 match.
7 MS. ROBESON: Well, wait. You can't just say --
8 THE WITNESS: I'm sorry.
9 MS. ROBESON: -- these two, because this goes to
10 the CCOC in writing.
11 THE WITNESS: Okay.
12 MS. ROBESON: So you have to say, the two at X.
13 THE WITNESS: Okay.
14 MS. ROBESON: You have to describe what you're
15 pointing to.
16 MR. MOHAMMADI: Your Honor, if I may object for a
17 second. I understand --
18 MS. ROBESON: Oh, go ahead.
19 MR. MOHAMMADI: -- you, I understand --
20 MS. ROBESON: Why wait?
21 MR. MOHAMMADI: -- you can ask questions, I
22 understand, but it seems to me like you're basically doing
23 direct here, for the last 15 minutes.
24 MS. ROBESON: Yes, that's okay. I can call a
25 witness.

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1 MR. MOHAMMADI: I understand, but --
2 MS. ROBESON: My issue is, and the reason I'm
3 doing it is, I cannot get a clear idea of -- now, I can
4 instruct Ms. Rosen, if you want to take over the direct, she
5 needs to be clear on what she's describing, what exhibit
6 she's referring to so that I -- I just want a list of what
7 she's -- I want to hear what she's saying.
8 MS. ROSEN: I understand. I mean --
9 MS. ROBESON: Okay.
10 MS. ROSEN: -- it seems like, you know, to some
11 extent, because, you know, this gets a little bit
12 complicated, that if it's more expeditious for you to do as
13 you're doing, I don't have an issue with it, you know.
14 MS. ROBESON: Well, I'll turn it over, but I have
15 the clear ability --
16 MR. MOHAMMADI: I'm not disputing that. I just,
17 it seems --
18 MS. ROBESON: Good. Then what's the basis of your
19 objection?
20 MR. MOHAMMADI: It seems to me like we --
21 MS. ROBESON: That what?
22 MR. MOHAMMADI: To keep it more uniform, as you --
23 MS. ROBESON: Flowing?
24 MR. MOHAMMADI: Yes, to let her finish with her
25 direct and then ask any questions --

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1 MS. ROBESON: Well, I don't want to sit here while
2 she looks through pictures.
3 MR. MOHAMMADI: That's fine, Your Honor. I'm just
4 noting it for the record, basically.
5 MS. ROBESON: Okay.
6 THE WITNESS: Well, maybe -- well, I apologize,
7 and what I can do is say --
8 MS. ROBESON: What I need you to do is be
9 specific. When you say windows are not in proportion, what
10 windows --
11 THE WITNESS: I'll try to --
12 MS. ROBESON: -- where are they shown in these
13 exhibits?
14 THE WITNESS: I'll try to realize and remember
15 that somebody's listening to this and trying to figure out
16 what I'm saying.
17 MS. ROBESON: That's right.
18 THE WITNESS: So I'm sorry. Okay. The windows on
19 the new office area --
20 MS. ROBESON: Yes.
21 THE WITNESS: -- all three sides are supposed to
22 be the same. They're supposed to be the same size as the
23 window in the front left bedroom --
24 BY MS. ROSEN:
25 Q I'm sorry. What page are you looking at when

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1 you're pointing at --
2 A -- as well as the --
3 Q Let them know which set page you're looking at in
4 the exhibit.
5 A Okay. The front left bedroom on the upper floor
6 plan --
7 MS. ROBESON: But not the master bedroom.
8 THE WITNESS: But not the master bedroom, and the
9 new office/bonus room/bedroom, it's supposed to match the
10 window on the left side --
11 MS. ROBESON: Okay.
12 THE WITNESS: -- on the upper floor plan.
13 MS. ROBESON: All right.
14 THE WITNESS: Okay.
15 MS. ROBESON: I understand.
16 THE WITNESS: So that's basically the gist of that
17 window, and that window appears to be sized by an existing
18 window that is --
19 MS. ROBESON: What window? The one on the
20 upper --
21 THE WITNESS: All of the windows that I just
22 described, according to this plan, just --
23 MS. ROBESON: Right.
24 THE WITNESS: -- looking at it, they all match the
25 basement plan window --

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1 MS. ROBESON: Okay.
2 THE WITNESS: -- in the area of the finished
3 basement as you're facing -- if you look at the rear
4 elevation, it is the window to the right of the center door.
5 MS. ROBESON: Okay.
6 THE WITNESS: Oh, I can do it, just a matter of
7 time. And then the two windows on the right-side elevation,
8 the ones that are just double windows --
9 MS. ROBESON: Wait. Wait.
10 THE WITNESS: -- those appear to match as well.
11 MS. ROBESON: Oh, I see what you're saying. They
12 all match the one on the rear elevation to the right of the
13 door, and then the two on the office/master bedroom appear
14 to match?
15 THE WITNESS: The, the -- let's see what the
16 master bedroom is. I'm going to check. The master bedroom
17 has, it, it has the windows that would match the new office,
18 and then it has what appears -- it looks like two French
19 doors.
20 MS. ROBESON: On the front.
21 THE WITNESS: Yeah.
22 MS. ROBESON: Yes.
23 THE WITNESS: The only, there's the triple window
24 -- if you look on the right-side elevation, there's a triple
25 window on the second floor --

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1 MS. ROBESON: Yes.
2 THE WITNESS: -- and let me see, and on the upper
3 garage, if you look on the left-side elevation, it shows a
4 matching double window. Neither one of those windows were
5 installed.
6 MS. ROBESON: Okay.
7 BY MS. ROSEN:
8 Q So is it just a blank wall, you mean?
9 A It's a blank wall on both.
10 Q Okay.
11 MS. ROBESON: Okay.
12 THE WITNESS: The only -- I'm going to desperately
13 try to get through this -- where the open shed is, if you
14 look at the right-side elevation, there's a very long narrow
15 window.
16 MS. ROBESON: The open shed is by the garage,
17 correct?
18 THE WITNESS: Correct.
19 MS. ROBESON: All right.
20 THE WITNESS: It's right now in the same area as
21 that tall thin --
22 MS. ROBESON: Window.
23 THE WITNESS: -- window that's --
24 MS. ROBESON: Yes.
25 THE WITNESS: And it shows, basically, that window

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1 coming back.
2 MS. ROBESON: Okay.
3 THE WITNESS: And then next to Shed, I think it's
4 3, the one that -- yes, Shed 3 at the laundry room, it shows
5 a wider window or door there, full glass.
6 MS. ROBESON: Is your testimony, that's not there?
7 THE WITNESS: That is now a multi-paned glass
8 door.
9 MS. ROBESON: Okay.
10 THE WITNESS: The window that's shown there at the
11 deck, right now it's --
12 MS. ROBESON: The two-paned window?
13 THE WITNESS: Yes --
14 MS. ROBESON: Yes.
15 THE WITNESS: -- on the first floor. Right now
16 it's about a foot off of the back end of the house, and this
17 shows it as being moved, and it's -- it hasn't been moved.
18 MS. ROBESON: Wait. This means, you're saying the
19 right elevation shows it --
20 THE WITNESS: Right-side elevation shows it as
21 being new.
22 MS. ROBESON: Shows it further back?
23 THE WITNESS: Yes. It shows it here.
24 MS. ROBESON: Further away from the facade --
25 THE WITNESS: Right.

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1 MS. ROBESON: -- the rear facade?
2 THE WITNESS: Correct.
3 MS. ROBESON: Okay.
4 THE WITNESS: See, I marked my plans; so now I'm
5 trying -- the window above it on the second floor, I don't
6 believe it exists right now -- I could look through the
7 pictures -- and --
8 MS. ROBESON: Well --
9 THE WITNESS: -- it shows it here on the plan, and
10 it's not installed.
11 MS. ROBESON: Okay.
12 BY MS. ROSEN:
13 Q Is it just a blank wall also?
14 A There's a little window on the other side of the
15 chimney, on the left side of the chimney if you're looking
16 at the right-side elevation, second floor, and that shows it
17 as being removed, and it's still there right now. I think
18 I --
19 MS. ROBESON: Okay. An existing window is there?
20 THE WITNESS: Correct.
21 MS. ROBESON: Okay.
22 THE WITNESS: Yes. Oh, I know what it was. The
23 -- I need to make a correction -- the window on the left
24 side of the chimney on the first floor --
25 BY MS. ROSEN:

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1 Q On the right-side --
2 MS. ROBESON: Wait. Wait. Which elevation?
3 BY MS. ROSEN:
4 Q Right-side elevation?
5 A On the right-side elevation.
6 MS. ROBESON: Okay.
7 THE WITNESS: It, it exists. What they did is
8 they located a door on the right side of the chimney, and
9 it's not shown on the plan.
10 MS. ROBESON: Where is the door?
11 THE WITNESS: It's shown on the right side of the
12 chimney.
13 MS. ROBESON: Oh, at the deck level?
14 THE WITNESS: Yes.
15 MS. ROBESON: Okay.
16 BY MS. ROSEN:
17 Q Are you trying to say that they put a door there
18 that's not shown on the plans --
19 A Yes.
20 Q -- is that what your testimony is? Okay.
21 A There's a door there that's not shown on the
22 plans. I think I got all the windows and doors.
23 MS. ROBESON: Okay.
24 THE WITNESS: Oh, I think --
25 MS. ROBESON: Are we on 6 now?

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1 THE WITNESS: I'll do one more on the windows and
2 doors.
3 MS. ROBESON: Okay.
4 THE WITNESS: On the, we call it the lobby/entry
5 area, the double --
6 MS. ROBESON: The foyer?
7 THE WITNESS: The foyer. There was supposed to be
8 a window/door assembly, we call it. It's really a very
9 narrow door, double door, and then a very wide window, and
10 what was actually installed was just a double door.
11 MS. ROBESON: Okay.
12 THE WITNESS: And that is shown on Exhibit 80(e),
13 as in Edward, which is page 11.
14 MS. ROBESON: Okay.
15 THE WITNESS: And the area above it was supposed
16 to have windows that are kind of spaced similar to the
17 door/window assembly below, and there's nothing installed;
18 they're missing.
19 MS. ROBESON: Okay.
20 MR. MOHAMMADI: What did you say? 80(e)?
21 THE WITNESS: Yes.
22 MR. MOHAMMADI: I don't have 80(e).
23 BY MS. ROSEN:
24 Q I don't think it's -- no, it's not 80, sorry.
25 It's --

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1 A Oh, am I wrong?
2 Q -- I think it's 82(e), I think is what you're
3 looking at.
4 A Oh, sorry.
5 Q It's okay. Let's make sure. It's this page,
6 right? This page?
7 A Yes.
8 MS. ROSEN: Yes, it's 82(e).
9 MS. ROBESON: Okay. Okay. So that's -- is that
10 Item 5 that we just finished, with the windows?
11 THE WITNESS: Yes.
12 MS. ROSEN: Yes.
13 MS. ROBESON: Okay. So now we're on Item 6.
14 BY MS. ROSEN:
15 Q Okay. Item 6 being, the addition over the garage
16 on the right side to be corrected to show a setback of one
17 foot six inches, with French doors, a wood railing, and
18 overhanging roof aligning with front face of garage below or
19 addition to be removed. What is the --
20 A It's supposed to be -- it's designed the same way
21 as the addition on the left side. So if you look at
22 elevation --
23 MS. ROBESON: Yes.
24 THE WITNESS: -- front elevation, you can see the
25 similarities.

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1 MS. ROBESON: Hold on. Okay. So what are you
2 saying should be the same?
3 THE WITNESS: The, the setback for the door --
4 MS. ROBESON: Which door? The front door in the
5 foyer.
6 THE WITNESS: The door on the upper floor at --
7 MS. ROBESON: Above the garage?
8 THE WITNESS: Yes, above the garage, on --
9 MS. ROBESON: Is that a door or a window?
10 THE WITNESS: That's, it's a door. It's in their
11 new office/bonus room/bedroom on the upper floor plan, and
12 it is the recessed -- it almost looks like a closet because
13 the window, the architectural window detail isn't coming
14 through clearly on some of the plans, but it's, it's just
15 because the print missed it on mine a little bit. I mean,
16 you can see, like, you know, a window and a window somewhere
17 there. So this is supposed to be a door.
18 MS. ROBESON: Okay. All right.
19 BY MS. ROSEN:
20 Q Okay. Now on, also on No. 6, you have, roof over
21 this section must be lowered to match approved plans, triple
22 window to be installed on side as shown in approved plans.
23 Is that something you already addressed with the windows?
24 A Yes.
25 Q Okay. Cut sheets provided to HOA, non-complying.

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1 I think you already did that one.
2 A We did the -- we already did the overhang.
3 Q Okay. So that's already been addressed. So I
4 guess we go to No. 7 then. I think you've gone through --
5 A It looks -- yes, and we talked about the roof
6 already. The CMU block walls to be brick veneer -- oh, I'm
7 sorry. I'm on 7. Okay. So we're finished with 6.
8 Q We've done 6.
9 MS. ROSEN: She already addressed 6.
10 BY MS. ROSEN:
11 Q All right. Now, going to No. 7.
12 A 7, we've basically gone over it because we talked
13 about --
14 MS. ROBESON: Well, can you, it's --
15 THE WITNESS: Okay.
16 MS. ROBESON: -- I have 77 in front of me, and I
17 have pictures, and it's --
18 THE WITNESS: Okay.
19 MS. ROBESON: -- hard for me to add one more. So
20 can you --
21 THE WITNESS: Okay.
22 MS. ROBESON: -- just describe it, what --
23 THE WITNESS: Yes. Okay.
24 MS. ROBESON: -- the next one is?
25 THE WITNESS: On the --

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1 BY MS. ROSEN:
2 Q Number 7.
3 A It's No. 7, and on the front elevation, it's the
4 elevation all the way to the left.
5 MS. ROBESON: And what's wrong with it, though?
6 That's what I'm saying. I don't have the supplemental
7 complaint right --
8 THE WITNESS: We discussed the fact that the brick
9 veneer knee walls don't exist. We talked about the upper
10 balcony that doesn't exist.
11 MS. ROBESON: Okay.
12 BY MS. ROSEN:
13 Q You indicate, addition on the left side of the
14 house does not match approved plans.
15 A Right. It's not -- it's supposed to be set back
16 three-foot-10 --
17 MS. ROBESON: Instead of?
18 THE WITNESS: -- and it's eight or 10 feet,
19 somewhere around there. And I mention, install rainwater
20 dry wells --
21 MS. ROBESON: Where?
22 THE WITNESS: -- to mitigate damage. It's --
23 MS. ROBESON: Wait. Rainwater dry -- you mean
24 stormwater management?
25 THE WITNESS: Right. It's --

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1 MS. ROBESON: But that's not part --
2 THE WITNESS: It was included as part of No. 7.
3 BY MS. ROSEN:
4 Q Okay. Was that part of his plans?
5 MS. ROBESON: Wouldn't that be a stormwater
6 management issue and not a -- did you approve stormwater
7 management for this site?
8 THE WITNESS: There was, there was discussion, and
9 I think somewhere in -- it's not shown on the approved
10 plans. It's -- and I can look at the letter --
11 MS. ROBESON: Okay. So what do you --
12 THE WITNESS: -- the approved letter, but it's
13 basically --
14 MS. ROBESON: Okay. So what do you want to see
15 for stormwater management?
16 THE WITNESS: Something that manages --
17 MS. ROBESON: What are you asking for?
18 THE WITNESS: -- the amount of rain that comes off
19 of this large structure and is dissipated slower.
20 MS. ROBESON: Like a rain garden.
21 THE WITNESS: Something.
22 MS. ROBESON: I'm not sure they even allow --
23 THE WITNESS: The --
24 MS. ROBESON: Anyway --
25 THE WITNESS: Well, I know that now the county is

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1 looking at these really, really large homes on really,
2 really small lots and they're asking for --
3 MS. ROBESON: That's right.
4 THE WITNESS: -- dry wells. So I, I made a
5 recommendation. I just noted that there's a, there is a
6 rainwater issue, and then I noted that.
7 MS. ROBESON: Well, it's part of your supplemental
8 -- and what's the rainwater issue that you observe?
9 THE WITNESS: The, the spillway is absolutely
10 topped off during a mid or very bad storm, and because
11 there's only -- there is mostly exposed soil on the lot and
12 has been for several years, that it damages the spillway,
13 and it's, it's a little bit tricky to drive by there when
14 it's raining.
15 MS. ROBESON: Well -- okay.
16 THE WITNESS: Most very, very large homes, they'll
17 do a dry well, and the county really doesn't allow exposed
18 dirt. They don't seem to like it.
19 MS. ROBESON: Well, the county is not part of this
20 case.
21 THE WITNESS: I know. I know.
22 MS. ROBESON: So --
23 THE WITNESS: And we do have a problem with --
24 MS. ROBESON: -- we're adding that to your punch
25 list, but whether it's part of this case or not --

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1 THE WITNESS: I understand.
2 MS. ROBESON: So, all right, so you're saying the
3 runoff is damaging the spillway?
4 THE WITNESS: It is. It's pulling the dirt that
5 was dug out of the basement and spread on top of the topsoil
6 around the lot. It's, it's just -- because that soil is
7 kind of loose --
8 MS. ROBESON: Right.
9 THE WITNESS: -- it's just pulling it and dragging
10 it down.
11 MS. ROBESON: Okay.
12 THE WITNESS: So --
13 MS. ROBESON: Okay. Is that all of that item?
14 THE WITNESS: Yes.
15 MS. ROBESON: Okay.
16 BY MS. ROSEN:
17 Q Okay. Then No. 8 on the supplemental complaint,
18 two-story entry does not match plans at all and should be
19 removed.
20 MS. ROBESON: Is that the foyer entry?
21 THE WITNESS: Yes. It's the windows, the doors.
22 I'm not certain if the size of it matches the plans, as well
23 as the roof.
24 BY MS. ROSEN:
25 Q Okay. And then you also have, original entrance

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1 and second-story window design to be reinstalled.
2 A Right.
3 Q Okay. What is the issue with the original
4 entrance?
5 A It goes more, it matches -- the original entrance
6 was an offset, and somewhere we have a picture of it, where
7 the entry door was offset, it wasn't centered, and the
8 approved plans kind of match that design, and the windows
9 above match that, and if you go through and look at a lot of
10 the homes in the neighborhood, that was -- it's, it's still
11 maintained in a lot of the homes. So it helps to make this
12 house blend in, and it -- basically, when I was making my
13 comments, it was directed to the plans. It doesn't match
14 the plans.
15 MS. ROBESON: Okay. All right.
16 BY MS. ROSEN:
17 Q Okay. Number 9 I think you already addressed as
18 rainwater --
19 A Right.
20 Q -- water. So No. 10, remaining additions along
21 the second floor rear of the house are not to be built, why
22 do you feel that they should -- are those part of the
23 approved plans?
24 A They're part of the approved plans. I --
25 Q So why do you feel they should not be built?

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1 A Well, we're, we're over two years into this
2 construction, and we're nowhere near getting this done.
3 There's so many things that appear to have been built that,
4 and installed, that don't match the approved plans that, you
5 know, us on the board, to put a lot of time into this --
6 we've, we come a lot to, you know, obviously the hearings
7 and everything; so we're trying to find a middle ground here
8 and get this done -- so we just feel that if -- because what
9 has been built, so much of it doesn't appear to match plans,
10 to keep adding and even allowing the additional buildout
11 that hasn't been done, it's, we just don't see this as going
12 to get done, according to plans. We're also looking at time
13 so that we can all start to enjoy our neighborhood and get
14 things settled. So we just would like it removed from the
15 prospect of being completed in the back.
16 MS. ROBESON: In the rear?
17 THE WITNESS: Yes.
18 MS. ROBESON: But not the front?
19 THE WITNESS: The front, we take big issue with
20 what has gone on with the lobby and entry area. I mean,
21 it's --
22 MS. ROBESON: Oh, I see what you're saying.
23 THE WITNESS: So --
24 MS. ROBESON: You're saying in the rear because
25 that's still under construction.

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1 THE WITNESS: That hasn't been constructed --
2 MS. ROBESON: I see.
3 THE WITNESS: -- so we just, you know, my proposal
4 was, we were -- I was asked to see how could we get this
5 done, and I said, well, we're over two years here, well,
6 we're almost three years here and it just doesn't look like
7 it's going to get done; so, you know, what are the
8 possibilities? And my outlook is, it's possible to get the
9 windows done, to me; the brick veneer would not be too
10 difficult to do; putting Hardie board up wouldn't be a
11 stretch; the, the roof, I don't see it happening. Just as a
12 time frame, I don't see it happening. I think --
13 MS. ROBESON: What do you mean the Hardie board
14 wouldn't be a stretch?
15 THE WITNESS: I don't think putting siding up
16 would be real difficult to get it done in a short period of
17 time. They have Hardie board --
18 MS. ROBESON: But not the vinyl siding.
19 THE WITNESS: The vinyl, yeah, I'm not -- I can't
20 get into that.
21 MS. ROBESON: Okay. So you're just saying how
22 long it would take, according to the existing approval?
23 THE WITNESS: Right.
24 MS. ROBESON: Except for -- and how long to bring
25 it into compliance --

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1 THE WITNESS: Right.
2 MS. ROBESON: -- is that what you're saying?
3 Okay.
4 THE WITNESS: I looked at it -- I looked at it as,
5 okay, what is different about what was constructed from the
6 plans --
7 MS. ROBESON: Yes.
8 THE WITNESS: -- and I wrote it all out.
9 MS. ROBESON: Okay.
10 THE WITNESS: Then how do we get this done, and we
11 came up with -- it was kind of jointly kind of decided -- is
12 it possible to get this done in a couple of months, and it's
13 like, well, yes and no.
14 MS. ROBESON: Okay.
15 THE WITNESS: And then what was the most feasible
16 and the most likely and, you know, without causing a lot of
17 harm to anyone or everyone. In order to resolve it, to me,
18 I just don't think that everyone's going to be happy, but no
19 one is going to be really, really upset. I think there's
20 got to be a little give and take. So that was how I came.
21 MS. ROBESON: Okay. All right. But right now are
22 you talking about settlement, what you need to --
23 THE WITNESS: Well, when I --
24 MS. ROBESON: -- resolve it that way, or --
25 THE WITNESS: What I did is I looked at it, and we

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1 came up with three months, and --
2 MS. ROBESON: To do what? The construction work?
3 THE WITNESS: To finish the project.
4 MS. ROBESON: I see. Okay.
5 MR. MOHAMMADI: Your Honor, I believe --
6 THE WITNESS: And that's why I wrote in some
7 things.
8 MR. MOHAMMADI: -- at this point in time,
9 Ms. Gowan is testifying to settlement discussion and
10 proposals that were made.
11 MS. ROSEN: We're not, she's not settlement. If
12 you actually look at the supplement --
13 MS. ROBESON: Well --
14 MS. ROSEN: -- it says at the end what they're
15 asking for is a three-month time frame to complete all --
16 MS. ROBESON: Yes.
17 MS. ROSEN: -- of the above. That's where this
18 comes from.
19 MS. ROBESON: She's talking about, assuming that
20 the HOA wins, how long is it going to take and --
21 MR. MOHAMMADI: Oh, I withdraw, Your Honor.
22 MS. ROBESON: -- what time period is reasonable.
23 Go ahead.
24 THE WITNESS: I mean, basically, there's, you know
25 -- so that's why in some of them I said remove this or do

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1 this or do that, and I asked for -- I wrote down remove
2 because there was so much about it that didn't comply --
3 MS. ROBESON: So you --
4 THE WITNESS: -- that to bring it into
5 compliance --
6 MS. ROBESON: So you recognize that some of these
7 things, he may just not have done them yet, some of them,
8 like, like the, the removal of Shed 1?
9 THE WITNESS: That's possible.
10 MS. ROBESON: Yes. Okay. Any other questions,
11 Ms. Rosen?
12 MS. ROSEN: I think that is probably --
13 BY MS. ROSEN:
14 Q Well, just very quickly, I think we've already
15 addressed No. 11, I'm assuming. Is that already addressed,
16 window and door trim?
17 A The window and door trim, they need to be
18 consistent. They're not, and it just shows on the
19 elevations that they're very thin, and I mean, through the
20 neighborhood, they're either two- or four-inch. It just
21 needs to be consistent, whatever is finally decided and done
22 and agreed upon. It's not.
23 Q Okay. And you just had No. 12, door patio to be
24 full glass door.
25 A Right. That is the door off the deck. Right now

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1 it's a multi --
2 MS. ROBESON: Deck in the rear?
3 THE WITNESS: In -- right.
4 MS. ROBESON: Wait a minute. Which deck?
5 THE WITNESS: It's the deck on the right side of
6 the house --
7 MS. ROBESON: Okay. As you face the house?
8 THE WITNESS: -- at the deck.
9 MS. ROBESON: All right.
10 THE WITNESS: Correct. And then there was never a
11 planting plan. There was a request for a planting plan,
12 evergreens and something, and that's even in the approval
13 letter, and it's been a, actually a refusal for it. So I
14 just noted that it's --
15 MS. ROBESON: There's what?
16 THE WITNESS: It's been a refusal, I think, on the
17 part of the Balls to supply a planting plan.
18 MS. ROBESON: Okay. Are you sure or not sure?
19 THE WITNESS: I, I ran across a letter where
20 Mr. Peter Ball said that, that it's not needed, it's not
21 necessary, it's too shady.
22 MS. ROBESON: Okay.
23 THE WITNESS: That -- so that's where that comes
24 from.
25 MR. MOHAMMADI: Your Honor, just objection to

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1 that. If it does exist, it should have been provided in
2 discovery.
3 MS. ROBESON: It hasn't been?
4 MR. MOHAMMADI: As far as I know, I have not seen
5 that letter --
6 MS. ROBESON: All right.
7 MR. MOHAMMADI: -- but maybe it's --
8 MS. ROBESON: Anything else, Ms. Rosen?
9 THE WITNESS: And then no equipment supplies or
10 yard debris can be kept out in the yard or on this property,
11 covered or otherwise.
12 BY MS. ROSEN:
13 Q Has that been an issue in this construction?
14 A It's been an issue for years.
15 MS. ROBESON: Is it equipment used in -- I thought
16 I read somewhere that Mr. Ball is in construction himself --
17 is it equipment used for the construction of this house or
18 is it equipment, or do you know?
19 THE WITNESS: It's kind of --
20 MS. ROBESON: If you don't know -- I just want to
21 know if you know or not.
22 THE WITNESS: Some of it now probably is, but most
23 of it in the past is something that stays there for a couple
24 of weeks, disappears, and then something else takes its
25 place. The yard -- so it kind of implies that the yard is

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1 used as storage for the company.
2 MS. ROBESON: Well, that's not -- okay. All
3 right.
4 THE WITNESS: But it's, you know, that's --
5 MS. ROBESON: That's beyond this --
6 THE WITNESS: Right.
7 MS. ROBESON: -- the scope of your complaint.
8 So --
9 THE WITNESS: Yes.
10 BY MS. ROSEN:
11 Q Okay. And then other than that, in Paragraph No.
12 15 of the supplement, you refer to parking on the easement.
13 Has that been an issue, of parking and trucks and other
14 vehicles on the property?
15 A Yes. They've received previous notices. It's,
16 you're also, I don't believe you're allowed -- my
17 understanding is, you cannot park on the easement, not for a
18 long period of time.
19 MS. ROBESON: On what easement?
20 THE WITNESS: The county easement.
21 MS. ROBESON: What county easement? The
22 right-of-way?
23 THE WITNESS: Yes, and it's a, it's a permit
24 parking spot. It became a slight concern when a house in
25 the same court caught on fire and practically, mostly burned

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1 down, but anyway, we, we know that you're not supposed to
2 park there. We -- I've noticed numerous letters and things
3 over the years.
4 MS. ROBESON: Okay.
5 THE WITNESS: So it's just to reinforce that.
6 BY MS. ROSEN:
7 Q Okay. And then, finally, you're basically, the
8 association is seeking that whatever work has to be done or
9 whatever items have to be removed with regard to this
10 construction project, that there be only a three-month, be
11 given -- Mr. Ball be given a three-month time frame to
12 complete it?
13 A Yes. It's half of the original request of six
14 months, but we've been three years at this, almost -- it was
15 granted May 2011. I think construction began November of
16 2011. So we're, we're getting what, two-and-a-half, almost
17 three years at this.
18 MS. ROBESON: All right.
19 MS. ROSEN: Okay.
20 THE WITNESS: Sorry.
21 MS. ROBESON: Cross-examination.
22 MR. MOHAMMADI: Court's indulgence for just one
23 minute.
24 MS. ROSEN: I just have to stand up for like a
25 second. Can we maybe just take two minutes while he's

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1 looking, and I'll stand up a little bit?
2 MS. ROBESON: Yes. We'll take a five- --
3 MR. MOHAMMADI: I apologize. I seem to have
4 misplaced this --
5 MS. ROSEN: It's okay. I'll just walk around a
6 little bit.
7 MS. ROBESON: We'll take a five-minute break.
8 MS. ROSEN: Thank you.
9 (Whereupon, at 3:47 p.m., a brief recess was
10 taken.)
11 MS. ROBESON: We're back on the record. Go ahead,
12 Mr. Mohammadi. Are you ready?
13 MR. MOHAMMADI: I'm ready.
14 MS. ROBESON: All right.
15 MR. MOHAMMADI: Thank you.
16 CROSS-EXAMINATION
17 BY MR. MOHAMMADI:
18 Q All right. Good afternoon, Ms. Gowan. Ms. Gowan,
19 you've been living on the property for, you said, I think,
20 15 years?
21 A Yes.
22 Q Okay. And I think your testimony was, also, that
23 since you moved in, there's been consistently construction
24 going on ever since then?
25 A Yes, basically.

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1 Q So for the last 15 years, you have to sit there
2 and look at your neighbor doing construction on his house
3 the entire time?
4 A Different parts of it.
5 Q But, essentially, you're looking at your neighbor
6 doing construction pretty much for the last 15 years that
7 you've been living there?
8 A Yeah, basically.
9 Q Is it true that since Mr., since you moved in --
10 and Mr. Ball was at the property before you moved in, right?
11 A Yes.
12 Q Since you moved in, there have been at least two
13 instances where a dispute between you and Mr. Peter Ball
14 ended up in court?
15 A Yes.
16 Q Okay. And they were related to the property,
17 right, his property, specifically?
18 A Both.
19 Q Okay. So the first one was regarding a property
20 line dispute?
21 A Yes.
22 Q Okay. And what was the second one?
23 A The same thing.
24 Q Another property line dispute?
25 A Yes.

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1 Q All right. And in one of those, the court found
2 in your favor, right?
3 A Yes.
4 Q And in the other one, the court found in
5 Mr. Ball's favor?
6 A Yes.
7 Q And the one that was found in your favor, the
8 award was \$1 as sort of nominal damages?
9 A 31. She --
10 Q \$1 plus \$30 in costs, right?
11 A Uh-huh.
12 Q Okay. So the judgment itself was \$1 nominal,
13 nominal damages; is that fair to say?
14 A I --
15 MS. ROBESON: If you don't know --
16 THE WITNESS: I don't know.
17 MS. ROBESON: -- say you don't know.
18 THE WITNESS: I don't know.
19 BY MR. MOHAMMADI:
20 Q Okay. Is that the only times you two have been in
21 a dispute?
22 A That's the only time that I know of that we've
23 been in court.
24 Q Okay. Outside of court, have you ever had a
25 dispute with Mr. Ball before?

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1 A I generally try to avoid him.
2 Q Okay. I think you did testify that when you were
3 taking pictures, he said certain things to you, is that
4 right?
5 A Yes.
6 Q Isn't it true that you essentially showed him the
7 middle finger while you were there, when he asked you what
8 you're doing?
9 A No.
10 Q Okay. And so you just, your testimony today is
11 that you were taking pictures; he comes out of nowhere and
12 just starts, essentially, cussing you out?
13 A I drove up. He was driving out in his truck.
14 Q My question was just simply that your testimony
15 was you showed up --
16 MS. ROBESON: You need to answer his question.
17 BY MR. MOHAMMADI:
18 Q -- you started taking pictures, and Mr. Ball, out
19 of nowhere, started cursing you out?
20 A I didn't invite them.
21 Q Okay. So, again, your recollection is not -- you
22 don't remember flick him off, essentially, right?
23 A No.
24 Q And you don't remember saying any obscenities to
25 him?

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1 A No.
2 Q Okay. Do you remember at any board meetings
3 telling Mr. Ball, or yelling obscenities at Mr. Ball at any
4 board meetings that you had?
5 A I don't recall yelling obscenities.
6 Q Okay. All right. Now, you've been a board member
7 since when?
8 A 2012.
9 Q Okay. And since 2012 you've been a board member
10 as a secretary, right?
11 A Yes.
12 Q Okay. And I think you described what you do.
13 It's keeping track of the minutes, distributing notices,
14 sort of an all-inclusive job, I think you said?
15 A Yes.
16 Q Okay. And you were aware of the dispute going on
17 between, with Mr. Ball?
18 A What dispute?
19 Q The dispute between the, between the HOA and
20 Mr. Ball with respect to his property and construction that
21 was, were going on?
22 A When I joined -- oh, yes. Yes.
23 Q Yes? Okay. Let me go back for a second here on
24 something you said earlier, that you said for board minutes
25 you keep both drafts and finals, right?

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1 A Right.
2 Q Have you produced all the drafts and all the
3 finals in discovery today?
4 A I'd have to look.
5 Q But if I told you that we only got one set of
6 everything, would that surprise you?
7 A I wouldn't know. I'd have to look and see what,
8 exactly what you had to see if it was all the drafts and all
9 of the finals.
10 Q Let me ask you this: In preparing the discovery
11 responses, who produced all the documents to Ms. Rosen to
12 provide to us?
13 A I probably provided most, if not all.
14 Q And that's because you hold, you have all the
15 meeting notes at your house, right?
16 A Right.
17 Q As you testified, correct? So you would know
18 whether you gave Ms. Rosen all the drafts and all the final
19 versions, is that correct? And who else would know, if not
20 you?
21 A I would just, I need to see, to make sure, but --
22 Q My question is, who besides you would know what
23 drafts and final versions of the meeting notes were provided
24 to Ms. Rosen?
25 A Other members of the board. They, they could or

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1 would have copies of the final.
2 Q Okay. But were they involved in putting together
3 the discovery responses?
4 A I know I supplied things that I was asked to
5 supply.
6 Q You were present when this -- at the preliminary
7 issue that came up this morning, correct? You were here
8 this morning, right --
9 A Yes.
10 Q -- from the beginning? Okay. And you recall that
11 I raised an objection with respect to some documents I
12 received yesterday?
13 A Yes, I heard you.
14 Q Okay. And one of my objections, if you recall,
15 was meeting notes that were supplied that were not
16 previously supplied?
17 A You mentioned that.
18 Q Okay. Are there other meeting notes that you
19 supplied that you have not supplied yet, either final or
20 drafts?
21 A There was a list of documents requested, and those
22 are the documents that I provided.
23 MS. ROBESON: Keep going. Well, I guess --
24 THE WITNESS: I believe --
25 MS. ROBESON: -- what he's trying to get from you

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1 -- and I would think you would be able to answer -- is, are
2 there any other drafts or other documents that, that aren't,
3 that weren't provided?
4 THE WITNESS: Not that I'm aware of. I mean, I
5 could go through the list and double-check, but I believe
6 that they asked for all of the meeting notes from a certain
7 period of time up to, like, April or May --
8 MS. ROBESON: I'm just saying --
9 THE WITNESS: -- and they should have all of them.
10 MS. ROBESON: -- you really need to answer his
11 questions. All right? Keep going, Mr. Mohammadi.
12 MR. MOHAMMADI: Okay.
13 BY MR. MOHAMMADI:
14 Q I guess what I'm getting at is, the only new
15 additional meeting notes that you provided were July 17,
16 2013, right?
17 A Right.
18 Q I'm trying to find out if there are any other
19 meeting notes that were requested -- and I think the request
20 started in 2008 to today -- that you have not provided yet.
21 A Not that I'm aware of.
22 Q Okay. Is it customary that you keep, always keep
23 one draft and always keep one final version?
24 A No.
25 Q Okay. So sometimes there's just the final

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1 version?
2 A Correct.
3 Q Okay. And why is that?
4 A Well, I think it makes it simpler to keep a final
5 version of the documents that were voted and approved on by
6 the board. I can see from this hearing that having drafts
7 and the final brings a little bit of confusion.
8 Q Okay. Do you know, is there a way to distinguish
9 drafts from the final versions?
10 A I, I would need to look at them, but I, I do
11 understand.
12 Q Okay.
13 MS. ROBESON: Well, wait. You don't have a system
14 to distinguish between draft and --
15 THE WITNESS: I have them electronically noted as
16 final or draft, but once you print them, the only way that
17 you can tell the difference right now is to go back and
18 re-pull the final document. I was thinking this past week
19 that we probably should stamp them and scan the permanent
20 copy because none of them have ever -- I guess I'm the only
21 one that's ever kept a draft. Everyone else gets rid of the
22 draft, only has a final.
23 BY MR. MOHAMMADI:
24 Q All right. Well, I'll ask you about the one that
25 came in, I'm guessing. I'm showing you Exhibits 91 and 92.

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1 Exhibit 91 is October 7, 2013, meeting notes; is that fair
2 to say?
3 A Yes.
4 Q And then Exhibit 92 is a compilation of, I guess,
5 2013 meeting notes, which, also, it does include on the
6 third page the October 7, 2013, meeting notes; is that fair
7 to say?
8 A This document is a draft.
9 Q 92 is a draft?
10 A No. This whole composite of 2013 is a draft.
11 MS. ROBESON: A draft of what?
12 THE WITNESS: It -- I thought that we needed to do
13 a 2012 and 2013 annual meeting composite for the CCOC issue
14 that was brought up basically as I was coming in on the
15 board. So I did both the 2012 composite as well as a 2013.
16 We only needed the 2012. We reviewed it, approved it, kept
17 it. I should've never have kept this 2013 draft. So this
18 one is a draft. That's why not all of the information on
19 this comes from this. I stopped working on this.
20 BY MR. MOHAMMADI:
21 Q If I can ask you some more questions about this.
22 So this, Exhibit 92, is not the official meeting notes?
23 A No --
24 Q Okay. This is just --
25 A -- the 2013.

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1 Q Right, the 2013, the ones that -- let's say,
2 February 11, 2013, on No. 92, that's not the official
3 meeting notes?
4 A No, not for 2013.
5 Q Okay. So there's something out there that's the
6 official meeting notes?
7 A It's the individual one.
8 Q Okay. My question, again, if you just look at the
9 February 11, 2013, meeting notes, just the February 11,
10 2013 --
11 A Uh-huh.
12 Q -- does this accurately show what the final
13 meeting notes are?
14 A It's a composite, and I -- this is probably
15 shorter, a condensed version of the February 11 meeting
16 notes --
17 Q Okay. So --
18 A -- highlighting things that were discussed.
19 Q Okay. So what I'm asking is, there's some
20 document out there that is the official February 11, 2013,
21 meeting notes, and this one is not it?
22 A Right.
23 Q Okay. Is there a reason why that February 11,
24 2013, meeting notes have not been provided to us in
25 discovery?

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1 A No, only it may not have been requested
2 specifically and --
3 MS. ROBESON: I thought they were requested.
4 THE WITNESS: If you don't have them --
5 MR. MOHAMMADI: They clearly were, Your Honor.
6 MS. ROBESON: Well, we're trying to get through
7 this case in some orderly manner, and you should have -- I
8 don't have, I can't put my hand on your interrogatories at
9 the moment. I think they are --
10 MR. MOHAMMADI: Hold on. I can tell you what
11 exhibit it is.
12 MR. HUMAYUN: Your Honor, if I may, even if we get
13 to that analysis, the fact that they provided us with
14 meeting minutes in response to our discovery request is
15 indicative of the fact that we requested them, and there's
16 no explanation as to why drafts were being provided and not
17 final versions.
18 MR. MOHAMMADI: Number 46, I think, Your Honor,
19 would be the exhibit, specifically.
20 MS. ROBESON: And can you get me to the
21 interrogatory?
22 MR. MOHAMMADI: It would be the document request,
23 and I have to find it.
24 MS. ROBESON: Okay. I've got it, I think. No.
25 It would be before that.

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1 MS. ROSEN: You should have them, separately.
2 MS. ROBESON: Well, I don't have the discovery. I
3 have to --
4 MS. ROSEN: Okay.
5 MS. ROBESON: -- rely on what you provide each
6 other.
7 MS. ROSEN: Okay.
8 MR. MOHAMMADI: Court's indulgence. I know I have
9 them, just --
10 MS. ROSEN: Okay.
11 MR. MOHAMMADI: I think it's Request, Document
12 Request No. 16: All HOA board meeting minutes and notice of
13 meeting for the last five years. I think it's definitely
14 requested, if that's the issue.
15 MS. ROBESON: Yes. I mean --
16 MS. ROSEN: Well, I provided everything that was
17 provided to me. At no -- I'm just going to note that at no
18 time during this litigation did Mr. Mohammadi ever contact
19 me and said, hey, do you have the minutes for such and such,
20 or whatever.
21 MS. ROBESON: Okay.
22 MS. ROSEN: I mean, obviously, if something hasn't
23 been produced that should have been, we'll be more than
24 happy to tell Ms. Gowan to find it and --
25 MS. ROBESON: Mr. --

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1 MS. ROSEN: -- produce it immediately, but he
2 needs to give me a list. I'll take care of it.
3 MS. ROBESON: Mr. Mohammadi, is the only -- what
4 do you have? Do you have other minutes from 2013?
5 MR. MOHAMMADI: The only reason this came up for
6 us initially is because we received one set of minutes that
7 were different. So everything -- we have one copy of
8 everything except for the October 7th minutes, which are
9 different than the ones we received in the compilation. You
10 can compare and see it. That raised an issue for us, raised
11 an issue for us, and it was only now, when Ms. Gowan
12 testified that there are drafts and final copies kept of
13 everything, that we became aware, okay, there might be two
14 versions out there.
15 MS. ROBESON: I understand.
16 MR. MOHAMMADI: She just testified that this
17 compilation, which is what we have, compilations of meeting
18 minutes, are drafts. All we have are drafts except for one
19 that looks, at least --
20 MS. ROBESON: Right.
21 MR. MOHAMMADI: -- to me at least, the one
22 official meeting minutes.
23 MS. ROSEN: I think it's probably more than one,
24 but I guess what I'm basically saying is that if you had
25 contacted me at any time prior --

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1 MS. ROBESON: Well, they didn't know until she --
2 THE WITNESS: They didn't know that we had both.
3 MS. ROSEN: -- just testified that there were
4 drafts and finals. That's what --
5 MR. MOHAMMADI: And I'm not blaming Ms. Rosen for
6 this, because --
7 MS. ROBESON: No, nobody is. Nobody is. Now, the
8 question is, what are we going to do about it? So do you --
9 so it's just the July draft?
10 MR. MOHAMMADI: The only one I have is the October
11 7th, 2013, that's -- there's two versions of it.
12 Everything --
13 MS. ROSEN: And I believe --
14 MR. MOHAMMADI: -- else is one version.
15 MS. ROSEN: You have October 28th because that's
16 already been put into evidence. You have October --
17 MR. MOHAMMADI: What I have, like I said, what I
18 have are meeting minutes and only one set of each. I don't
19 have the drafts and the final versions. The only, only one
20 I know I have two versions of are the October 7th, 2013,
21 minutes and yesterday an e-mail was sent for the July 17,
22 2013. Those are the only ones I know include, I guess, a
23 draft and a final version, and everything else, I don't know
24 if they're drafts, final versions, or what they are.
25 MS. ROBESON: Okay. Okay. He clearly requested

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1 them. I've got your interrogatories as Exhibit 31. (C) is
2 the documents request. So --
3 MS. ROSEN: Do you have the individuals?
4 THE WITNESS: What I have I produced, and --
5 MS. ROSEN: Okay.
6 MS. ROBESON: Well, the question is, there's --
7 well --
8 MR. MOHAMMADI: Yes, I apologize, 31, you are
9 right.
10 MS. ROBESON: The question is, why didn't you
11 provide it, is there anything else that you -- given this
12 clarification, is there anything else, and how soon can you
13 provide it, because here we've gotten through all day at a
14 hearing --
15 MR. MOHAMMADI: Day 2 of the hearing.
16 MS. ROBESON: -- and he can't cross-examine you.
17 THE WITNESS: Well, what I can do, if it's just
18 these and we're not --
19 MS. ROBESON: Well, you need to tell him.
20 THE WITNESS: Okay. If --
21 MS. ROBESON: You have to tell him, and there is a
22 standard, I've worked -- there is a standard recordkeeping
23 system where you don't have this problem. So, anyway, how
24 soon do you think you can identify for him?
25 THE WITNESS: Today.

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1 MS. ROSEN: My suggestion would just be, I can
2 have Ms. Gowan produce all the final, I guess, finals of all
3 the minutes for whatever time period you would like. I
4 guess, what, 2012 and '13? Is that what you're looking for?
5 MR. MOHAMMADI: Well, yes, but I think my issue,
6 or our issue, is bigger than just not having provided them
7 to us. It's clearly prejudicial to be going into the second
8 day of trial, not having had all the discovery that was
9 requested and finding out after the fact. Typically under
10 these circumstances some kind of sanctions should have been
11 awarded, should -- are called for. We are only finding out
12 that the discovery has not been properly produced now, on
13 the last day, last hour of the second day.
14 My problem is twofold with it. One is the
15 prejudicial nature of it. Mr. Barr already went through a
16 full day of cross-examination. Mr. Gibson went through a
17 full day of cross-examination on their direct. Mr. Barr
18 went through a deposition as well, and now this is the first
19 time we find out that -- so far what we know is that we
20 don't have the proper meeting minutes. I don't -- that puts
21 the rest of the discovery production into question as well.
22 Do we have the full discovery productions, the proper ones
23 for everything else? That's one issue.
24 The second issue is, again, it does go towards the
25 bad-faith claim. Now, I'm not -- have I shown that they did

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1 it on purpose or that Ms. Gowan did it on purpose or the
2 board did it on purpose? Not necessarily, but I think it
3 needs to be considered as part of the bad-faith claim that
4 here we are in the litigation and it's been pending for six
5 months now and we are just getting things now that should
6 have been provided to us months and months and months ago.
7 MS. ROBESON: Well, I'm not going to rule on the
8 bad-faith claim right now. I understand your point. I will
9 consider it.
10 MS. ROSEN: May I just note that they took a
11 deposition of Mr. Barr, and I recall that questions were
12 asked of Mr. Barr about, you know, certain things, minutes
13 being drafts and certain minutes being stand-alone. I don't
14 have the transcript right with me, but I believe that came
15 up in the deposition. So I think they were aware of that
16 when they took Mr. Barr's deposition, but nothing, you
17 know --
18 MS. ROBESON: Well, to me, it's not an issue that
19 is going to be the final determination of bad faith, and I'm
20 reluctant to put a single oversight as bad faith. My
21 concern at this moment is how to get through this trial --
22 THE WITNESS: Exactly.
23 MS. ROBESON: -- and so I -- I mean, my sanctions
24 in the APA is I can grant a continuance, which is just going
25 to further delay this case; I can assess costs, based on it,

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1 for unexcused -- suspension or continuance of scheduled
2 hearings, dismissal of actions -- no, that's not going to
3 happen -- denial of admission of documents and exhibits and
4 admission of matters as adverse to a defaulting party within
5 my discretion.
6 My, what I would consider it as at this stage,
7 because I think that Mr. Ball is the one that has
8 voluntarily agreed at this point not to continue
9 construction -- am I correct or not?
10 MR. MOHAMMADI: Correct.
11 MS. ROSEN: Well, yes, I don't know if he's been
12 doing construction since that time. I don't know, but I
13 mean, initially he was doing construction.
14 MS. ROBESON: Yes, but, but since the pre-hearing
15 conference. So a delay, if I grant a delay, it --
16 MS. ROSEN: Well, he did do some construction
17 after that pre-hearing because there's a nice photograph of
18 him in May 2000 -- not him, but a construction worker on his
19 roof. So it was still going after.
20 MR. MOHAMMADI: I would object to that. The only
21 thing you have --
22 MS. ROBESON: Okay.
23 MR. MOHAMMADI: -- is a person on top, and it was
24 permitted that he can waterproof his house.
25 MS. ROBESON: Okay. Well, the point is, the point

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1 is that the delay hurts Mr. Ball because he's the one --
2 well, I guess it hurts everybody if an injury is looking at
3 the unfinished thing -- but, in particular, he's got,
4 hopefully he's got weatherproofing on it.
5 MR. MOHAMMADI: Just so you're aware, Your Honor,
6 his permit does expire in October. So a delay would be
7 prejudicial.
8 MS. ROBESON: Okay. So, and we need to get this
9 before October. So --
10 THE WITNESS: It can be extended.
11 MS. ROBESON: -- I am not going -- now, see that's
12 the kind of thing I don't like.
13 THE WITNESS: I'm sorry.
14 MS. ROBESON: Really, in this hearing I know that
15 you have been, but don't be saying stuff like that.
16 THE WITNESS: Okay.
17 MS. ROBESON: And you're right, it can be
18 extended, because I used to do all the building code
19 enforcement for Anne Arundel and Howard Counties, but I'm
20 not going to -- it's a discretionary extension; so -- and I
21 don't like these little asides, and both parties have done
22 them.
23 Now, how can I get you all to get all the
24 documents to each other? So it's 4:30.
25 MR. MOHAMMADI: I can continue with my -- I don't

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1 know how late we're going today.
2 MS. ROBESON: I am going until I can't -- I am
3 going until I need to eat. That's how we're going. So you
4 continue. After the hearing, when do you say you can get --
5 I mean, what I mean is, I want you to look through
6 everything you have and, if there's something, or you can
7 meet, if there's something you need that -- you know, I'm
8 going to set a deadline. All right?
9 THE WITNESS: Uh-huh.
10 MS. ROBESON: You think about a reasonable time
11 frame for you to go through everything you need to go
12 through. All right?
13 THE WITNESS: Okay.
14 MS. ROBESON: And then we'll set that time frame
15 at the end of the hearing, but then I want both sides, no
16 more pictures, you know, until you can -- you have a little
17 more leeway on rebuttal. All right? So, Mr. Mohammadi, you
18 continue.
19 MR. MOHAMMADI: Thank you.
20 BY MR. MOHAMMADI:
21 Q Just to be clear, this, Exhibit 91, is a final
22 version of the meeting notes?
23 A This one, yes.
24 Q Okay. And would you agree that the version in 92
25 for the October 7, 2013, meeting does not have everything

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1 that was in Exhibit 91? If you want to take a moment to
2 compare, that's fine.
3 A It's missing sections.
4 Q Okay. You would agree that it's not the same
5 thing, right? There are differences?
6 A Well, in size alone, but there's some, there's
7 some sections that are missing.
8 Q From the draft?
9 A Right. So that's why this was never -- it wasn't
10 needed. It was never approved.
11 MS. ROBESON: What's this?
12 THE WITNESS: The composite for 2013. Otherwise,
13 it would have all of the information, just condensed, and
14 it's not.
15 BY MR. MOHAMMADI:
16 Q It's fair to say that you're upset about the
17 construction that's been pending for so long, right, on
18 Mr. Ball's property?
19 A Oh, just the time lag.
20 Q Okay. Is it fair to say that you consider it an
21 eyesore?
22 A It's not my house.
23 MS. ROBESON: Well, answer the question.
24 THE WITNESS: It's --
25 MS. ROBESON: Do you consider it an eyesore or

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1 don't you, because we're never going to get through this
2 hearing?
3 THE WITNESS: I don't see it a whole lot. I --
4 MS. ROBESON: Well, why are you so upset about it?
5 THE WITNESS: -- don't have too many windows. I'm
6 on the board, and I'm just helping them work their way
7 through.
8 MS. ROBESON: So you don't consider this an
9 eyesore?
10 THE WITNESS: Oh, I, I don't think it's very well
11 done. I don't think that it matches the plans, but the
12 plans that -- if it were built to the approved plans, it
13 would have met the board's requirements.
14 MS. ROBESON: Go ahead, Mr. Mohammadi.
15 BY MR. MOHAMMADI:
16 Q Can you see the house from your, from your -- I
17 mean, you took pictures from your property of the house,
18 right?
19 A Yes.
20 Q So you can see the house clearly?
21 A From one side.
22 Q Okay. Now, there was, I think you testified that
23 there was some issue with water runoff?
24 A Yes.
25 Q Is the issue that it runs off into your property

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1 and you believe it's, it's causing erosion?
2 A Yes.
3 Q And that it's sort of sweeping it into your
4 property?
5 A That and the county easement and the road.
6 Q You agree that there's a wooden fence between your
7 property and Mr. Ball's property, right?
8 A Yes.
9 Q Okay. And isn't it true that you actually filed a
10 complaint and had an inspector come out to check, to check
11 this water runoff issue?
12 A Yes.
13 Q And isn't it true that the inspector determined
14 that the actual issue was with your property and not
15 Mr. Ball's property?
16 A No.
17 MR. MOHAMMADI: Court's indulgence.
18 MS. ROBESON: I'm going to take a two-minute
19 recess and just change the heat level. I will be right
20 back.
21 MS. ROSEN: Okay.
22 (Whereupon, at 4:24 p.m., a brief recess was
23 taken.)
24 MS. ROBESON: Okay. Go ahead.
25 MS. ROSEN: Okay. My question has to do with, I

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1 hate to say it, documents. Impeachment documents, are we
2 supposed to be supplying them to each other or not, because
3 I thought when we -- when I was told to amend the
4 supplemental, you know, since you were going to amend the
5 supplemental pre-hearing statement, that, you know, some of
6 the documents I supplied that we talked about this morning
7 were impeachment documents and I supplied them. So I'm
8 just --
9 MS. ROBESON: Yes, and I'm --
10 MS. ROSEN: -- a little confused as to, you know,
11 because we, I think there's some confusion about what -- I
12 mean, are we supposed to supply impeachment documents too,
13 anything that you're going to use, or how is this going to
14 work?
15 MS. ROBESON: My -- and I wasn't entirely clear on
16 that -- what I would like is if -- impeachment documents are
17 a little different than the documents on the case-in-chief
18 because you really don't know what the witness is actually
19 going to say. I'm going to allow some latitude for
20 impeachment documents, especially if it's relatively
21 reliable; for instance, if it's a county record. If it's
22 something like the article that Mr. Mohammadi pulled from
23 the web about Mr. Barr, I took it in for the weight it
24 deserves but I'm not going to -- if it's non-verifiable, I
25 am not going to take those in but if it's reasonably

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1 verifiable, like, or something that was provided in
2 discovery.
3 MS. ROSEN: Okay. Because, when I supplied the
4 documents that I referred to this morning, that group, you
5 know, I guess I assumed that we would -- you know, I guess I
6 would like to be able to use some of those in my
7 case-in-chief at some point, if I could, not seriously for
8 impeachment. I wasn't under the impression that we were
9 allowed to put in anything new, which is why it was
10 classified as impeachment.
11 MS. ROBESON: Well, the case-in-chief rules are
12 different --
13 MS. ROSEN: Okay.
14 MS. ROBESON: -- when it comes to the pre-hearing
15 statement.
16 MS. ROSEN: Okay.
17 MS. ROBESON: And so I think what we will have to
18 do, this is going to go another day, that if you can forward
19 those documents to -- we're going to do supplemental --
20 MS. ROSEN: Okay. Yes, I've already given him the
21 documents, but I was just, you know, at the time, I just
22 figured, I didn't know, wasn't sure whether impeachment. So
23 I wanted to --
24 MS. ROBESON: I see what you're saying. Well,
25 I'm --

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1 MS. ROSEN: -- I didn't want to spring a document;
2 so I said I better supply it, even though --
3 MS. ROBESON: Yes, that may have been something I
4 should have clarified better.
5 MS. ROSEN: -- as a strategy, there might have
6 been one or two that I maybe would have not wanted to
7 supply --
8 MS. ROBESON: Exactly.
9 MS. ROSEN: -- but I said I don't want to be
10 precluded, so I did.
11 MS. ROBESON: Okay. All right. Have we found the
12 document, Mr. Mohammadi?
13 MR. MOHAMMADI: Yes, I have.
14 MS. ROBESON: And is this in record? I take it --
15 MR. MOHAMMADI: It's not.
16 MS. ROBESON: -- not.
17 MR. MOHAMMADI: It's not.
18 MS. ROBESON: So we're marking it as 120. And how
19 would you describe this, Mr. Mohammadi?
20 (Exhibit No. 120 was marked
21 for identification.)
22 MR. MOHAMMADI: It's a Department of Permitting
23 Services complaint from 1/10/2012.
24 MS. ROBESON: Okay, DPS complaint dated 1/10/2012.
25 BY MR. MOHAMMADI:

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1 Q Ms. Gowan, as I asked before, you complained about
2 the runoff, correct, to Maryland Department of Permitting
3 Services?
4 A Yes.
5 Q Okay. And the date on this document, January 10,
6 2012, does that, does that seem to be about the same time
7 that you complained about it?
8 A I'm sorry, just a minute. Okay.
9 Q Okay. This January 10, 2012, does that appear to
10 be the same time that you submitted your complaint with the
11 Department of Permitting Services?
12 A I've called them a few times about issues with
13 water runoff and not only to see how to settle this issue --
14 MS. ROBESON: What is this issue?
15 THE WITNESS: It's a continuation of water runoff
16 issues on that side of my yard.
17 MS. ROBESON: Well, what are you pointing to when
18 you say this?
19 THE WITNESS: Well, he gave me this document.
20 MS. ROBESON: Okay. So that's been marked as 120.
21 Do I have any objections?
22 MS. ROSEN: Well, I mean, I'm not sure that she at
23 this point, you know, has been able to definitely identify
24 what this document is. I'm not sure that --
25 THE WITNESS: Well, what they're basically

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1 pointing out is that --
2 MS. ROBESON: No. Wait. Wait.
3 MS. ROSEN: I mean, the document hasn't -- it
4 looks like something that came from online, and I don't
5 think it's been authenticated by her as to what it is.
6 MS. ROBESON: Well, I'm going to let it in subject
7 to -- I'm going to let it in because it is, it looks a lot
8 like the DPS website that we use, but Mr. Mohammadi, if you
9 have a witness in your case-in-chief that can further
10 authenticate it, that would be helpful.
11 (Exhibit No. 120 was received
12 in evidence.)
13 MR. MOHAMMADI: Okay.
14 BY MR. MOHAMMADI:
15 Q Looking at the service request description, it
16 says that owner has re-graded rear yard, graded slope grade
17 so sediment muck runs into my yard, and your yard, that
18 would be you, right?
19 A Uh-huh.
20 Q And --
21 A Yes.
22 Q That's a yes? Okay. And then in the resolution
23 section of that, starting on the fourth line from the
24 bottom, No. 3, it says, there's a minor sediment -- there is
25 minor sediment traces on caller's asphalt driver; this

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1 appears to be caused by caller's lack of adequate grass
2 growth alongside of the garage area. Is that, is that
3 correct?
4 A I can't -- grass won't grow there because of the
5 sediment.
6 MS. ROBESON: Well, is that correct?
7 THE WITNESS: Then I'm not certain. I mean, this
8 is a -- this is a year ago, but I know that area has a water
9 runoff issue, and I have problems getting grass to stay
10 there.
11 BY MR. MOHAMMADI:
12 Q Okay. So my question is, is this what the
13 inspector told you?
14 A I'm reading it here. I don't know if this is what
15 he told me.
16 Q Okay. So you don't have no, you don't have any
17 independent recollection of whether this is what he told
18 you?
19 A No.
20 Q Okay. And so you still maintain that you had
21 nothing to do with the water runoff on your property?
22 A No. They've -- I, I may have a little, but I
23 don't have the amount that damages this side, meaning I've
24 got some in the direct back, because I have a hill, and
25 they've asked me to build retaining walls, plantings, mulch,

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1 and I've done that. This is along my garage area. It
2 continues to get eroded away. The water coming from
3 Mr. Ball's property comes over a ledge that I've got and
4 takes out my bedding on a regular basis and continues it
5 down the driveway. And I've talked to a cousin of mine that
6 works for the environmental department of the county, and he
7 suggested a berm --
8 MR. MOHAMMADI: Objection.
9 THE WITNESS: -- because I'm trying to resolve it.
10 MS. ROBESON: I'm going to let it in and give it
11 the weight it deserves. And what did he suggest?
12 THE WITNESS: He suggested a berm to, to stop the
13 water coming in on my property, but for the easement, the
14 county is going to have to figure that out.
15 BY MR. MOHAMMADI:
16 Q And this was not the only time you filed a
17 complaint about the water runoff, right?
18 A It seems to happen every time they do a lot of
19 digging in their yard. It's very strange.
20 Q And so you filed one every time?
21 A No.
22 Q How many complaints with respect to the water
23 runoff have you filed?
24 A I've had them come two times to do repair work,
25 and I think, you know, in the 15 years, I don't know. I

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1 don't know.
2 Q More than three times?
3 A I don't know if it'd be three times. I don't
4 know.
5 Q Okay. Besides this particular water runoff, have
6 you filed any other complaints with the Department of
7 Permitting Services?
8 A I called them around the time of the installation
9 of the retaining wall.
10 Q Okay. Of whose retaining wall? Your retaining
11 wall?
12 A No, the Balls' retaining wall.
13 Q And when was that?
14 A November of 2011. There wasn't any notice that
15 the -- none of the, none of us in the surrounding homes were
16 notified that the plans had been approved. So all of a
17 sudden there was a lot of construction over on the side,
18 and --
19 MS. ROBESON: What plans? You mean --
20 THE WITNESS: The approved plans. So --
21 MS. ROBESON: Okay. There's no county approval.
22 Is that what you're saying?
23 MR. MOHAMMADI: I think --
24 THE WITNESS: Well, the HOA didn't notify us that
25 the plans had been approved. So when I saw construction --

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1 MS. ROBESON: But you're on the board.
2 THE WITNESS: I didn't join the board until almost
3 a year --
4 MS. ROBESON: I see. Okay.
5 THE WITNESS: -- later. And so I wanted to know
6 if they knew that, you know, if there'd been any approval of
7 any construction, and I was told that there was no permits.
8 So I was asked to call the permitting office and find out
9 why they were building if they weren't allowed. So I
10 volunteered and I did it.
11 BY MR. MOHAMMADI:
12 Q First of all, when you say they, who are you
13 talking about?
14 A The board.
15 Q Okay. Second of all, my question was, did you
16 file any other complaints against the, against the Balls
17 with the Department of Permitting Services?
18 A The retaining wall --
19 Q So back --
20 A -- other than that, I don't know. I mean, the
21 other neighbor called several times about issues with the
22 offices and other things. I mean, we talk.
23 MS. ROBESON: Okay, but as far as you. I need you
24 to focus on his question and answer it. Did you file any
25 other complaints?

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1 THE WITNESS: I can't recall.
2 MS. ROBESON: Okay.
3 THE WITNESS: I mean, I was confronted.
4 MS. ROBESON: No, don't -- that's fine. If you
5 can't recall, you can't recall.
6 BY MR. MOHAMMADI:
7 Q You testified that in order to do construction, a
8 certain procedure has to be followed; is that fair? In
9 order for a homeowner to do any alterations to the exterior
10 of their home, they have to follow certain procedures; is
11 that fair to say?
12 A Yes.
13 Q Okay. And is it fair to say that those procedures
14 are set forth in the architectural control committee
15 procedures as well as the guidelines?
16 A Yes, and it's also outlined in the covenants.
17 Q Okay. And that procedure requires an application
18 to be filed with a form --
19 A Yes.
20 Q -- an approved form? And no application will be
21 considered unless it's filed on that approved form, correct?
22 A Yes.
23 Q Okay. And I think you were here when Mr. Barr,
24 Dr. Barr testified that if an application is nonconforming,
25 the board would let the homeowner know that it's

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1 nonconforming and what needs to be done to change it?
2 A If it's not approved.
3 Q Okay. Do you just ignore, is it the board's sort
4 of -- do they just ignore applications when they come in
5 sometimes?
6 A Not a formal application.
7 Q Okay. What if it's not on a formal application,
8 on one of those forms? What does the board do then?
9 A I don't work in the architectural committee, but I
10 would think that they would call or contact the person --
11 MS. ROBESON: Okay.
12 THE WITNESS: -- but that's --
13 MS. ROBESON: Go ahead.
14 BY MR. MOHAMMADI:
15 Q I think you testified that when the new
16 application for the deck, after the CCOC case was submitted,
17 it did not include the form.
18 A No, it doesn't.
19 Q Okay. But that was approved, right?
20 A The deck only.
21 Q Okay. And you say that because, you're saying the
22 shed itself, the shed was not approved?
23 A Correct.
24 Q What happens if a plan gets approved and the work
25 is not done?

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1 A It, there -- on the form it states how long the
2 form is good for, and the old ones are two years, and I
3 believe it's been shortened to one year, but it's stated on
4 the form. So it's one year from time that it's been
5 approved.
6 Q That the work has to be done; is that what you're
7 saying?
8 A That's how long, you know, unless they have agreed
9 outside of that for something longer, but it should be a
10 year.
11 Q Okay. My question is, what if they, what if the
12 homeowner changes his mind and does not want to do the
13 construction -- what happens then?
14 A You have to reapply.
15 Q Okay. So you have to reapply to get your approved
16 plans withdrawn, even though no work has been done yet?
17 A Yes.
18 Q Okay. Is that laid out anywhere in the procedures
19 or guidelines?
20 A The form says good for one year, or the form will
21 say good for two years, you know, depending on -- the really
22 old ones say two years.
23 Q Well, I'm not sure if you understood my question,
24 or maybe I'm not understanding your answer, but what I'm
25 trying to find out is, if a homeowner submits a set of plans

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1 and they're approved --
2 A Uh-huh.
3 Q -- and the homeowner then decides, you know what,
4 I'm not going to do anything, I'm not going to construct
5 anything --
6 A They would have to resubmit it if the, if the
7 application expires.
8 Q They don't ever want to do any construction again.
9 Do they have to get approval to not do the construction?
10 A Not that I'm aware of.
11 Q Okay. So if a homeowner decides to abandon part
12 of, you know, the construction that he got approval on, he
13 doesn't have to do anything; he doesn't have to come back
14 and say, I want to -- I don't want to do it anymore?
15 A If he doesn't do any of it, then they've decided
16 not to do it.
17 Q Okay. You were not on the board when the plans
18 were approved, right?
19 A Correct.
20 Q When did you see the plans for the first time?
21 A Six or eight months later.
22 Q Was that before you joined the board or after you
23 joined the board?
24 A I saw them about the time of the retaining wall.
25 So I guess it's really, I did see them before. I'm sorry.

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1 Q So you saw them before, before what?
2 A Before I joined the board.
3 Q Okay. But after they were approved, right?
4 A Yes.
5 Q Okay. And you were not involved in any of the
6 approval process, right?
7 A No.
8 Q And you were not involved in all the submissions
9 that started in 2008 until 2011, right?
10 A I wasn't on the board.
11 Q Okay. And, again, so you were not involved in any
12 of that decision-making or --
13 A No.
14 Q -- approval process? Okay. When you came onto
15 the board, are the plans that we've been talking about on
16 Exhibit No. 77, is that what you saw on an eight by 11?
17 A Yes.
18 Q You had not seen any other plans, larger plans,
19 larger-scale plans?
20 A There's a, there's a larger set of exactly the
21 same thing.
22 Q Okay. So there is a larger set of plans. How
23 much larger?
24 A Not very much, foot and a half by two feet. I
25 mean, they're not very big.

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1 Q Okay. Are you aware that those have not been
2 provided to us?
3 A You wanted both sets?
4 Q We wanted all sets, all plans.
5 MS. ROSEN: I believe that any plans that would
6 fall under the category of things, that if they were your
7 plans, obviously you would have them, and number two, I
8 believe they were probably also admitted into the hearing in
9 the previous case, which is all based on the same
10 application.
11 MR. MOHAMMADI: With all due respect, that
12 previous case I was not there, and whatever has happened
13 there, had not happened there, that's not indicative of what
14 actually occurred. I understand certain things happened
15 and --
16 MS. ROSEN: Well, we don't have to produce the
17 documents that came from that case. That's in the record,
18 and you know, we don't have to --
19 MS. ROBESON: Right, and I don't have that case.
20 I don't know if --
21 THE WITNESS: They're in there. They're in the
22 record. I don't have them.
23 MS. ROBESON: -- there are eight, there are -- I
24 can't remember if there's plans in there or not.
25 MS. ROSEN: I believe there is because I remember

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1 during that hearing, I remember we, there was a -- I believe
2 there should be a large set, larger set that was in there
3 also. That's my recollection, but --
4 THE WITNESS: The original ones.
5 MS. ROSEN: -- plans, plans that were, that were
6 obviously plans that were -- any plans that were produced
7 came from them. So why would we, you know -- if it's
8 documented, you would have. Under the CCOC rules, you don't
9 have to produce what somebody has.
10 MS. ROBESON: Right.
11 MR. MOHAMMADI: The other thing I would add,
12 Dr. Barr testified -- and I asked him the same question
13 about this --
14 MS. ROBESON: Yes, I know.
15 MR. MOHAMMADI: -- is there other plans? He said,
16 no, these are it.
17 MS. ROBESON: And he said no. I know. I
18 understand.
19 THE WITNESS: Well, in some sense, he's right
20 because the larger ones are in --
21 MS. ROBESON: Well, wait.
22 THE WITNESS: Sorry.
23 MS. ROBESON: No one asked you to speak. So just
24 -- we're going to keep order and no cross talk. I can go
25 get the CCOC case and take it a two-, another two-minute

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1 break. I do have a tendency to recall there are plans. Let
2 me go take that, and I will be right back. It's in 73-12,
3 right?
4 MR. MOHAMMADI: If it would be, that's where it
5 would be.
6 MS. ROSEN: Yes, it would be 73-12.
7 (Whereupon, at 4:45 p.m., a brief recess was
8 taken.)
9 MS. ROBESON: I do have plans, excuse me, in this.
10 They look like 11 by 17, and it was Complainant's Exhibit,
11 it looks like 5. So, Mr. Mohammadi, you can --
12 MS. ROSEN: Can we look at them also? I haven't
13 seen this file --
14 MS. ROBESON: Yes. You can approach.
15 MS. ROSEN: -- in quite a long time. I was hoping
16 I'd never have to look at it again. That's something
17 different because that's --
18 THE WITNESS: Yeah, that's not --
19 MS. ROSEN: -- that's something that they
20 submitted later.
21 MS. ROBESON: Okay. I stopped when I found those.
22 So I will look some more.
23 MS. ROSEN: Yes. It's not those.
24 MR. MOHAMMADI: But what is it? I can't, I mean,
25 I can't tell what the difference is between that and

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1 anything else. What is it?
2 MS. ROBESON: Well, let's, let's finish this
3 before we start.
4 MS. ROSEN: Those are the photos when we were
5 referring to photos that I --
6 MS. ROBESON: Yes.
7 MS. ROSEN: Yes, that's --
8 MS. ROBESON: It's Exhibit 9 in 73-12.
9 MS. ROSEN: That's the building --
10 MS. ROBESON: Yes.
11 MS. ROSEN: -- the building permit. I just put
12 things on it because that'll help.
13 MS. ROBESON: Okay. Here's another set of plans,
14 Complainant's Exhibit 1.
15 MS. ROSEN: Two were the ones -- the ones that
16 I've used are two of the ones that were the approved plans.
17 MS. ROBESON: I guess it could be in Commission
18 Exhibit 1. I was looking for large plans.
19 MS. ROSEN: I don't think that they were, but I'm
20 just trying to go off the top of my head.
21 MR. MOHAMMADI: I think 77 did come from this, but
22 77 is the small plans.
23 MS. ROSEN: May I look at what's here?
24 MS. ROBESON: Sure.
25 MS. ROSEN: Refresh my recollection as to some of

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1 this stuff.
2 MS. ROBESON: Okay --
3 MR. MOHAMMADI: Okay. We can talk about it later.
4 MS. ROBESON: -- well, we'll stay on the record.
5 MR. MOHAMMADI: We'll talk about it later.
6 MS. ROBESON: I know there's a supplement to
7 Commission Exhibit 1 as well. So let me --
8 MS. ROSEN: Is there a list of these exhibits that
9 were in this case?
10 MS. ROBESON: No. This is all I have. This is
11 how they keep their file.
12 MS. ROSEN: I just haven't looked at this for a
13 long time. I --
14 MS. ROBESON: Let me just check Commission Exhibit
15 -- this is the supplement, looks like all the court case,
16 the supplemental complaint. I do not see any. I can check.
17 I've got several files, but they were marked like that.
18 That's 30-12 right there. So what is your position,
19 Ms. Rosen, that --
20 MS. ROSEN: Well, that's not the approved plans.
21 That's something that --
22 MR. MOHAMMADI: Yes. We have --
23 MS. ROBESON: Now, what are these?
24 MS. ROSEN: They were different. I mean, the
25 approved plans were the complainant's Exhibit 2.

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1 MS. ROBESON: Well, I have, I have the approved
2 plans --
3 MS. ROSEN: Yes.
4 MS. ROBESON: -- but they're not large.
5 MS. ROSEN: Right.
6 MS. ROBESON: So I was looking for -- there are
7 the approved, what you're saying are the approved plans, but
8 they're not, they're not larger than eight and a half by 11.
9 MS. ROSEN: The ones that we have, we submitted.
10 I mean --
11 MS. ROBESON: So --
12 MR. MOHAMMADI: But I think that's exactly the
13 issue: what they have, they have not submitted.
14 MS. ROBESON: I have this. That looks like
15 something Ms. Gowan may have done. That's the code to her
16 supplemental complaint, I think.
17 MS. ROSEN: Any plans that were supposedly
18 submitted would have emanated originally from Mr. Ball. So
19 we wouldn't be required to supply something, even if it
20 existed, that came from him.
21 MS. ROBESON: Well, I'm less worried -- okay.
22 MR. MOHAMMADI: I don't think that's the case at
23 all.
24 MS. ROBESON: Just a second. Okay. Everybody go
25 back because I'm not finding plans. I will, I will

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1 double-check everywhere.
2 MS. ROSEN: Yes. I don't know. Maybe -- I'm not
3 sure how they, because I don't know how they keep things at
4 CCOC, and I don't, I really don't recall at this point.
5 MS. ROBESON: Mr. Mohammadi, where were we in your
6 cross?
7 MR. MOHAMMADI: My cross? I asked specifically
8 about where those large approved plans are, why they have
9 not been provided. That was my cross.
10 MS. ROBESON: And, Ms. Gowan, you say there are
11 large approved plans? You testified to that, correct?
12 THE WITNESS: I believe I saw larger plans. They,
13 they had no real dimensions or anything on them. They
14 were --
15 MS. ROBESON: Well, you don't have to --
16 THE WITNESS: But I, I don't -- I'm really trying
17 to recall.
18 MS. ROBESON: And when you say large, are they,
19 like, similar to this?
20 THE WITNESS: They're not very much bigger. Yeah,
21 about that size or slightly smaller. I mean, I basically
22 wanted to go and look at these plans and see what was being
23 built, what was approved, because I didn't have any idea,
24 and when the gentleman from the county said, well, he's
25 building a retaining wall, I just wanted to see what had

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1 been approved. And the plans I looked at didn't have a
2 retaining wall, and I -- that's kind of all I remember.
3 MS. ROBESON: Wait. You went to the county to
4 review plans or --
5 THE WITNESS: No, no. I, well --
6 MS. ROBESON: The plans that had been submitted to
7 the board.
8 THE WITNESS: Yes.
9 MS. ROBESON: And you recall seeing a larger set
10 of plans than the eight-and-a-half by 11?
11 THE WITNESS: I think so. I can't say absolutely
12 for sure. I know I looked at plans, and I know that the
13 plans I looked at, the approved plans are the same ones.
14 MS. ROSEN: I'm not sure what difference this
15 makes because, if the approved plans, you know, the size
16 that we have here, if there happen to exist a larger one,
17 I'm not sure what difference it makes --
18 MS. ROBESON: Well --
19 MS. ROSEN: -- because it's the same thing and it
20 would have come from them.
21 MS. ROBESON: What's your opinion, Mr. --
22 MR. MOHAMMADI: Well, I'd like to see them before
23 I say whether they're in fact the same or not, whether
24 they're approved or not.
25 MS. ROBESON: Okay. Well, we don't have them. So

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1 we are going to have to proceed.
2 MR. MOHAMMADI: Your Honor, just, I mean, again,
3 this is prejudicial for a respondent.
4 MS. ROBESON: I understand and I'm noting it.
5 MR. MOHAMMADI: Okay.
6 MS. ROBESON: Is there any other case that could
7 have had these? Wasn't there --
8 MS. ROSEN: Well, the problem here, quite frankly,
9 is that there's so many different -- you know, after the
10 approved plans, they were hit with so many different sets of
11 drawings that, when people start talking about drawings and
12 plans and this and that, I mean, quite frankly, it becomes
13 confusing. The approved plans were the ones that were
14 Complainant's Exhibit 2. If there's a larger size of them,
15 I'm really not sure, but that's what they are.
16 MS. ROBESON: So Ms. Gowan recollects seeing them,
17 but they aren't in our official files. Ms. Gowan, I
18 understand your -- let's move on on cross-examination. I'm
19 going to ask Ms. Gowan to really try to find what she
20 remembers seeing. Okay?
21 MR. MOHAMMADI: Your Honor, if I may respond to
22 what Ms. Rosen has said just very briefly. She said there
23 have been -- this is exactly the issue -- a lot of plans and
24 submissions and drawings, and they're working off of one of
25 those sets which they are claiming are the approved plans.

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1 MS. ROBESON: I understand totally, and it goes to
2 whether they've met the burden of their case.
3 MR. MOHAMMADI: Correct.
4 MS. ROBESON: I can't force the plans to appear
5 unless -- I do expect the parties to, you know, provide all
6 the documents in their possession. So you continue with
7 your cross-examination.
8 MR. MOHAMMADI: Thank you.
9 BY MR. MOHAMMADI:
10 Q Ms. Gowan, I think you testified that the only
11 change that was approved by the board on the property was
12 something to do with the brick?
13 A Yes.
14 Q Okay. And what specifically was this brick issue
15 that was approved later on?
16 A Color.
17 Q Okay. So just the color was changed?
18 A Yes, that's --
19 Q And I think your testimony was that, that when the
20 change was requested, a formal application was submitted?
21 A Yes.
22 Q And when you say formal application, you're
23 talking about on one of the forms that the architectural
24 committee has set forth, right?
25 A Yes.

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1 Q Similar to the one that was submitted with the May
2 10, 2011, plans?
3 A Yes.
4 Q Okay. Are you aware that we don't have that
5 either, the application that was submitted for the brick?
6 MS. ROSEN: I'm sorry?
7 MS. ROBESON: Ms. Gowan, did you hear the
8 question?
9 THE WITNESS: I did. I'm, I'm trying to think of
10 where that document is.
11 BY MR. MOHAMMADI:
12 Q Did you ever provide it -- well, would you have
13 been responsible for providing it to Ms. Rosen?
14 A I would have, and I'm, I'm going to have to look
15 for that document, see, because I recall seeing one --
16 Q Okay. So --
17 A -- and it's, it's attached to a letter.
18 Q Okay. So there is one, but you're not sure where
19 it is; is that fair?
20 A No, I know where it is. It's -- I've got it on my
21 computer.
22 MS. ROBESON: Okay. If you know where it is, why
23 wasn't it provided?
24 THE WITNESS: I provided documents according to a
25 list that I received, and that's the list of documents that

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1 I provided, and --
2 MS. ROBESON: So you didn't think it was
3 requested?
4 THE WITNESS: Exactly.
5 MS. ROBESON: I see.
6 THE WITNESS: So I don't mean to make this
7 arduous, and I feel I have.
8 MR. MOHAMMADI: I'm not sure if you want me to
9 move on from this, or --
10 MS. ROSEN: One second. I was --
11 MS. ROBESON: Well, I'm just --
12 MS. ROSEN: -- I just want to pull up something
13 here on the CCOC discovery rules.
14 MS. ROBESON: Why don't you -- just one second --
15 why don't you identify what part of your interrogatories
16 that was responsive to.
17 MR. MOHAMMADI: Just one moment. I'm looking at
18 them.
19 MS. ROSEN: I just want to note that under the
20 CCOC's, the request for production of documents, basically,
21 under the regulations, it says, requests are limited to
22 whatever, 20 individual requests, and may only be made of
23 documents not otherwise available to or in the control of
24 the requesting party or not available in the public record.
25 If they submitted drawings, plans, whatever they may have

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1 submitted, it would be in their control; they should have a
2 copy of it. So we wouldn't --
3 MS. ROBESON: Well, the problem --
4 MS. ROSEN: -- be required to submit these things.
5 MS. ROBESON: The problem is, what I'm thinking is
6 going on, and I could be incorrect, is that there's a
7 disagreement over what constitutes the approved plans.
8 MS. ROSEN: I understand that, but --
9 MS. ROBESON: So it doesn't matter if Mr. Ball has
10 whatever plans were submitted. It's him saying, this is
11 what I submitted. So I don't -- and I don't have a record
12 from the HOA, an official document from the HOA, saying
13 whether he admitted it or not. So that's beyond the
14 discovery issue. Okay?
15 MS. ROSEN: I know, but if his position is, is
16 that something other than what we have contended is the
17 approved plans, if he's contending that some other plan was
18 the approved plan, then he can put that forward in his
19 case-in-chief. I haven't seen such a document, and in even
20 his discovery responses, what he seems to be -- he seems to
21 be taking the position, legally in this case, that the
22 December 16th, what he dropped off in the doorway on
23 December 16th is an approved plan. That seems to be their
24 theory, that it's an approved plan because it was never
25 acted upon. So we need to stop muddying the waters here.

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1 That's basically what their position is.
2 MS. ROBESON: Well, I don't -- we need to exchange
3 the information requested. Now, I don't know if you
4 requested it in -- so that everyone is on a level playing
5 field.
6 MR. MOHAMMADI: All plans submitted by respondents
7 for construction on their home during the last five years, I
8 think that falls within that request. That would be --
9 MS. ROSEN: In my view, this was available in the
10 public record, the plans --
11 MS. ROBESON: Where?
12 MS. ROSEN: In the CCOC cases. I mean -- yes.
13 MS. ROBESON: But now she's saying there's another
14 set of plans that we don't have.
15 MS. ROSEN: No.
16 THE WITNESS: No. No.
17 MS. ROSEN: There's only one set of approved
18 plans --
19 THE WITNESS: They're --
20 MS. ROSEN: -- and that's what we --
21 THE WITNESS: They're the same set from what I
22 remember. They're just bigger.
23 MR. MOHAMMADI: That's exactly the issue --
24 THE WITNESS: I just --
25 MR. MOHAMMADI: -- she doesn't know. In fact,

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1 nobody --
2 MS. ROBESON: Okay.
3 MR. MOHAMMADI: -- nobody knows.
4 MS. ROBESON: All right, guys.
5 MS. ROSEN: This has been litigated already,
6 previously, what was the approved plans. That was already
7 addressed and litigated and found to be a fact in the
8 previous CCOC case.
9 MS. ROBESON: Yes, but, okay, but this -- it's not
10 preclusive. This is an administrative hearing --
11 MS. ROSEN: I understand.
12 MS. ROBESON: -- so res judicata does not apply,
13 but what the analysis is, is, was, you know, if you're -- if
14 I make a different finding, is it arbitrary and capricious
15 for me to change my mind. Now, you know, evidence coming
16 in, one way or the other, that the CCOC may not have had, if
17 I change my mind because of that, that's not arbitrary and
18 capricious. That's the case law. It's not preclusive. It
19 just, if I come to a different conclusion, it simply has to
20 have some rationale as to why I come to a different factual
21 conclusion, and there's lots of case law on that. So what
22 else do you have? Where else are we as far as
23 cross-examination?
24 MR. MOHAMMADI: I mean, I haven't gotten into any
25 of the substance. I'm still trying to get through some of

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1 the procedures and stuff, but I'm not sure what your
2 decision is with respect to this other application. I think
3 it's --
4 MS. ROBESON: Well, what are you asking me for?
5 That's what I -- I'm not going to make a sanctions hearing
6 now. We're going to get through the case --
7 MR. MOHAMMADI: Okay.
8 MS. ROBESON: -- and you can argue about sanctions
9 later --
10 MR. MOHAMMADI: That's fine.
11 MS. ROBESON: -- because I don't have any evidence
12 to say -- I have a larger set of plans -- I don't have any
13 evidence to say they're not identical because it's harmless
14 error. I don't even have Mr. Ball's testimony. So at this
15 stage -- no, he's not coming out of turn.
16 MR. MOHAMMADI: No, I'm not going to -- I was just
17 thinking about something.
18 MS. ROBESON: Okay. So what we're going to do is
19 proceed with your cross-examination. I am noting these
20 items, like the July 17th minutes, this large set of plans.
21 I'm noting them. Whether it is the basis for something or
22 not, it's premature. All right?
23 MR. MOHAMMADI: Okay.
24 BY MR. MOHAMMADI:
25 Q Have you ever gone out to Mr. Ball's property and

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1 done any, taken any measurements?
2 A No.
3 Q Okay. So everything you complain about is just
4 based on sort of visual observation, right?
5 A For the plans, I used the features and elements of
6 the plans to help estimate the dimensions.
7 Q Okay. And when you say estimate, it's -- that's
8 what it is, is just estimates, right?
9 A Right.
10 Q They're not accurate measurements?
11 A Only where he's shown dimensions.
12 Q So when you talk about, you know, the trim being
13 too thick, what are we talking about? The difference
14 between two inches and three-and-a-half inches?
15 A Some of the windows are trimmed narrower than
16 others.
17 Q Okay. And how many inches are we talking about?
18 A The older ones are two inches, and the new ones
19 are two to six inches.
20 Q And you can tell the dimensions from visual
21 observations as well as looking at the eight by 11 plans,
22 how many inches exactly it's supposed to be?
23 A Basically.
24 Q Okay.
25 A I mean, it's not a finite art, but I can look and

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1 tell the difference between a two and a four or a six.
2 Q Okay. So you can look at this plan, 77, look at
3 the front elevation, and you can tell that --
4 A They're very narrow.
5 Q -- the trim on -- you're pointing to the, from the
6 front elevation, the left addition on the bottom floor, on
7 the ground floor?
8 A The trim here, and all of the windows and doors
9 all match.
10 Q Okay. How many inches is that on the front
11 elevation on the left side?
12 A That's two to four inches.
13 Q What tells you that?
14 A Because the bricks are about three to four inches
15 here; so you can kind of compare.
16 Q And these are scaled drawings, in your opinion?
17 A They're reduced scaled drawings.
18 MS. ROBESON: Well, wait. Were there scaled
19 drawings at some point?
20 THE WITNESS: I would hope. Well, we'd have to --
21 MS. ROBESON: No, no comment on -- do you know of
22 scaled drawings?
23 THE WITNESS: I've seen these with scale marks on
24 some of the areas.
25 MS. ROBESON: Okay.

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1 BY MR. MOHAMMADI:
2 Q Where have you seen those?
3 A You're, you're looking at them, and then when you
4 look --
5 MS. ROBESON: Are you talking about the floor
6 plan, the measurements of the addition, because that's
7 not --
8 THE WITNESS: There's some dimensions here.
9 BY MR. MOHAMMADI:
10 Q Okay. So you're talking about some of the floor
11 plans of the approved plans have dimensions in certain spots
12 only?
13 A Right.
14 Q Okay. And that's what you're talking about, the
15 scaled plans that you saw?
16 A The plans that I saw were a bigger version of
17 this, and I've got a --
18 MS. ROBESON: In your recollection.
19 THE WITNESS: Right, and I've just got to go see
20 if they really do exist.
21 MS. ROBESON: Okay.
22 BY MR. MOHAMMADI:
23 Q Do you recall ever seeing as-built plans?
24 A Only at the permit office.
25 Q Okay. But none with the HOA --

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1 A No.
2 Q -- or the board? Okay. Showing you what's been
3 marked as Exhibit 79, that's the letter that was sent after
4 the site visit on the Balls' property, right, on September
5 15, 2013?
6 A Yes.
7 Q Okay. Did you have anything to do with the
8 drafting of this?
9 A No.
10 Q Okay. Did you approve this letter at any point?
11 A No.
12 Q What about after it was sent -- did you approve it
13 after at any point?
14 A No.
15 Q Did the board approve at any point afterwards?
16 A We discussed the issue, and Raj Barr sent out the
17 letter.
18 Q Now, I think you testified that the reason you
19 sort of did this in such a quick manner -- meaning you went
20 up on the site, you saw the site, and the following day you
21 sent the letter -- was because you wanted to stop the issue
22 becoming bigger; is that fair to say?
23 A The board, yes.
24 Q Okay. And isn't it true that at the time some
25 board members went up to the site and the letter was sent,

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1 all the trusses were already on the roof?
2 A I don't know if all of them were up on the roof.
3 Q Were you aware that trusses were on the roof at
4 that time?
5 A I saw them going up.
6 Q Okay. Did you complain about it?
7 A I, I think I, I e-mailed Peter Gibson and Raj to
8 ask if the roof was to be raised.
9 Q Okay. Was that before or after you looked at the
10 plans?
11 A That was in September of 2013 when they put the
12 trusses on.
13 Q Okay. And I think you testified before that,
14 sometime when the retaining wall went up, which was, I
15 guess, in 2011, you looked at the plans, right?
16 A I looked at the plans for the area, and like I
17 said, I've got to go back and see if they're the size plans
18 that I think I saw --
19 Q Okay.
20 A -- but I looked at the area of the shed. We have
21 been looking at the approved plans off and on in discussions
22 with the Balls to make sure that it stays in compliance, and
23 that's when I've looked at the plans.
24 Q Had you looked at the plans -- before this letter
25 was sent out, had you looked at the plans with respect to

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1 the roof ever?
2 A I looked at the plans because a couple of people
3 had asked if the roof was supposed to be higher than the
4 chimney, and I went back and looked, and no, it wasn't.
5 Q Okay. When you looked at the plans, when was
6 that, with respect to the roof specifically?
7 A Probably August/September, when the trusses were
8 being placed on them, was the, not exactly the last time,
9 but close to the last time.
10 Q 2013?
11 A Uh-huh.
12 Q Okay. And at that point, you determined that
13 because the roof height and the chimney were of a, there was
14 no difference in the distance between them, the top of them,
15 there shouldn't have been any change in roof height,
16 correct? I think that's what you just testified.
17 A I asked if the roof was supposed to be raised.
18 Q No. My question is, when you looked at the plans
19 yourself, okay --
20 A The roof was higher than the chimney.
21 Q Right, but the plans -- were you able to tell from
22 the plans whether the roof was supposed to be raised, or
23 not?
24 A The look of the roof doesn't show that it's
25 supposed to be raised, just because it's -- I'm trying to

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1 think of how to explain it. It doesn't look higher or
2 taller.
3 Q On the plan?
4 A Right.
5 Q That opinion, right, what are you basing that on?
6 If you can show on the plans, that's, that's fine, but
7 looking at 77, what are you looking at on this, on these
8 plans that tells you the roof is not supposed to be raised?
9 A The plans -- I looked at this, and then I came to
10 the left-side and right-side elevation, and they appear to
11 be long and relatively low, which is basically consistent
12 with the home's existing roof size or roof pitch.
13 Q I'm not sure I understand. What is long and low?
14 A The height of the roof doesn't appear to be very
15 tall where it doesn't produce a very steep slope, and this
16 doesn't look --
17 MS. ROBESON: Wait. What's this?
18 THE WITNESS: I'm sorry --
19 MS. ROBESON: That's okay.
20 THE WITNESS: -- the left-side elevation.
21 MS. ROBESON: Yes.
22 THE WITNESS: And the slope on this is very
23 consistent with what is existing. So when they raised the
24 roof, it, it presents a lot more of a vertical look and it
25 doesn't --

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1 MS. ROBESON: A vertical look in what way?
2 THE WITNESS: In height. It looks much taller,
3 even from the front.
4 MS. ROBESON: So are you saying it's taller with a
5 steeper slope?
6 THE WITNESS: Yes. I mean, I, I asked them why
7 they didn't request dimension drawings --
8 MS. ROBESON: Yes, I'd be interested --
9 THE WITNESS: -- and they said, well, most of the
10 board is made up of non-architects and construction and they
11 -- they really rely on the homeowners to be forthright in
12 providing all the information.
13 BY MR. MOHAMMADI:
14 Q My --
15 MS. ROBESON: So, I'm sorry, I am still confused
16 what you relied on to determine that the roof shouldn't be
17 higher. I'm looking at the left-side elevation and the
18 right-side elevation.
19 MR. MOHAMMADI: I think the right-side elevation
20 is the one you probably want to look at, because it shows
21 the garage side.
22 MS. ROBESON: Okay.
23 THE WITNESS: And it just doesn't appear to be any
24 different, and when I --
25 MS. ROBESON: Any different than?

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1 THE WITNESS: Than what exists now.
2 MS. ROBESON: And where is what exists now?
3 THE WITNESS: The, the ridge appears to have been
4 utilized again and then just the roof brought forth,
5 forward, to cover the upper level of the garage.
6 BY MR. MOHAMMADI:
7 Q Ms. Gowan, if I may ask you a couple of questions.
8 This right-side elevation, it shows the new addition that's
9 being built on top of the garage; is that fair to say?
10 A Yes.
11 Q That would be the second floor above the garage on
12 the left-hand side where there's a window, right?
13 A Right.
14 Q Okay. So is your testimony that before what
15 existed was -- the roof was placed the same way but there
16 was nothing underneath it to support it up?
17 A The roof that existed over this main part of the
18 house, the -- as you look at the side elevation, if you
19 looked at above the window where it's got the dotted line,
20 from there to the ridge, it appeared that that was the same,
21 but what is being constructed now is much higher,
22 significantly higher.
23 Q What are you basing that on, that it appeared to
24 be the same?
25 A You can look, and you can use some elements here

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1 for measurements. These are --
2 MS. ROBESON: Like what?
3 THE WITNESS: -- these are eight-foot sections --
4 BY MR. MOHAMMADI:
5 Q When you say these --
6 A -- floor to floor.
7 Q -- you're talking about the second floor?
8 A Right. And you can --
9 MS. ROBESON: Wait. Okay. I can't read the
10 numbers on this.
11 THE WITNESS: Okay. You see the --
12 MS. ROBESON: What do you mean eight-foot
13 sections? Sections of what?
14 THE WITNESS: Okay. The double-dotted line that
15 runs horizontally across --
16 MS. ROBESON: Yes.
17 THE WITNESS: -- there's another one above it.
18 MS. ROBESON: You're saying that's eight feet?
19 THE WITNESS: Right. It's eight or 10. It should
20 be --
21 MS. ROBESON: How do you know it's eight feet?
22 THE WITNESS: It's -- the ceiling height, and the
23 guess is that the ceiling height is eight feet because the
24 first floor is right now eight feet in all of the houses,
25 all of the older ones, in portions of it. So this is a

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1 measurement of eight. There are -- I think some areas in
2 some of the houses are nine, but you can kind of use that as
3 a benchmark to do some minor scaling. It's not exact
4 science, but --
5 MS. ROBESON: I understand.
6 THE WITNESS: But what is -- what has been
7 constructed, significantly higher.
8 MS. ROBESON: Okay.
9 BY MR. MOHAMMADI:
10 Q How tall was the roof previously?
11 A I don't know.
12 Q How tall is the roof currently?
13 A Much higher, significantly higher.
14 Q How tall is it?
15 A I would say, from looking at the trusses on it,
16 that it's six to eight feet taller.
17 Q My question is --
18 MS. ROBESON: He's asking you feet, how tall is
19 it.
20 MS. ROSEN: If you know.
21 BY MR. MOHAMMADI:
22 Q If you know. I mean, if you know, just say, just
23 tell me how tall it is. If you don't know, that's fine too.
24 A There's no scale on the drawings.
25 Q I'm asking about the current construction. How

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1 tall is the roof?
2 MS. ROSEN: If you know.
3 THE WITNESS: I don't. I mean, I can do a guess,
4 but I --
5 MS. ROBESON: No.
6 MS. ROSEN: Don't do a guess, no.
7 THE WITNESS: -- but I don't know because there's
8 no dimension.
9 MS. ROBESON: Right.
10 BY MR. MOHAMMADI:
11 Q I think, just to clarify, you testified that when
12 the deck application was submitted after the last CCOC
13 hearing, no formal -- no form was supplied with it, right?
14 The application form was not supplied with that, right?
15 A Not that I saw.
16 Q Okay. And I think you testified that the only
17 reason you didn't require the Balls to submit one is because
18 you wanted to meet the CCOC, I guess, requirements, time
19 requirements?
20 A Right.
21 Q Okay. And the CCOC time requirements simply said
22 you need to reach a decision within a certain amount of
23 time, right? Either approve or reject, correct?
24 A Right.
25 Q And you could've just rejected it and said, you

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1 have not supplied the plans in accordance with our rules and
2 procedures, correct? You could have done that?
3 A Yes.
4 Q But you didn't. You went ahead and said it's
5 fine, he doesn't need the application form, I'm going to,
6 we're going to go ahead and decide it based on what's
7 already, what's been submitted?
8 A We went ahead and reviewed it and --
9 Q Okay.
10 A -- he submitted it; we reviewed it.
11 Q All right. CCOC Case 73-12, you testified in that
12 case?
13 A Yes.
14 Q Were you involved when the board decided to bring
15 that case?
16 A Yes.
17 Q So you were part of the board that voted on it?
18 A Yes.
19 Q And similarly, for this, for this CCOC case, you
20 were part of the board that voted on bringing this
21 complaint?
22 A Yes.
23 Q Okay. With respect to the last, the 73-12 CCOC
24 case, you stated that there were -- the supplemental items
25 listed in this complaint were also listed in that previous

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1 complaint, right? I think that was your testimony.
2 A It would be, because I think even the roof was
3 constructed then.
4 Q Okay. Well, the roof is not part of the
5 supplemental, right? That's part of the original complaint
6 filed here.
7 A For here.
8 Q Right.
9 A Yes.
10 Q I'm talking about, the supplemental items listed
11 in the complaint were also listed previously in 73-12,
12 right?
13 A I could go line by line, but basically, yes.
14 Q Okay. And that was not accepted by the CCOC,
15 right? Those supplemental items were, I think you said,
16 kicked out, is, I think, the term you used.
17 A They accepted the original complaint, which was
18 the deck and shed.
19 Q Okay. And the others, other portions were kicked
20 out?
21 MS. ROSEN: I think the record speaks for itself
22 as to why those were not accepted. I'm not sure what the
23 point of this is. I mean, there's a record --
24 MS. ROBESON: Well, if it speaks for --
25 MS. ROSEN: -- there's a record that shows --

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1 MS. ROBESON: She was involved. If it speaks for
2 herself, it's frustrating to continually get I don't recall
3 or, I mean --
4 MS. ROSEN: Yes. What I'm saying is --
5 THE WITNESS: The --
6 MS. ROSEN: -- that the record in this case --
7 MS. ROBESON: It does. It speaks for itself. We
8 know why. The problem is, you know, she can't explain why,
9 but --
10 MS. ROSEN: We know why.
11 BY MR. MOHAMMADI:
12 Q Do you know why it was kicked out?
13 A Because it wasn't included in the initial
14 submission for a complaint.
15 Q Right. Now, with respect to this particular
16 complaint, you were here when Mr. Barr testified, right?
17 A Yes.
18 Q And you heard him say that the board did take a
19 vote to take this case to the CCOC?
20 A Yes.
21 Q You can recall that?
22 A Yes.
23 Q Okay. And what meeting was that at?
24 A I could look, because I know one of the original
25 -- one of the most recent votes.

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1 Q Well, I'm going to give you all the drafts. So
2 this might not have everything, but take a look at the
3 drafts. It's Exhibit No. 92. Maybe that'll help you
4 remember which meeting it was.
5 MS. ROSEN: Actually, I believe that the actual
6 meeting minutes are in the --
7 THE WITNESS: Yes, I believe it is too.
8 MS. ROSEN: -- were even introduced as an exhibit.
9 So you might want to show those instead.
10 THE WITNESS: Yes. It's, it should be October
11 2013, I would think, or --
12 BY MR. MOHAMMADI:
13 Q All right. Well, take a look at this last page,
14 October 28, 2013.
15 MS. ROSEN: We actually have Exhibit 93 as the
16 actual stand-alone minutes for October 28th of 2013.
17 They've already been admitted.
18 THE WITNESS: What does it say?
19 MS. ROBESON: Is this the draft composite?
20 MS. ROSEN: No. This is the actual --
21 MS. ROBESON: No. I know. I don't know --
22 THE WITNESS: This is the draft composite.
23 MS. ROBESON: -- I thought she was looking --
24 THE WITNESS: This is the draft composite that
25 he --

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1 MS. ROBESON: Yes.
2 THE WITNESS: -- he gave me.
3 MS. ROSEN: Yes, but I'm saying we have -- the
4 stand-alone minutes for Monday, October 28th, 2013 --
5 MS. ROBESON: Okay.
6 MS. ROSEN: -- were produced, and they have
7 already been admitted. So I don't know why we're not using
8 those.
9 MR. MOHAMMADI: Okay. That's Exhibit No. 93?
10 MS. ROSEN: Yes.
11 THE WITNESS: Let me see. Does it --
12 MS. ROSEN: 93. Well, let him just --
13 THE WITNESS: Yeah. It's in the October 28th
14 meeting minutes.
15 MS. ROBESON: Okay.
16 BY MR. MOHAMMADI:
17 Q Okay. And you recall Mr. Barr testifying that the
18 only issue that was voted on was the roof at that time?
19 A No.
20 Q You don't recall Mr. Barr testifying as to that?
21 A I, I don't recall him saying that it was only the
22 roof.
23 Q Okay. Do you know what issues were discussed?
24 A The roof mainly and then some of the other
25 discrepancies.

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1 Q Okay. You're aware that when the complaint was
2 filed, the supplemental items were not included on the
3 original filing, is that correct?
4 A I don't know. I wasn't working with --
5 Q Well, it's a supplemental complaint, right,
6 meaning it came later to supplement?
7 A Well, the supplement was that I developed for the
8 board that we reviewed and everything. This is what was
9 included in the complaint that we --
10 MS. ROBESON: Not this complaint. It wasn't
11 included in CCOC 73-12.
12 THE WITNESS: The itemized list was requested
13 during that hearing, and I developed a list of discrepancies
14 and things for everything, and then I was asked to do it for
15 just the deck and shed. So I pulled it all out and did
16 separate lists with separate plans and that was submitted.
17 BY MR. MOHAMMADI:
18 Q I'm sorry. And that's 73-12? That was submitted
19 in 73-12?
20 A Yes.
21 Q Okay. I'm asking about the supplemental complaint
22 today. That wasn't submitted as part of the original
23 complaint that was filed, correct?
24 A I supplied it. I don't know what was submitted.
25 Q Okay. That's fair enough. I'm going to ask you a

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1 few questions about the supplemental items in a minute, but
2 I just want to ask you about Mr. Barr's testimony again.
3 You heard him testify that he didn't really care about --
4 for him, the supplemental items were not really a big deal,
5 right?
6 A I'd have to look back through and see if that's
7 what he said.
8 MS. ROBESON: Okay.
9 BY MR. MOHAMMADI:
10 Q All right. If --
11 MS. ROBESON: No. I just --
12 MS. ROSEN: Want to eat now?
13 MS. ROBESON: That's fine. If -- when we do this
14 again, could everybody review all the documents and refresh
15 their memories as far as when things happened when, because
16 we've got a lot of board members not clear on their
17 recollections of what happened when and that would be
18 helpful to get through this rather than having to hunt up
19 through the attorneys this whole time line. Do you have a
20 time line? Did you prepare a time line --
21 THE WITNESS: I did.
22 MS. ROBESON: -- Ms. Gowan? Does that have some
23 of these answers on it?
24 THE WITNESS: It doesn't speak of Raj, Raj, you
25 know, Mr. --

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1 MS. ROBESON: No, that was the transcript. I
2 understand that, but things like, was it approved in the
3 October-something minutes. Well, all I'm asking you to do
4 -- you don't have to look now --
5 THE WITNESS: Is to look.
6 MS. ROBESON: -- just really familiarize yourself
7 with the documents and evidence so we don't spend a lot of
8 time searching for exhibits. You can continue.
9 MR. MOHAMMADI: Oh, I can continue? Okay. Thank
10 you.
11 BY MR. MOHAMMADI:
12 Q With respect to, I guess, this punch list that you
13 created, I think it's Exhibit 116 -- is this the punch list,
14 116? This is what you created?
15 A This was included in the C, the 73-12.
16 Q Okay.
17 MS. ROBESON: And I did see that.
18 BY MR. MOHAMMADI:
19 Q Was this something you gave to the board?
20 A Yes. I mean, some didn't understand it, but --
21 Q And this was prepared on October 8th, 2013, right?
22 I mean, I think it says up there, observed by Lynn Gowan,
23 10/8/2013.
24 A Right.
25 Q Okay. And 20 days after you prepared this is when

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1 the board voted to take the Balls to the CCOC?
2 A Yes.
3 Q Is it your contention today that the construction
4 on that property, on the Balls' property, is completed?
5 A On the exterior in some areas, but it's not
6 totally completed.
7 Q I mean, there's a lot of areas that have -- that
8 basically don't either have siding or the roof is not up. A
9 lot of different parts are still not finished, right?
10 A True.
11 Q Okay. With respect to the open shed that we were
12 talking about, are you aware that that shed existed when you
13 moved in?
14 A Yes.
15 Q Are you aware that it existed before Mr. Ball
16 moved in?
17 A I wouldn't know that.
18 Q Okay. And your only problem with it is that for
19 however long it's existed, it has never gotten HOA approval?
20 A True.
21 Q Do you know whether it was an addition that was
22 built later by somebody?
23 A Later than what?
24 Q Later than the original construction. Do you
25 know, do you know that it was an actual addition and not

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1 part of the original construction?
2 A One of the neighbors mentioned that it was built
3 by the Balls.
4 Q Okay. And that's all you have to go by, some
5 neighbor mentioning it?
6 A Right now.
7 Q And I think you testified that the plans show that
8 it was, is going to be removed?
9 A Yes.
10 Q How does the plan depict that it's going to be
11 removed?
12 A It's, it's not shown on the plans at all.
13 Q Oh, I see. You're saying it's absent on the
14 plans, so that must mean it's going to be taken off?
15 A Yes.
16 Q What about this closed shed -- do you know when
17 that was built?
18 A No. There's no record of it existing.
19 MS. ROBESON: Is the closed shed Shed 2, the --
20 MR. MOHAMMADI: Shed 3.
21 THE WITNESS: Shed 3.
22 MS. ROSEN: Shed 3.
23 MS. ROBESON: Okay.
24 MR. MOHAMMADI: Shed 2 is the one that was part of
25 the other case.

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1 MS. ROBESON: Other case. Okay.
2 BY MR. MOHAMMADI:
3 Q But ever since you moved in, it's been there?
4 A I think that was one of the constructions that was
5 going on shortly around when I moved in.
6 Q Taking a look again at Exhibit No. 77, I think you
7 testified that the new addition, the new office addition, is
8 supposed to have a specific setback?
9 A Right.
10 Q And that's three feet 10 inches?
11 A Yes.
12 Q Where do you get that from?
13 A Right here.
14 Q What are you pointing at?
15 A The dimensions.
16 Q On the lower --
17 MR. MOHAMMADI: Okay. For the record, she's
18 pointing to lower floor plans. I guess there's something
19 written there.
20 BY MR. MOHAMMADI:
21 Q You can make out what that says?
22 A With a magnifying glass --
23 Q Is that what you did?
24 A -- granted. Yes.
25 Q That's what you did? You pulled a magnifying

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1 glass, and you looked at it to see how much it's supposed to
2 be?
3 A Well, I have a clearer version of it, yes.
4 Q Oh, okay. Okay. Did you go to the property to
5 determine how far the setback is now?
6 A No. It appears to be roughly even with the face
7 of the chimney.
8 Q Let me ask you something else that's curious. You
9 know sort of what the Balls' property looks like in the
10 elevation, right?
11 A Yes.
12 Q It's built on a hill, right?
13 A A little bit of a hill.
14 Q Okay. The back of the house drops off as well as,
15 if you go from the garage down towards the office side of
16 the house, it also drops off, right?
17 A Not on the front, no.
18 Q Okay. So on the front it's completely straight?
19 A Around the area of the garage, it's, it's -- I'm
20 trying to explain. The road comes down at one angle to
21 their property, but I don't recall it having a hill.
22 Q Okay. Well, just give me one second. I believe
23 we have some pictures.
24 A Here it is. See, it's, it's almost even.
25 Q Okay. So you're looking at --

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1 MS. ROBESON: Wait. What exhibit -- oh, okay.
2 BY MR. MOHAMMADI:
3 Q 82(a), right?
4 A Right.
5 Q Okay. So you're looking at what, the top picture?
6 You're saying it's almost even. You mean there's just a
7 straight line?
8 A Across the front it's almost a straight line.
9 Q If I can direct your attention to the bottom
10 picture, if you reach where the office section is, isn't it
11 true that there's, it looks like it's, there's a dip down?
12 A Out to the far left.
13 Q Okay. And then again, on the back -- I think
14 Exhibit No. 77 may depict it -- and if you look at both the
15 right-side and left-side elevations, they show that there's
16 sort of a dip, right?
17 A Here.
18 Q On the left-side elevation, you're talking about
19 there's sort of a diagonal line at the bottom, going
20 downward?
21 A Now, yes.
22 Q Okay. And on the right side, just flip that, it's
23 going downward on the right side?
24 A On, on this plan.
25 MS. ROBESON: Could you speak up just a little? I

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1 can't hear.
2 THE WITNESS: On the elevations, the right side
3 and the left side, the plan indicates that there's a
4 downslope towards the back.
5 MS. ROBESON: Okay.
6 BY MR. MOHAMMADI:
7 Q And let me make sure I understand this. When you
8 said that the brick veneer knee wall is higher than what
9 was, what is actually approved --
10 A Right.
11 Q -- you're somehow measuring what's on the approved
12 plan and comparing it to what's currently there?
13 A It shows three courses.
14 Q Taking a look at the front elevation picture,
15 right, you're pointing to what looks, what you're saying is
16 three courses on the left and right side of the garage?
17 A Right.
18 Q Okay. How many courses of brick are there on the
19 front elevation, the area that's right next -- on the right
20 side of the new office building? How many courses of brick
21 are there?
22 A Many.
23 Q On the -- I'm sorry?
24 A Quite a number.
25 Q Do you know how many?

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1 A No.
2 Q Have you compared the amount of bricks on this to
3 what's actually built?
4 A To get this -- can I?
5 Q Yes.
6 A Okay.
7 Q Well, first of all, you can answer my question,
8 actually. But have you compared the amount of bricks on
9 this versus what's actually being built?
10 A No.
11 Q Okay. If I asked you whether there were more
12 bricks or less bricks, would you consider that a violation
13 of the approved plans?
14 A If it covered the whole front side to side and
15 encompassed the windows as shown, if he had two or 20 or 50
16 bricks left over from what he ordered, no.
17 Q Okay. But let's -- okay. I think you may have
18 answered, but I'll ask it differently. Let's say these
19 approved plans show 50 rows of bricks.
20 A Okay.
21 Q Okay? And let's say Mr. Ball had built something
22 that was 55 rows of bricks. Would that be considered a
23 violation?
24 A Not if it came -- if it covered the whole facade.
25 Q Okay. So as long as it covered the whole facade

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1 in accordance with this, didn't matter how many rows it was
2 as long as it just covered, right?
3 A For that, for that facade.
4 Q Are you aware whether the board ever saw as-built
5 drawings?
6 A No.
7 Q And without seeing the as-built drawings, the
8 board approved these set of plans?
9 A I don't know.
10 Q You testified that part of this, part of what the
11 board is requesting is that Mr. Ball be required to stop
12 work on some portions of the house and that everything be
13 completed within three months, is that fair, in the
14 supplemental complaint?
15 A It doesn't say stop work on everything.
16 Q I thought your testimony was that you did not
17 think he could finish certain things, so you wanted to just
18 stop those items. You didn't specify what things. You just
19 said, I want -- we don't think he can finish, so we don't
20 want him to do it.
21 A There -- I stated that there is a large number of
22 discrepancies and, with the time constraints and the
23 addition in the back, there's no way he could do it in three
24 months.
25 Q Okay.

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1 A He hasn't been able to build it in six.
2 Q Right. And you're saying it's been going on for
3 three years, so there's no way he can finish it in six
4 months. Is that what your testimony is?
5 A He cannot finish it in three months.
6 Q Are you aware that it took over three years for
7 the plans to even be approved by the board?
8 A I've heard that.
9 Q Okay. And are you aware that upon approval and
10 when work started to be performed, issues came up with the
11 construction?
12 A Yes.
13 Q For example, a siding issue came up?
14 A I heard that.
15 Q Okay. You're aware that there's another case
16 pending, right?
17 A Yes.
18 Q And because these issues came up, work had to be
19 stopped, isn't it fair to say?
20 A For siding?
21 Q Sure. I'm asking you, did --
22 A No.
23 Q Okay.
24 A I mean, there's been nothing stated that he or
25 anyone would need to stop construction for an addition if

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1 the issue was just siding --
2 Q But --
3 A -- and I don't recall seeing that either.
4 Q With respect to the current complaint, I think you
5 stated that the board didn't want him to continue until this
6 is resolved, isn't that fair?
7 A No.
8 Q Okay. So you wanted him to finish everything
9 while this case was pending?
10 A They wanted him to bring the discrepancies back
11 into conforming.
12 Q Why are they insisting that he then, when we were
13 here at the pre-hearing, pre-statement hearing or the
14 preliminary hearing, whatever it's called, excuse me, that
15 he not do any more work?
16 A There's not been a statement for him not to
17 continue work.
18 Q I think you stated that as part of the approved
19 plans, a planting submission was supposed to be provided?
20 A Yes.
21 MR. MOHAMMADI: I don't think I have extras. It
22 was part of the deposition.
23 MS. ROSEN: Yes, I remember it.
24 MR. MOHAMMADI: 121, I believe.
25 MS. ROBESON: Okay. Can you describe it?

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1 MR. MOHAMMADI: Planting plan submitted by Peter
2 Ball, and I think the date is May 9, 2013.
3 MS. ROBESON: I'm just going to say, planting
4 plan, 5/9/13. Is this an exhibit in another --
5 MR. MOHAMMADI: There's a deposition exhibit --
6 MS. ROBESON: Okay.
7 MR. MOHAMMADI: -- and I don't have any other
8 copies.
9 MS. ROBESON: I have to do this then.
10 BY MR. MOHAMMADI:
11 Q Showing you what's been marked as Exhibit No. 121,
12 have you ever seen this document before?
13 A No.
14 Q Okay. So you're not aware whether this was ever
15 submitted?
16 A No. Uhn-uh.
17 Q Okay. Does it appear to be a planting plan
18 submitted by Peter Ball?
19 A There's no planting plan. It's a contract with
20 cancellation rights and a schedule and a --
21 MS. ROBESON: Schedule of what? Plantings?
22 THE WITNESS: No. It's a notice of cancellation
23 rights, costs on Schedule A, gives him two options -- the
24 Schedule A really is just pricing -- and then part of this
25 is pulled off of the e-mail site, and it gives miscellaneous

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1 provisions, notice required by law, and then this page is
2 just an agreement. The only signature page is the notice of
3 cancellation rights. There's -- oh, I'm sorry. There's a
4 signature on the Schedule A, but there's no planting plan --
5 MS. ROBESON: Okay.
6 THE WITNESS: -- no description of plans.
7 MR. MOHAMMADI: I mean, I'll leave it with you,
8 Your Honor, but at this point, I'll wait to move it in with
9 my own witness.
10 MR. HUMAYUN: The back of those pages are printer
11 residue.
12 MR. MOHAMMADI: Yes. For the record, this was
13 apparently printed on recycled paper. So the back of each
14 page is just recycled paper. I can get another copy.
15 MS. ROBESON: Okay. Now, are you not moving this
16 in?
17 MR. MOHAMMADI: I mean, I'll move it in, but I
18 think Ms. Rosen is probably --
19 MS. ROBESON: Is there any objection?
20 MS. ROSEN: Well, I would object at this point
21 because she's basically indicated it's not a planting plan.
22 It's, you know -- so he can't move this in as a planting
23 plan. It's nothing.
24 MS. ROBESON: I'm going to reserve until Mr. Ball
25 can testify to it.

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1 MR. MOHAMMADI: Certainly.
2 MS. ROBESON: I just have to mark that. So I
3 marked it 121. I'll keep it 121 until we make a ruling.
4 How much more do you have, Mr. Mohammadi?
5 (Exhibit No. 121 was marked
6 for identification.)
7 MR. MOHAMMADI: Not very long. I think --
8 MS. ROBESON: Okay.
9 MR. MOHAMMADI: -- maybe, about five minutes or
10 so.
11 MS. ROBESON: Okay.
12 BY MR. MOHAMMADI:
13 Q Would you agree that the board is required to
14 notify members of hearings, any board meetings that are
15 happening?
16 A Yes.
17 Q Okay. And the board does this, right? That's
18 your testimony, right --
19 A Yes.
20 Q -- that the board notifies them regularly? Okay.
21 And would you -- and, specifically, if it's concerning a
22 particular member, such as Mr. Peter Ball, the board would
23 notify Mr. Ball about, hey, there's some issues, we're going
24 to have a board meeting?
25 A We notify all of our members.

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1 Q I'm showing you what's been marked as --
2 MS. ROBESON: 122.
3 (Exhibit No. 122 was marked
4 for identification.)
5 MR. MOHAMMADI: 122. Thank you.
6 MS. ROBESON: Can you -- oh, go ahead.
7 BY MR. MOHAMMADI:
8 Q This is an e-mail between you and Raj Barr, is
9 that correct? That's your e-mail address, right,
10 lynnmgowan@gmail.com?
11 A Yes.
12 Q Okay. And it's being sent to Raj, Raj Barr?
13 A Yes.
14 Q And that's a June 18, 2013, e-mail, correct?
15 A Right.
16 Q Okay. There's a portion of this e-mail that's
17 highlighted. It says: I just got off the phone with Mary
18 Blihard (phonetic sp.). It seems there is growing committee
19 concern over P. Ball's construction. Someone notified him a
20 few weeks ago, and I had requested a board meeting -- not
21 sure who told him and I'm concerned it could jeopardize our
22 future CCOC meeting if he knows exactly what we are doing
23 and can plan his excuses ahead of time. That's what you
24 wrote, right?
25 A That's what's on the e-mail.

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1 Q Okay. You wrote that, though, right?
2 A I can go back and look, but it appears so.
3 Q Okay.
4 MR. MOHAMMADI: Move to admit --
5 MS. ROBESON: Objection?
6 MR. MOHAMMADI: -- 122.
7 MS. ROBESON: Any objections?
8 MS. ROSEN: Well, there's a whole bunch of e-mails
9 attached to this; so it'll be -- let me just take a look.
10 Okay. Well, no objection. I mean, it is what it is. So
11 it's a whole -- it's a string; so it's all going in. Which
12 number is that? I'm sorry. 120?
13 MS. ROBESON: 122.
14 BY MR. MOHAMMADI:
15 Q And I know Ms. Robeson said to review everything,
16 what has happened before, so -- but I'll ask the question
17 again. You recall when Mr. Barr stated in his testimony
18 that he didn't really care about the supplemental items?
19 A I don't recall him stating that.
20 MS. ROSEN: I'm going to object as asked and
21 answered. Didn't we already go through this already?
22 MS. ROBESON: You did ask and answer it. I know
23 what Mr. Barr said because I'm going to get the, or it's in
24 the transcript. So do you have --
25 THE WITNESS: Okay.

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1 MS. ROBESON: -- a follow-up question?
2 MR. MOHAMMADI: Yes.
3 BY MR. MOHAMMADI:
4 Q If Mr. Barr did not care, okay, who cared about
5 the supplemental items?
6 A Several neighbors --
7 MS. ROBESON: Well, let's get back --
8 THE WITNESS: -- people in the community, and
9 people on the board.
10 MS. ROBESON: I'm sorry. Did you have any
11 objection to 122? And we're going to stop in about 10
12 minutes. I was --
13 MS. ROSEN: I'm fine with --
14 MS. ROBESON: -- trying to get through Ms. Gowan,
15 if we can, but --
16 MR. MOHAMMADI: I thought it was admitted already.
17 I think she said it's fine.
18 MS. ROSEN: Yes. 122 is a string of e-mails. I
19 said it was okay.
20 MS. ROBESON: See, that's why we're going to stop
21 soon, because this is dinnertime. No. All right. Can the
22 court reporter go back and see if I admitted it?
23 MS. ROSEN: Just before we, I mean, when we stop,
24 I just want to take one more look at the CCOC file and just
25 see if all the exhibits are in there sequentially, because

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1 I'm wondering if something may be missing, and if there is,
2 I'll probably ask you to see if we can locate it.
3 MS. ROBESON: Exhibit 122.
4 THE REPORTER: Thank you. I don't see the exhibit
5 admitted yet.
6 MS. ROBESON: Okay. So do you have an objection,
7 Ms. --
8 MS. ROSEN: I'm fine with 122 as a string.
9 MS. ROBESON: Okay. So it's admitted. Go ahead,
10 Mr. Mohammadi.
11 (Exhibit No. 122 was received
12 in evidence.)
13 BY MR. MOHAMMADI:
14 Q Besides yourself -- I assume you care about those
15 supplemental issues, right?
16 A I do, only in the sense that I want it to match
17 the approved plans.
18 Q Besides you, who else cared about them? You will
19 recall that Mr. Gibson, for example, also stated in an
20 e-mail that pretty much everything is okay except for the
21 roof.
22 A Right. It was most of the other board members.
23 We just recently changed a few members. We had one board
24 member that, she hasn't come to most of our meetings. So I
25 can't speak for her, but most of the board members are not

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1 happy with the construction.
2 Q Okay.
3 MR. MOHAMMADI: Just Court's indulgence one minute
4 here.
5 BY MR. MOHAMMADI:
6 Q Just a follow-up question on a previous question I
7 asked. If there's an approved plan and a homeowner decides
8 they don't want to construct, they don't want to do what
9 they got approval for, as in not any construction, does the
10 board consider that a violation and pursues remedies against
11 that homeowner?
12 A If it's a new construction, it's a new element, I
13 wouldn't think that they would. If it's to repair something
14 that's damaged and change it and they were expecting it to
15 get corrected, I would think that they would.
16 Q Okay.
17 A I mean, that's --
18 Q Okay. That --
19 A -- my understanding.
20 Q You're the one that sends out all the meeting
21 notices?
22 A Yes.
23 Q Okay. And for every meeting there's a notice?
24 A Yes.
25 Q Okay. And those notices have been provided?

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1 A Yes.
2 MR. MOHAMMADI: Well, I don't think I have any,
3 but -- I may have some from my client, but I don't think I
4 have anything from the other side, but we can look at
5 that --
6 MS. ROBESON: All right.
7 MR. MOHAMMADI: -- as part of a different thing.
8 MS. ROBESON: Okay.
9 MR. HUMAYUN: Yes. We just ask that if they do
10 have a pile of meeting notices somewhere from the meeting
11 that were sent out, that the method of transmission and the
12 copy of notice be provided.
13 MS. ROBESON: Did you ask for that in discovery?
14 MR. MOHAMMADI: I believe so.
15 MS. ROBESON: Do you have notices?
16 THE WITNESS: We, we have a standard notice that
17 we use for regular meetings, and then we have a compiled one
18 for our annual meeting, and the annual meeting was provided.
19 MS. ROBESON: Do you keep copies for each
20 meeting --
21 THE WITNESS: Of notices? No, we --
22 MS. ROBESON: -- copies of what was sent out?
23 THE WITNESS: No, we don't. They're, they're
24 either put on the LISTSERV, they're e-mailed out or they're
25 dropped in their mailbox, and it gives the date and time and

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1 location of the meeting, and it's pretty generic about the,
2 the things that are going to be discussed, and it's very
3 repetitive.
4 MR. MOHAMMADI: For the --
5 MS. ROBESON: What is repetitive?
6 THE WITNESS: The, the outline of the agenda.
7 MS. ROBESON: Okay.
8 MR. HUMAYUN: So you guys discuss the same things
9 over and over again?
10 MS. ROSEN: Well, I think what she's --
11 MS. ROBESON: Just a second. One at a time.
12 MR. HUMAYUN: Pardon me, Your Honor.
13 MR. MOHAMMADI: For the record, it's Request No.
14 16, the same one for minutes. It says, minutes and notices
15 of minutes.
16 MS. ROBESON: Well, she's saying, you don't keep
17 -- for each meeting, you don't keep a copy of the notice --
18 THE WITNESS: No.
19 MS. ROBESON: -- that you actually send out?
20 THE WITNESS: No.
21 MS. ROBESON: Now, what is a typical agenda?
22 THE WITNESS: It's basically as it's outlined.
23 It's president's report, treasury's report, environmental,
24 architectural, old business, new business, new items. It
25 really is basic.

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1 MS. ROBESON: So a property owner might not know
2 you were discussing their application at a particular
3 meeting?
4 THE WITNESS: Someone that's not getting letters
5 or e-mails about their particular issue, possibly.
6 MS. ROBESON: Okay.
7 THE WITNESS: If they put in a new application,
8 then we have a procedure where the committee chair has the
9 45 days to notify them once they receive approval.
10 MS. ROBESON: Yes, I remember that. All right.
11 Go ahead, Mr. Mohammadi.
12 MR. MOHAMMADI: Nothing further.
13 MS. ROBESON: Any redirect, Ms. Rosen?
14 MS. ROSEN: No, but I would reserve the right to
15 bring her back for a very brief redirect.
16 MS. ROBESON: That's fine. I know. That's fine.
17 Okay. Anything else?
18 MR. MOHAMMADI: I'm sorry. I didn't get that.
19 Redirect next time we are here or --
20 MS. ROBESON: Next time we're here.
21 MS. ROSEN: Yes, next time we're here. Now, with
22 regard to minutes, I guess Ms. Gowan needs to look and see
23 for all the stand-alone minutes, to make sure that I get
24 them to Mr. Mohammadi. So I just want a deadline for her to
25 give them to me.

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1 MS. ROBESON: Well, the next hearing is July 10th.
2 MS. ROSEN: Okay.
3 MS. ROBESON: So can you do it --
4 THE WITNESS: Give me a day, and I'll do it.
5 MS. ROBESON: -- how's Monday, July 7th?
6 Mr. Mohammadi, that gives you two days to go through the
7 minutes.
8 MR. MOHAMMADI: That's fine, Your Honor.
9 MS. ROSEN: Okay.
10 MS. ROBESON: Okay. So Monday, July 7th, is when
11 I'd like you to provide the minutes.
12 MS. ROSEN: And I will also ask my client to see
13 if they have, you know, a little bit of a larger-size
14 drawing of the complainant's Exhibit 2 --
15 MS. ROBESON: Yes.
16 MS. ROSEN: -- in the other, because, yes, because
17 -- that's the reason why I wanted to look at the file, was
18 to see if there was a missing exhibit, but everything looks
19 sequential and there's a list, but I will, I'll ask them to
20 see if there is a somewhat larger size of the complainant's
21 Exhibit 2.
22 MS. ROBESON: That's fine.
23 MR. MOHAMMADI: Your Honor, based on what our
24 discussions were today, I think there's now four items that
25 we are potentially looking for. It's the meeting minutes --

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1 MS. ROBESON: Well, I was just, I was just looking
2 at my notes. I have the July 17th, 2013, minutes. I have
3 the large set of plans.
4 MS. ROSEN: Yes. Well, the July 17th I've given
5 them. They've already got that.
6 MS. ROBESON: Okay. Then all the other minutes
7 and the large set of plans. Anything else?
8 MR. MOHAMMADI: Large set of plans, minutes, the
9 application that was approved for the brick veneer --
10 MR. MOHAMMADI: Yes.
11 MS. ROSEN: Okay.
12 MR. MOHAMMADI: -- and then I think what we just
13 also discussed was the notices. I think they may, you may
14 have included that, but notices of minutes, if there are
15 any. I know she said there is none that they keep, but if
16 there are any.
17 MS. ROSEN: Do you keep a generic? Do you have
18 like -- at least, do you have a generic?
19 THE WITNESS: I do. It's generic, and then we do
20 put forth a very, more elaborate agenda for the annual
21 meetings, and they're attached, and they should already have
22 them and so should she and so should you.
23 MS. ROSEN: I'm probably just going to ask you --
24 MS. ROBESON: Well, I haven't seen them.
25 MS. ROSEN: Just to be on the safe side, I think

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1 what I'm going to ask you to do is to get me, you know, all
2 of the minutes, stand-alone, no drafts. I just want the
3 real minutes.
4 THE WITNESS: Okay. The final?
5 MS. ROSEN: Yes, the real final form minutes for
6 the last, I guess, couple years; the, whatever notices you
7 have. If it's just the standard, generic, that's fine, but
8 whatever notice you have that was used for meetings. Well,
9 I'll need the brick veneer application that was submitted,
10 and if we have a larger-size drawing of the complainant's
11 Exhibit 2 that was in the previous case, which is this
12 exhibit, 77, the approved plans --
13 THE WITNESS: Uh-huh.
14 MS. ROSEN: -- if we have a larger size, I would
15 need to have that also.
16 THE WITNESS: Okay.
17 MS. ROSEN: Okay. I think that should do it.
18 THE WITNESS: Okay.
19 MS. ROBESON: Okay. Now, what I'd like -- oh, did
20 you have something else?
21 MS. ROSEN: No. I'm just going to say, if there's
22 anything else that Mr. Mohammadi needs, you know, if there's
23 something, if he finds something, just to say, I don't think
24 I have this, just contact me. I mean, I'll be happy to try
25 to get it.

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1 MS. ROBESON: Okay. All right. Anything else,
2 Mr. Mohammadi?
3 MR. MOHAMMADI: I think that's it for today, Your
4 Honor.
5 MS. ROBESON: I hesitate to ask. I'm teasing you.
6 MR. MOHAMMADI: Just doing what I need to.
7 MS. ROBESON: I know. That's -- it's fine. What
8 I'm going to do, what I would like the parties to do is
9 check their schedule for July 24th and July 31st, yes, July
10 31st, and check with your witnesses and see if they can make
11 those dates. Right now we already have a reserve date of
12 July 10th; so I don't need to know today about a new date.
13 So if you could check that and exchange the information we
14 discussed, things will be good.
15 MS. ROSEN: Okay. And if I could just get from
16 Mr. Mohammadi the exhibits, a copy of the exhibits that were
17 introduced today from your side, you know, numbers, so that
18 I can keep my things sequential, because you didn't have
19 extra copies.
20 MR. MOHAMMADI: Yes, and actually, I'm missing --
21 one of them I gave you. 121, that was my only copy. I
22 don't know if there's any way we can make a copy of it
23 today.
24 MS. ROSEN: If you could just provide those to me
25 with the exhibit numbers so I can keep it in order, I'd

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1 appreciate it.
2 MS. ROBESON: You know what? Our staff is gone.
3 MS. ROSEN: They want their dinner.
4 MS. ROBESON: So -- and I can't release it.
5 MR. MOHAMMADI: That's fine. I'll ask for it at
6 the next hearing. That's fine.
7 MS. ROBESON: This is the deposition, the --
8 MR. MOHAMMADI: Yes, planting plan.
9 MS. ROSEN: -- deposition exhibit? Either that or
10 what I can do is have Ellen scan it in tomorrow and -- I
11 can't release it to you.
12 MR. MOHAMMADI: That's fine.
13 MS. ROBESON: I can have Ellen, our secretary,
14 scan it in and e-mail it to you.
15 MR. MOHAMMADI: Okay. That'll work.
16 MS. ROBESON: Okay. Anything else?
17 MR. MOHAMMADI: I believe that's it.
18 MS. ROBESON: Okay. Well, with that, we're going
19 to adjourn to July 10th at 9:30 in this room, and if you
20 could look at new dates, that would be great. All right.
21 The case is continued until then.
22 (Whereupon, at 6:06 p.m., the hearing was
23 adjourned.)
24
25

C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Potowmack Preserve v. Michael and Peter Ball

Case No. 72-13

OZAH No. C14-01

By:

Wendy Campos, Transcriber

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