

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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

A hearing in the above-entitled matter was held on July 10, 2014, commencing at 9:40 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:

Corinne G. Rosen, Esq.

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Rockville, Maryland 20848

For the Respondents:

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Rockville, Maryland 20850

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Raj Barr				
By Ms. Rosen:	7			40
By Mr. Mohammadi:		19		
Lynn Gowan				
By Ms. Rosen:				49
By Mr. Mohammadi:				70
Rande Joiner				
By Ms. Rosen:	102			
By Mr. Mohammadi:		113		
Leo Schwartz				
By Mr. Mohammadi:	146			

E X H I B I T S

Exhibit No.		Marked/Received
126	Drawings submitted for approval of architectural change	6 7
126(a)	Complainant's Exhibit 1 in 73-12	10
127	2010 to 2014 board minutes and documents	59 64
128	2011 application to change brick siding	66 67
129	September 12, 2013, e-mail	108 109
130(a)-(g)	Photographs	160 173
131(a)	Mr. Ball's answers to interrogatories	168
132(a)-(ee)	Photographs	177 186

P R O C E E D I N G S

1 MS. ROBESON: All right. I am calling the case of
2 CCOC 72-13, Potowmack Preserve, Inc., versus Peter and
3 Michael Ball. Are there any preliminary matters?
4 (No audible response.)
5 MS. ROBESON: Wow. No, don't, don't --
6 MR. MOHAMMADI: It's not really a preliminary
7 matter.
8 MS. ROBESON: Good.
9 MR. MOHAMMADI: I did get -- Ms. Rosen provided us
10 with some documentation pursuant to what we discussed
11 before, on Monday. So --
12 MS. ROBESON: About what?
13 MR. MOHAMMADI: There were some documents, missing
14 meeting notes --
15 MS. ROBESON: Yes. Yes. Yes.
16 MR. MOHAMMADI: -- notices, some plans that were
17 submitted.
18 MS. ROBESON: Right.
19 MR. MOHAMMADI: So those have --
20 MS. ROBESON: Thank you.
21 MR. MOHAMMADI: -- it appears what should have
22 been provided has been provided at this point. So --
23 MS. ROBESON: All right. Thank you.
24 MR. MOHAMMADI: I suspect there will be questions
25

1 about those, just --
2 MS. ROSEN: Absolutely.
3 MR. MOHAMMADI: -- just giving you a heads-up.
4 MS. ROBESON: Thank you. All right. It's my -- I
5 believe that we had ended. We were going to let Ms. Gowan,
6 Gowan, Gowan --
7 MS. GOWAN: Gowan.
8 MS. ROBESON: Gowan, have more fun on redirect.
9 So --
10 MS. ROSEN: I was going to request, if I could,
11 with regard to the drawings that were first provided --
12 MS. ROBESON: To what that were first --
13 MS. ROSEN: The large-size drawings, which is part
14 of the package that I provided.
15 MS. ROBESON: Yes, Exhibit 88.
16 MS. ROSEN: What I wanted to do, I think, to
17 clarify and make things easier for everybody, if I could
18 now, would be to call Raj Barr, just to go through that, to
19 clarify every, you know, these, this large-drawing document,
20 and then after that just recall Ms. --
21 MS. ROBESON: Okay. Are you speaking of --
22 MS. ROSEN: I'm speaking of -- well, I haven't
23 given it to you yet. I have, did --
24 MS. ROBESON: Okay. So this isn't, this isn't
25 Exhibit 88?

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1 MR. MOHAMMADI: No. This is one of the new --
2 MS. ROSEN: No. This would be a new exhibit.
3 MS. ROBESON: Oh, this is the one that Ms. Gowan
4 testified that she thought she saw or she recollected
5 seeing.
6 MS. ROSEN: Yes, this is, and I think it's easier
7 if I have Mr., Dr. Barr go through it anyway --
8 MS. ROBESON: All right.
9 MS. ROSEN: -- and obviously, Mr. Mohammadi can
10 ask any questions he wants related to that. I'm just trying
11 to make life a little bit easier, if possible.
12 MS. ROBESON: That's good. Thank you.
13 MS. ROSEN: You're welcome.
14 MS. ROBESON: Let me -- okay. This would be 126.
15 (Exhibit No. 126 was marked
16 for identification.)
17 MR. MOHAMMADI: Just to clarify it, I split it up.
18 Did you keep everything the way you gave it to me? Is that
19 how you produced it, or --
20 MS. ROSEN: Yes. I put the clips, but you can
21 look at mine if you need to.
22 MR. MOHAMMADI: Okay, because I took them apart.
23 MS. ROSEN: Yes. I'm trying to make this as
24 rational as I possibly can, but --
25 MS. ROBESON: I'm going to call this --

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1 MS. ROSEN: The drawings?
2 MS. ROBESON: -- submission for approval, or --
3 MR. BARR: No, approved plans.
4 MS. ROBESON: -- drawings submitted for approval
5 of architectural change.
6 MS. ROSEN: Okay.
7 MS. ROBESON: And so I understand there's no
8 objections.
9 MR. MOHAMMADI: No objection.
10 MS. ROBESON: All right. It's admitted.
11 (Exhibit No. 126 was received
12 in evidence.)
13 MS. ROSEN: Okay. Right. And if you need to look
14 at us --
15 (Witness previously sworn.)
16 DIRECT EXAMINATION
17 BY MS. ROSEN:
18 Q Okay. Dr. Barr --
19 MR. MOHAMMADI: If I don't have it here, I'll look
20 at it.
21 MS. ROSEN: All right. What I have, what I've --
22 I'm just going to explain what you're going to see here in
23 this package, you know, because it's basically a cover
24 sheet; there's an application --
25 MS. ROBESON: Okay. Wait. Can Mr. Barr --

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1 MS. ROSEN: Okay. Okay.
2 MS. ROBESON: -- take us through that, because --
3 BY MS. ROSEN:
4 Q All right. Dr. Barr, I'm going to ask you to
5 explain --
6 MS. ROBESON: Dr. Barr, you're still under oath.
7 THE WITNESS: Yeah.
8 BY MS. ROSEN:
9 Q -- page by page, everything that is in this
10 exhibit that's been marked as 126, including the two things
11 that are clipped into here.
12 A Right. The very first page is a sample of siding
13 color and exterior trim color.
14 MS. ROBESON: Wait. Okay. You're not going
15 through that. It looks like there's an application form.
16 THE WITNESS: Yeah. The application form is
17 right --
18 MS. ROBESON: So now you're going to --
19 MS. ROSEN: I'm asking --
20 MS. ROBESON: -- I see CS1.
21 MS. ROSEN: I'm going to ask him -- in order to
22 just make sure that everything's clear, I want to ask him to
23 go through this page by page. That's what I'm asking him to
24 do.
25 MS. ROBESON: That would be great. Let's do that.

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1 Okay. Go ahead.
2 THE WITNESS: And so the very first page clipped
3 is this little --
4 MS. ROBESON: Yes.
5 THE WITNESS: Yes, and that just says siding color
6 and trim color.
7 MS. ROBESON: I see. Oh, I see. It's --
8 THE WITNESS: That's what I was --
9 MS. ROBESON: -- black and white. So I didn't --
10 THE WITNESS: Yeah.
11 MS. ROBESON: -- realize that you were going --
12 THE WITNESS: Right.
13 MS. ROBESON: -- through page by page. Okay. Go
14 ahead.
15 BY MS. ROSEN:
16 Q Okay.
17 A And the next page, page 2, is the architectural
18 control committee application.
19 Q What's the date of that application?
20 A March 2nd, 2011.
21 Q Okay. And then we go to the next page here.
22 A Yes. Shall I proceed or wait for --
23 MS. ROBESON: Yes, you can go ahead.
24 THE WITNESS: Okay. The first sheet of the large
25 drawing, it says, CS1. It's a cover sheet with a list of

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1 drawings marked on it.
2 BY MS. ROSEN:
3 Q Okay. Explain what is clipped to this.
4 A Eight-and-a-half by 11 clipped to it is marked
5 Exhibit 1.
6 Q And what exhibit, what case is that referring to?
7 A That would be 73-12.
8 Q Okay.
9 MR. MOHAMMADI: Could I ask for indulgence for one
10 second? Let me pull those up so I can clip them to mine as
11 well, if that's okay.
12 MS. ROBESON: Okay. If I may, I'm going to do
13 Complainant's Exhibit 1 from 73-12 as 125(a), just in case
14 they get separated.
15 MS. ROSEN: Okay. That's fine. 126(a) I think
16 you mean.
17 MS. ROBESON: Yes, that is what I mean. So 126(a)
18 is Complainant's Exhibit 1 --
19 MS. ROSEN: In 73-12.
20 MS. ROBESON: -- in 73-12.
21 (Exhibit No. 126(a) was marked
22 for identification.)
23 MR. MOHAMMADI: Is it this one, or is it this one?
24 MS. ROSEN: That one.
25 MR. MOHAMMADI: That's the one.

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1 MS. ROSEN: Okay?
2 MR. MOHAMMADI: All right. Thank you.
3 BY MS. ROSEN:
4 Q All right. Now, if you could please go through
5 Complainant's Exhibit 1, along with the large sheets, and
6 explain which ones are identical.
7 A Okay.
8 Q Or different, as it may be.
9 A The first sheet on Exhibit 1 is marked CS dash 1,
10 and it's identical to -- I can't see it on this, but it's
11 the same as CS1 that was submitted in the large version.
12 Q Okay.
13 A Sheet 2 is an e-mail from Tania Bruno, giving
14 square footage, and the e-mail is dated June 24, 2010.
15 Q Okay. And who is Tania Bruno?
16 A Tania Bruno was the architect for this drawing,
17 architect for this project, as far as we know.
18 Q She was hired --
19 A She was hired by Mr. Ball.
20 Q -- she was Peter Ball's architect --
21 A Right.
22 Q -- or Michael Ball's architect?
23 A Yeah.
24 Q Okay.
25 A So CS1 is the same as -- I can see it now in full

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1 in this third sheet -- the same as the large sheet. The
2 next drawing from that is AB1, which is the same as what you
3 see in the large version.
4 MS. ROBESON: Okay. So AB1 on Exhibit 125(a) is
5 the same as AB1 in Exhibit 125?
6 THE WITNESS: 126, you mean.
7 MS. ROBESON: I mean, 126. Excuse me.
8 THE WITNESS: In both those, right.
9 MS. ROBESON: Okay. One, just one second. I'm
10 sorry to interrupt. Mr. Ball, you left the last hearing, I
11 think at the lunch break. Do you waive your right to
12 cross-examination of the witnesses that testify?
13 MR. PETER BALL: Uh-huh.
14 MS. ROBESON: You have to say yes or no.
15 MR. PETER BALL: Yes.
16 MS. ROBESON: Okay. Thank you. I'm sorry to
17 interrupt.
18 THE WITNESS: Yeah. It's okay. Exhibit 1, the
19 next sheet, is AB2.
20 MS. ROBESON: Exhibit 1 is 126(a).
21 THE WITNESS: Yes, 126(a).
22 MR. MOHAMMADI: Just for your reference, Your
23 Honor, I think he's referring to, on the first page of the
24 -- it says Exhibit 1 up here.
25 MS. ROBESON: Right. I know that.

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1 MR. MOHAMMADI: Okay.
2 MS. ROBESON: I just want --
3 THE WITNESS: I'll now call it --
4 MS. ROBESON: I just don't want Exhibit 1 in
5 another case.
6 THE WITNESS: Right. Right.
7 MS. ROBESON: It's confusing. So --
8 MS. ROSEN: Oh, I know. It's --
9 MS. ROBESON: -- go ahead.
10 THE WITNESS: I'll call it 126(a) from now on.
11 MS. ROBESON: Thank you.
12 THE WITNESS: 126(a), the third sheet says AB2 --
13 MS. ROBESON: Yes.
14 THE WITNESS: -- and that is the same one as what
15 you see in the large version, AB2. AB stands, I think in
16 the site, it says, as-built.
17 MS. ROBESON: As-built, yes. Go ahead.
18 THE WITNESS: The sheet after that is AB3 in
19 126(a) and is identical to AB3 in 126.
20 MS. ROBESON: All right.
21 THE WITNESS: AB4 in 126(a) is the same as AB4 in
22 126.
23 MS. ROBESON: All right.
24 THE WITNESS: AB5 in 126(a) is the same as AB5 in
25 126.

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1 MS. ROBESON: Okay.
2 THE WITNESS: Next item I have here is called
3 Exhibit 2. So I guess you're going to call it --
4 MS. ROSEN: What's clipped now is, was -- now it's
5 Exhibit 77 in our case.
6 MS. ROBESON: Yes --
7 MS. ROSEN: Okay.
8 MS. ROBESON: -- the approved plans.
9 MS. ROSEN: Yes. I'm just waiting --
10 MS. ROBESON: Yes.
11 MS. ROSEN: -- for him to get his thing. Okay.
12 MR. MOHAMMADI: Are we marking that as 126(b)?
13 THE WITNESS: No. It's --
14 MS. ROSEN: Well, it's 77. It's actually 77
15 already.
16 MS. ROBESON: It's already Exhibit --
17 MS. ROSEN: I'm just trying to do this to
18 illustrate.
19 MS. ROBESON: It's hard with two cases and --
20 okay. Go ahead.
21 THE WITNESS: So 77, page 1 is an e-mail from
22 Jamie Dees (phonetic sp.), the secretary, to the board
23 members, the first sheet. The first sheet of the drawings
24 is identical to A1 in 126(a).
25 BY MS. ROSEN:

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1 Q No. This is 126.
2 A Oh, sorry, 126.
3 MS. ROBESON: Okay.
4 THE WITNESS: Sheet 3 in 77 is the same as A2, A2
5 in 77, oh, 126.
6 MS. ROBESON: Yes. Okay.
7 THE WITNESS: I'm getting confused here. I'm --
8 MS. ROBESON: It's --
9 THE WITNESS: -- trying to keep it straight,
10 but --
11 MS. ROBESON: Yes.
12 THE WITNESS: Sheet 4 of 77 is identical to A3 in
13 126.
14 MS. ROBESON: Okay.
15 THE WITNESS: Sheet 5 of 77 is identical to Sheet
16 A4 in 126.
17 MS. ROBESON: Okay.
18 THE WITNESS: Wait a minute. Wait a minute.
19 Sorry, a small, small transposition. Sheet -- was it 5?
20 MS. ROBESON: You just did 5 of 77.
21 THE WITNESS: Okay. Sheet 5 is not -- I got the
22 wrong one. Sheet 5 is identical to Sheet A5 --
23 MS. ROBESON: Okay.
24 THE WITNESS: -- whoops, Sheet -- I'm missing a
25 sheet. Oh, yes, I got confused because Sheet 5 is identical

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1 to the upper drawing on Sheet A4 and is marked Front
2 Elevation.
3 MS. ROBESON: Wait a minute. Sheet 5 in 77 --
4 THE WITNESS: Yes.
5 MS. ROBESON: -- is identical -- I thought you
6 said Sheet 5 was the same as A5 in 126.
7 THE WITNESS: A4. It's on A4.
8 MS. ROBESON: Oh, okay, A4. So --
9 THE WITNESS: And it's the top drawing of A4.
10 It's called Front Elevation.
11 MS. ROBESON: Okay. So what's identical to the
12 top drawing in A4 in 126? What is --
13 THE WITNESS: Top drawing in A is --
14 MS. ROBESON: Which --
15 THE WITNESS: -- I just, I'll count the sheet --
16 MS. ROBESON: Okay. I just --
17 THE WITNESS: -- just to be absolutely correct.
18 MS. ROBESON: What part of 77 is identical to the
19 top drawing --
20 THE WITNESS: Yes.
21 MS. ROBESON: -- in A4 --
22 THE WITNESS: One, two --
23 MS. ROBESON: -- of 126?
24 THE WITNESS: -- three, four. Sheet 5 of A77 --
25 MS. ROBESON: Okay.

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1 THE WITNESS: -- of 77, whatever it's called,
2 is --
3 MS. ROBESON: Yes.
4 THE WITNESS: -- identical to the top drawing of
5 Sheet A4 of 126 --
6 MS. ROBESON: Okay.
7 THE WITNESS: -- and they're both labeled Front
8 Elevation.
9 MS. ROBESON: Okay.
10 THE WITNESS: Sheet 6 of, of 77 is identical to
11 the lower drawing of A4 on 126 --
12 MS. ROBESON: Okay.
13 THE WITNESS: -- and they're both marked Rear
14 Elevation.
15 MS. ROBESON: All right.
16 THE WITNESS: Sheet 7 of A77 is the same as the
17 top drawing, labeled Left-Side Elevation, of A5 on --
18 MS. ROBESON: Okay.
19 THE WITNESS: -- 126. And Sheet 8 of 77 is the
20 same as the lower drawing, labeled Right Elevation, on A5
21 of, of 126.
22 MS. ROBESON: Okay.
23 THE WITNESS: There's an additional sheet on 126
24 which is the site plan.
25 BY MS. ROSEN:

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1 Q Okay. So just to clarify then, this large
2 drawing, this large set of plans, whatever we're going to --
3 that we marked as 126, is that, this, would this constitute
4 then the actual complete application that was conditionally
5 approved?
6 A Yes.
7 Q The sheets that you identified as being also
8 similar or the same as the -- what was Complainant's Exhibit
9 1 in the previous case? It refers to as-built plans. What
10 does as-built mean?
11 A As-built are the drawings produced by the
12 architect, showing the existing condition before any change.
13 Q Okay. Would you -- okay.
14 MS. ROSEN: I think we've already admitted these,
15 correct?
16 MS. ROBESON: Yes.
17 MS. ROSEN: Okay. I guess -- all right. Unless
18 Mr. Mohammadi, do you have any questions? Oh, I'm sorry.
19 MS. ROBESON: I'll ask him.
20 MS. ROSEN: I'm sorry.
21 MS. ROBESON: Do you have cross?
22 MR. MOHAMMADI: Yes, I do, if you don't mind.
23 MS. ROSEN: Absolutely.
24 MS. ROBESON: I don't mind.
25 MR. MOHAMMADI: All right.

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1 MS. ROBESON: It is your right.
2 MR. MOHAMMADI: I'll try to do this also as
3 efficiently as possible.
4 CROSS-EXAMINATION
5 BY MR. MOHAMMADI:
6 Q Okay. I think you just testified that this whole
7 package, 126, was the full approved plans submitted by the
8 Balls, correct?
9 A Correct.
10 Q Okay.
11 MS. ROBESON: Including 126(a) or --
12 BY MR. MOHAMMADI:
13 Q Does that include 126(a) and 126 -- and 77?
14 A What is 126(a)? Exhibit 1?
15 MS. ROBESON: Well, it's Exhibit 1 --
16 MS. ROSEN: 126(a) --
17 MS. ROBESON: -- in 73-12.
18 MR. MOHAMMADI: Right.
19 MS. ROSEN: Right.
20 MS. ROBESON: This.
21 MS. ROSEN: This was 126(a).
22 THE WITNESS: Okay. 126(a), the part that's
23 relevant is the as-built drawing.
24 BY MR. MOHAMMADI:
25 Q Okay. So --

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1 A It's Exhibit 2 from 77 --
2 MS. ROBESON: No.
3 THE WITNESS: -- together with the as-built part
4 of 126.
5 MS. ROBESON: Wait. I'm getting confused.
6 THE WITNESS: Oh, sorry.
7 MS. ROBESON: What is 126(a)?
8 THE WITNESS: 126(a) was a submission made in July
9 of 2010 which requested -- I could get into it for one
10 second, if you'd like --
11 MS. ROBESON: Yes.
12 THE WITNESS: -- or not.
13 MS. ROBESON: I'm going to ask him because I need
14 to understand this.
15 MR. MOHAMMADI: Sure.
16 MS. ROBESON: Okay. Go ahead.
17 THE WITNESS: 126(a) was a submission made in July
18 of 2010, and the significant difference in the proposal then
19 was that there was a third level that was fully built out on
20 the back of the house on top of the current flat roof.
21 MS. ROBESON: Okay. And can you identify where
22 that's shown in this, in 126(a)?
23 THE WITNESS: Yes. It shows on the elevation on
24 the rear, which is on Sheet A4 of 126(a) -- two elevations,
25 front elevation and rear elevation.

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1 MS. ROBESON: So it would be on the rear
2 elevation?
3 THE WITNESS: Rear Elevation shows the complete
4 buildout on the third floor, and the front elevation shows a
5 set of clerestory windows sticking out over the top --
6 MS. ROBESON: Okay.
7 THE WITNESS: -- and that was rejected by a letter
8 from Jeff Williams, the previous president, and the board --
9 MS. ROBESON: Right.
10 THE WITNESS: -- and so they were asked to
11 resubmit, saying that this was too high and come back down.
12 MS. ROBESON: Okay.
13 THE WITNESS: And so that -- and the second
14 difference is on Front Elevation, above the garage. If you
15 look at the elevation above the garage, that is two gables
16 next to each other.
17 MS. ROBESON: Right. Okay.
18 THE WITNESS: So that was a -- that was an earlier
19 submission that was rejected, and they took the advice to
20 not build above and came back saying in a letter that all
21 they were doing now was taking the flat roof from the back
22 and, from the edge of it, climbing up to meet the existing
23 roof ridge, and that is in a letter that came from Mr. Ball
24 to the board --
25 MS. ROBESON: Right.

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1 THE WITNESS: -- just before we did this.
2 MS. ROBESON: Now, I was --
3 THE WITNESS: Yeah.
4 MS. ROBESON: -- reading through all the
5 correspondence and minutes to -- the flat roof, that's an
6 existing condition. That was an existing condition,
7 correct. Do you have any picture here, showing the, in the
8 record, showing the, or in the as-builts, showing the flat
9 roof?
10 THE WITNESS: I believe so.
11 MS. ROBESON: Would it be in the as-builts?
12 THE WITNESS: No. As a photograph, it would be
13 just --
14 MS. ROBESON: No. It doesn't have to be a
15 photograph. Anything visually --
16 THE WITNESS: Oh, you mean in a plan?
17 MS. ROBESON: Either one. I'll take --
18 THE WITNESS: Okay. I know it --
19 MS. ROBESON: -- I'll take anything.
20 THE WITNESS: Okay. I know it exists in the --
21 oh, yeah, here it is on page AB4.
22 MS. ROBESON: Of which exhibit?
23 THE WITNESS: 126.
24 MS. ROBESON: 126. Okay. Now, what I'm going to
25 ask you to do, because I need to make sure that the CCOC

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1 understands it and I may be slower than them but I need to
2 understand it and have a record of it, so if you could
3 approach, please -- you're all welcome to approach --
4 because, when I was reading through the correspondence, I
5 did not understand, well, one of the, one of the minutes.
6 Okay. So I'm, what I'm showing you is AB4 and --
7 THE WITNESS: Yeah. Just one minute.
8 MS. ROBESON: Take your time. No, don't show me.
9 THE WITNESS: Okay.
10 MS. ROBESON: Look at this one.
11 THE WITNESS: All right. Okay.
12 MS. ROBESON: Okay. I'm showing you AB4 --
13 THE WITNESS: I believe it's this line that shows
14 the flat roof of the existing condition.
15 MS. ROBESON: Okay. When you say this, can you
16 mark that line?
17 THE WITNESS: Yes. I was just turning to the
18 better elevation that shows that.
19 MS. ROBESON: And it's marked by a -- put a cross
20 there. Okay. It's --
21 THE WITNESS: Top of flat roof, I'll say on that.
22 MS. ROBESON: -- is your position that that's the
23 top of the flat --
24 THE WITNESS: That's my understanding of it, and
25 here is a better -- that's what I was telling you.

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1 MS. ROBESON: I see. Okay. So you're marking on
2 AB5, on the as-built right-side elevation, where the flat
3 roof is. Okay. That's helpful for me, okay, where your
4 position is that the flat roof is. Did you see that, Mr. --
5 MR. MOHAMMADI: Yes.
6 THE WITNESS: It's also in the photographs that
7 you have in the file.
8 MS. ROBESON: Okay. All right. I just -- all
9 right. Mr. Mohammadi, I interrupted your cross; so go
10 ahead.
11 MR. MOHAMMADI: Not a problem. You did part of
12 what I was going to do. So --
13 BY MR. MOHAMMADI:
14 Q Just a question on that specific flat roof -- that
15 flat roof today is still there, right?
16 A As far as I know, yeah.
17 Q It hasn't been built over yet?
18 A As far as I know. I have not been back there.
19 Q Okay. All right.
20 A I've seen it in the photographs.
21 Q Now, just to be sure, if you take out -- let's
22 just take out 126(a), okay --
23 A Uh-huh.
24 Q -- and just focus on 126. That's basically the
25 approved drawings, right?

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1 A Correct.
2 Q Okay. And these approved drawings have as-built
3 drawings, specifically AB1, AB2, AB3, AB4, and AB5, correct?
4 A Yes.
5 Q And AB stands for as-built, right?
6 A Right.
7 Q Okay. I want to first clarify, are these to
8 scale?
9 A I don't know. I don't know that they're to scale.
10 It says a drawing scale at the bottom, but one thing we know
11 in practice is never to scale a drawing because you don't
12 know what happens in the shrinkage --
13 Q Okay.
14 A -- when it's printed.
15 Q All right. But to the best of your understanding,
16 these drawings were prepared with a drawing scale of
17 one-eighth to a foot, one-eighth inch to a foot?
18 A I can only go by what's stated here. It says
19 that.
20 Q Okay. Based on these drawings, is there any way
21 for you to determine whether the roof height was going to be
22 increased from the as-built drawing to the final approved
23 drawing? Is there any way for you to determine that?
24 A We had asked since 2008 that the applicant's
25 drawings have dimensions and sections, and you'll see it in

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1 the January 2008 submission and the response in February of
2 2008 from the chair of the architectural committee at the
3 time, rejecting that application because it had no sections
4 and had no dimensions.
5 Q All right. Let me stop you. I asked a question.
6 A So --
7 MS. ROBESON: Please just answer his question.
8 THE WITNESS: -- I cannot say because there is no
9 dimensions shown on the as-built drawing. So I --
10 BY MR. MOHAMMADI:
11 Q Well --
12 MS. ROBESON: Except there is a scale, but your
13 position is that the scale, because it's not the original
14 blueprint, the blueprint drawing, that the scale is no good;
15 is that --
16 THE WITNESS: And --
17 MS. ROBESON: -- what you're telling me?
18 THE WITNESS: Yes, and also it's a convention, and
19 it's usually stated on the title block, do not scale
20 drawings, and nobody ever scales drawings because you don't
21 know what scale -- the fact that it says this is to scale
22 doesn't make it necessarily so.
23 BY MR. MOHAMMADI:
24 Q Okay. Well, let's --
25 MS. ROBESON: Wait. Wait.

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1 THE WITNESS: Okay.
2 MS. ROBESON: Wait. Wait. Wait. Wait. I scale
3 drawings all the time.
4 THE WITNESS: I would strongly recommend that
5 that's not --
6 MS. ROBESON: No, no, seriously. Seriously --
7 THE WITNESS: No, I'm very serious. I'm very
8 serious.
9 MS. ROBESON: On the blueprints?
10 THE WITNESS: Yes, ma'am, the --
11 MS. ROBESON: Say you have the blueprints and you
12 have an architect's or an engineer's scale, either one.
13 THE WITNESS: The reason I'm saying this is, on
14 most title blocks that I have seen, not off conceptual
15 drawings, but in construction drawings, there's an
16 instruction to the contractor: Do not scale drawings. All
17 dimensions will be marked for you. So we have --
18 MS. ROBESON: But that's a construction drawing.
19 THE WITNESS: Yes. So that's something that I've
20 just got used to. So we don't scale anything. I mean, you
21 can scale it, but the biggest question is, that he asked and
22 I'm answering, is, I cannot tell what the scale, what the
23 height of the existing roof is because, though we had asked
24 for it since 2008, we never got it and it's not shown.
25 MS. ROBESON: Well, wait a minute. I read

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1 somewhere -- and I don't, I didn't bring my cheat sheet --
2 but I read somewhere that he said, Mr., somebody at one of
3 the meeting minutes, that he said the height would not
4 exceed 30 feet.
5 THE WITNESS: Yes, ma'am. The point I'm making
6 is, the drawings, when they're submitted, are supposed to
7 have it. I've seen three different dimensions: one from
8 the architect, saying at one point in an e-mail it's not,
9 it's about 18 feet; another one saying it's 28; and,
10 finally, I saw one where the architect said, the
11 measurements of the existing condition were given to me by
12 Peter Ball.
13 So I've seen three different numbers, and saying
14 something is not going to exceed 30 does not tell me --
15 that's talking about a proposal. The question is, what is
16 the current height and what is it in relationship to the new
17 one, and that is very clearly written out in, without a
18 dimension given, in the March -- in the April 15th, 2011,
19 letter that Mr. Ball sent around to the board so they could
20 understand what he was doing, in which he says, we're taking
21 the flat roof and inclining it until it reaches the top of
22 the ridge; we're not going above it.
23 MS. ROBESON: Well, I wanted to ask you about that
24 letter because -- and that's what I was just looking for --
25 because I wasn't sure --

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1 MS. ROSEN: Can you tell me which exhibit it is so
2 I can pull it out for you?
3 MS. ROBESON: Well, that's, I didn't --
4 MS. ROSEN: I may be able to tell you because I'm
5 sure I marked it.
6 MR. MOHAMMADI: It's 76.
7 MS. ROBESON: I think it's minutes.
8 MR. MOHAMMADI: I believe it's 76, Your Honor.
9 MS. ROSEN: It's 76, is the April 15th, 2011,
10 letter, is Exhibit 76. That's the one he's referring to.
11 MS. ROBESON: Yes, that is it. Thank you.
12 MS. ROSEN: Okay.
13 MS. ROBESON: Explain to me what in -- it's
14 paragraph 2 of Exhibit 76 -- explain to me what your
15 interpretation of that, paragraph 2, is.
16 THE WITNESS: It's very clear to me and to the
17 board that he's stating that his only request is a change of
18 the roof from flat to sloped -- I'm reading Line No. 3 --
19 and then he says it's a 3 in 12 pitch. When he does that,
20 it will come up 68 inches from the flat roof. The height of
21 the existing structure to which it's going to connect is
22 eight feet tall. To do that would leave it 28 inches lower
23 than the top of the existing roof, which would be, what's
24 the word he uses, would not be, line 3 from the bottom,
25 would not be consistent with good design principle; so it

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1 will be much more flowing design and be much more
2 attractive. So he's connecting it from the bottom of --
3 from the top of the flat roof to the top of the existing
4 ridge, and he specifically says he's not going above.
5 MS. ROBESON: Wait a minute. Wait a minute. So
6 he's not adding an addition --
7 THE WITNESS: There is no increase in --
8 MS. ROBESON: -- to the top of the flat roof;
9 that's what your position is?
10 THE WITNESS: No. He's saying that -- yes. He's
11 saying what he's doing is the roof of whatever he's adding
12 -- he's adding a deck on the side of the third floor,
13 walking out -- but he's saying the roof of that will still
14 be at the level of the existing ridge. That's what it says
15 in words right here. It's very clear to me, and to the
16 laypeople on the board, who don't read drawings, this was
17 the clearest statement they had.
18 MS. ROBESON: Well --
19 MR. MOHAMMADI: Can I ask a --
20 MS. ROBESON: You can -- okay. Go ahead.
21 BY MR. MOHAMMADI:
22 Q All right. First off, if you recall the
23 architectural design guidelines --
24 MR. MOHAMMADI: Your Honor, give me one moment to
25 find which exhibit that was.

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1 BY MR. MOHAMMADI:
2 Q Exhibit 70, looking at bottom -- at No. 9, it
3 says, accurate site plans, at minimum, one inch to 20 feet;
4 floor plans, sections and elevations, at minimum, one inch
5 to eight feet, showing existing and proposed design, must be
6 submitted together with color photographs, existing
7 conditions. Your own guidelines require these scaled
8 drawings, don't they?
9 A Yes.
10 Q Okay. And you're saying these are not, even
11 though you require them and this is what you based on to
12 approve the proposal, you can't rely on that these are on
13 scale?
14 A When we say the drawing has to be at that scale,
15 it means that one should draw on it to dimension it, and
16 that's what the, that's what the architect did.
17 MS. ROBESON: Where do your guidelines say -- I
18 mean, I'll be honest, I'm a little shocked that you can't
19 use the scale. I mean, I understand the reproduction
20 factor. I understand that, because you're right, that when
21 you reduce, when you reduce a, the original, you know, there
22 is a fudge factor. I guess what I can't figure out, (a) you
23 require scaled drawings and yet you say, you know, why do
24 you require -- and you don't require dimensions.
25 THE WITNESS: The reason it says specifically to

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1 do scaled drawings is, otherwise people just freehand it.
2 In this particular case, in 73-12 --
3 MS. ROBESON: And what's your basis for that?
4 THE WITNESS: What's that?
5 MS. ROBESON: What's your basis -- I mean --
6 THE WITNESS: So that it --
7 MS. ROBESON: Well, why can't they freehand them
8 with dimensions?
9 THE WITNESS: No, no, they can freehand --
10 MS. ROBESON: Why can't they freehand them with
11 dimensions?
12 THE WITNESS: They can. We're not asking for it
13 to be drafted. We want it to be drawn to scale. It can be
14 freehanded to scale. I'm giving you an example. In 73-12,
15 on the deck --
16 MS. ROBESON: Yes, but why can't you freehand it
17 and just put the dimensions in?
18 THE WITNESS: You could.
19 MS. ROBESON: And you would accept that?
20 THE WITNESS: Yes.
21 MS. ROBESON: So you would accept a handwritten
22 plan just with dimensions?
23 THE WITNESS: Yes, and I'll give you an example.
24 In 73-12, the deck drawing, the permit drawing submitted by
25 Mr. Ball, not to us -- to us it's just part of this package

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1 -- to the county, was a square with no dimensions on it,
2 which was approved. When we finally got a copy of it, I
3 wrote on behalf of the board to Mr. Ball and said, this has
4 no dimensions and it seems to be a different proposal; it
5 was square. He said, I will follow what was approved by HOA
6 to build.
7 So there was an example of a freehanded one which
8 had no dimensions, and the county approved it. And so we
9 were concerned that that was different from what we had
10 approved, and he said, don't worry, I will follow that, and
11 he did, in getting back to proportion, except for the
12 two-foot setback.
13 BY MR. MOHAMMADI:
14 Q Mr., Dr. Barr, excuse me, looking at As-Built 5,
15 right --
16 A Uh-huh.
17 Q -- on Exhibit 126, you're saying that that's what
18 the current condition was before any building, and there's
19 no addition over the flat roof, correct?
20 A All I can say is, what was given is the drawing
21 that is here. I don't know anything more than what she has
22 given us.
23 MS. ROBESON: Wait.
24 BY MR. MOHAMMADI:
25 Q Did you accept that as the as-built condition?

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1 A Yes, we did, yeah.
2 Q Okay. So you agreed that this was actually
3 existing prior to any construction going forward, correct?
4 A Correct. Correct.
5 Q Okay. And you're an architect, right?
6 A Yeah.
7 Q You can read plans?
8 A I hope so. Yes, I do.
9 Q Okay. And based on what you're reading there, it
10 doesn't appear -- there is a flat roof, and there doesn't
11 appear to be any construction on top of the flat roof,
12 correct?
13 A Yes.
14 Q Okay. Turning to A5, okay?
15 A Right.
16 Q Still looking at the -- comparing the as-built
17 right elevation to the right-side elevation of A5 --
18 A Yes.
19 Q -- does it appear that there's been now, as what
20 has been approved, that a portion would be built on top of
21 the roof?
22 A There is a roofline starting at that corner based
23 on what he said, and it goes to meet the ridge.
24 Q Okay. Again, just comparing the two drawings --
25 A Yeah.

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1 Q -- okay, and I have separated them for ease so you
2 don't have to do that, okay?
3 A No, I can see it here.
4 MS. ROBESON: Can you identify which drawings?
5 MR. MOHAMMADI: I'm looking at A5 as compared to
6 AB5.
7 MS. ROBESON: Okay.
8 BY MR. MOHAMMADI:
9 Q Okay. For ease of reference --
10 A I got it here. Don't worry.
11 Q Okay. Well, I think earlier you marked that there
12 was a line that demonstrated where the flat roof was, right?
13 A Right.
14 Q On the A5 drawing, in terms of the A5 drawing --
15 A Yeah.
16 Q -- where is that same line?
17 A Right here.
18 Q Okay. Doesn't it look like, based on what you're
19 looking at, that there was -- the ridgeline of the roof
20 doesn't start at the line but it starts some feet above
21 that?
22 A That's what it looks like here. I had not noticed
23 it until you pointed it out.
24 Q Okay. So this is the first time you've noticed
25 it?

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1 A That's the first time I've noticed it.
2 Q And we're here today because you are saying the
3 approved plans did not show that the roof would be raised?
4 A There was no dimension or any indication that we
5 could have, besides the written words, saying -- which is
6 not the first time we saw it; the architect herself had
7 written it previously -- that she was rising from this point
8 that was the top of the roof, going up. Now, until you just
9 showed it to --
10 MS. ROBESON: Yes, but I, let me just --
11 THE WITNESS: Yeah.
12 MS. ROBESON: -- ask you about that, because I've
13 been parsing this paragraph, trying to understand it. It
14 looked to me -- what does it mean, on our home, employing a
15 14-foot roof truss? So you knew that there would be
16 trusses. A 3-12 pitch would mean the roof would meet the
17 existing structure at 68 inches from the flat roof.
18 THE WITNESS: Right.
19 MS. ROBESON: Now, that's five feet eight inches.
20 THE WITNESS: Eight inches.
21 MS. ROBESON: So I guess my question is, what is
22 your understanding --
23 THE WITNESS: Yeah.
24 MS. ROBESON: -- of that line?
25 MR. MOHAMMADI: I'm sorry. What exhibit are you

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1 looking at?
2 MS. ROBESON: I'm sorry. I'm looking at 76,
3 paragraph 2.
4 THE WITNESS: My understanding is exactly what it
5 says, that it's starting at the top of the flat roof and it
6 meets the vertical wall at five foot eight from the flat
7 roof, leaving an eight-foot wall behind it --
8 MS. ROBESON: Well --
9 THE WITNESS: -- that it's reaching to and is
10 stopping short, and therefore he's saying that will look
11 ugly. It's not -- he didn't say ugly. He says it will not
12 look -- the height of the existing structure is only eight
13 feet; so at a minimum, where the new roofline would meet the
14 starting structure would leave 28 inches from the new roof
15 to the ridgeline --
16 MS. ROBESON: So --
17 THE WITNESS: -- to avoid --
18 MS. ROBESON: -- what you're saying is there would
19 be an angle from the flat roof meeting the existing roof 28
20 inches below the redline --
21 THE WITNESS: The ridgeline.
22 MS. ROBESON: -- the ridgeline, and there would be
23 another, another angle up to the ridgeline?
24 THE WITNESS: That's what he said would happen if
25 he just did that.

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1 MS. ROBESON: No, just --
2 THE WITNESS: Yes.
3 MS. ROBESON: -- answer my question. That's --
4 THE WITNESS: That's the first statement.
5 MS. ROBESON: -- that's your interpretation?
6 Please --
7 THE WITNESS: Of the first statement.
8 MS. ROBESON: -- answer my question.
9 THE WITNESS: Yes.
10 MS. ROBESON: That's your interpretation?
11 THE WITNESS: Right.
12 MS. ROBESON: Okay. Okay. Go ahead,
13 Mr. Mohammadi.
14 MR. MOHAMMADI: Okay.
15 BY MR. MOHAMMADI:
16 Q Let me try what I think is a simple exercise. I
17 don't know if it will be. I'm taking the as-built
18 drawings --
19 MS. ROBESON: Of?
20 MR. MOHAMMADI: AB4.
21 THE WITNESS: Uh-huh.
22 MS. ROBESON: Of 126?
23 MR. MOHAMMADI: 126.
24 BY MR. MOHAMMADI:
25 Q Okay? I'm laying it over A4 of 126, okay, and

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1 what I'm doing is I'm matching up the rear elevation, the
2 two doors. Okay? I'm just going to --
3 A Okay.
4 Q -- match those up. Okay?
5 MS. ROSEN: You didn't say you're matching it
6 up --
7 BY MR. MOHAMMADI:
8 Q So I'm laying them over each other. Okay?
9 A Can I borrow yours now?
10 MS. ROBESON: You may wish to show -- yes. Give
11 it --
12 BY MR. MOHAMMADI:
13 Q Okay. So what I'm doing --
14 MS. ROBESON: -- give it to Mr. --
15 BY MR. MOHAMMADI:
16 Q So, just so you're clear, I'm laying them over
17 each other, okay --
18 A Okay.
19 Q -- and I'm matching the two doors up over each
20 other so that the bottom line on the as-built matches --
21 A Yes.
22 Q -- the bottom line of the actual built.
23 A Right.
24 Q Would you agree that you can see through here that
25 the roof is actually raised on the as-built -- on the built

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1 one versus the as-built?
2 A On the proposal, I can see some shade line on
3 that.
4 Q Okay. So it does look like, if we just put them
5 over each other, that the roof looks raised?
6 A Right.
7 Q And you're still maintaining today that the
8 approved plans did not show that the roof would be raised?
9 A Yes.
10 Q Okay.
11 MR. MOHAMMADI: Okay. Nothing further on that.
12 MS. ROBESON: Redirect, Ms. Rosen?
13 REDIRECT EXAMINATION
14 BY MS. ROSEN:
15 Q Can you explain why you take the position that the
16 roof would not be raised?
17 A Yeah, because there were three years of meetings,
18 which are borne out by minutes, on the subject of what
19 Mr. Ball was trying to add. He himself said at the very, on
20 the April 15 letter that he sent to the board that all he's
21 doing is bumping out a 10 by 20 on the Crossing Creek side,
22 on the left side of the house --
23 MS. ROBESON: Right.
24 THE WITNESS: -- that he was asking for a raise of
25 an addition on top of the garage --

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1 MS. ROBESON: Yes.
2 THE WITNESS: -- and that he was bringing the flat
3 roof, which he said was a mistake when he first built it --
4 MS. ROBESON: Yes, I saw that.
5 THE WITNESS: -- and it was leaking, and that he
6 was now trying to put a sloped roof on it, and this
7 explanation was consistent with what he had spoken about
8 before. There were three items of bumping, as I showed you
9 on Exhibit, on Exhibit 1 of that, which is whatever it's
10 called, 126(a).
11 MS. ROBESON: Yes.
12 THE WITNESS: The addition over the garage that
13 was first submitted we liked because it looked like the one
14 next door. It was a gable end --
15 MS. ROBESON: Yes.
16 THE WITNESS: -- in this case, double-gable end.
17 It was set back from the edge of the roof; so it didn't come
18 right up to the front of it --
19 MS. ROBESON: Yes.
20 THE WITNESS: -- and it was not -- it was larger
21 than one that he was sitting next door, but it still was
22 compatible with it. When submitting the new application,
23 after being rejected for the additional roof he was trying
24 to add on, he submitted a slope for the bump-out over the
25 garage --

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1 MS. ROBESON: Okay.
2 THE WITNESS: -- a sloped roof, a pitched roof,
3 and it shows on 126 as, on Sheet A4, the top, Front
4 Elevation --
5 MS. ROBESON: Okay.
6 THE WITNESS: -- and made some other changes, such
7 as balconies and so forth, on that top of the addition. So
8 there were only three items of construction discussed in
9 that entire period. There was never a mention, after the
10 July 10 was rejected for raising the roof, about anything
11 about raising a roof.
12 MS. ROBESON: The July 10 --
13 THE WITNESS: Application, which is --
14 MS. ROBESON: -- rejection was the third --
15 THE WITNESS: -- 126(a).
16 MS. ROBESON: Yes. That was the third story.
17 THE WITNESS: The third level.
18 MS. ROBESON: Yes. Okay.
19 THE WITNESS: And there was a statement made by
20 Tania Bruno in writing that Mr. Ball is prepared to forgo
21 the third-floor addition --
22 MS. ROBESON: I saw that.
23 THE WITNESS: -- but he would like to have closet
24 space off the master bedroom, or whatever that level is up
25 there, and that to achieve that, they were doing this

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1 sloping thing to meet the existing ridge. There was never
2 any discussion of raising a roof.
3 So there was no reason for us, absent the fact
4 that there were no dimensions showing what is the ridge
5 height -- because you will see in the minutes, repeatedly,
6 what is your ridge height, being asked; what is the height
7 of your roof, being asked; and then his answer variously as,
8 not higher than 30. The real question we was asking was,
9 what is your ridge height now, because you're not talking
10 about going higher than that; you're talking about coming
11 and meeting it. So there was really no reason for us to
12 doubt that what was discussed was a bump-out on the left
13 side of the house, a bump-out above the garage --
14 MS. ROBESON: Yes.
15 THE WITNESS: -- and a new roof, correcting the
16 problem of the leaky flat roof by coming up to meet the
17 existing ridge.
18 MS. ROBESON: Yes.
19 THE WITNESS: The fourth item, which was the
20 horizontal vinyl siding --
21 MS. ROBESON: Yes.
22 THE WITNESS: -- has different, has different
23 iterations. In a board meeting, I believe on March 31 of
24 2011, he said he would use Hardie board, HardiePlank cement
25 board and not vinyl. Then he came to the meeting, before we

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1 voted on --
2 MR. MOHAMMADI: Objection to the vinyl --
3 MS. ROSEN: Yes, I don't think this is relevant.
4 MS. ROBESON: It's not relevant to this proceeding
5 except to the extent it shows the --
6 THE WITNESS: Of what we were dealing with.
7 MS. ROBESON: Well, the background of the
8 application.
9 THE WITNESS: Right.
10 MS. ROBESON: This proceeding is not about the
11 vinyl siding.
12 THE WITNESS: Yeah. No, I was --
13 MS. ROBESON: Okay. Go ahead.
14 THE WITNESS: -- not referring to that
15 particularly.
16 MS. ROBESON: I'm going to let you continue.
17 THE WITNESS: Right. And so when this came
18 through, the first vote taken at that board meeting, where
19 we had this, I think on the 5th of May, I'm not sure
20 exactly, was three for, three against --
21 MS. ROBESON: Yes.
22 THE WITNESS: -- and I have, from the time I got
23 on the board, have been trying to get Mr. Ball's work to
24 advance. That's always been my goal. The very first time I
25 came to a board meeting in 2005 or whatever, he was trying

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1 to get CMU walls accepted and close off the third side.
2 There's a long history, but I made the comment, since that
3 was -- I don't think I was even on the board then -- I just
4 made the observation, since they turned to me, what are you
5 thinking, I said, what else are you going to do, he's
6 already got two CMU walls on the side, let the guy close it
7 up. And so I've always been advancing his cause, and he
8 knows that.
9 In addition to the vote being three-three, he had
10 also promised to take care of unfinished, outstanding
11 construction, specifically the tar paper on the back of the
12 house above the flat roof, which had been left with no
13 siding for 10-some years, had been sitting there for a long,
14 long time. I had just taken over officially as the
15 president. I was elected in April of that year. I had --
16 MS. ROBESON: Of which year are you?
17 THE WITNESS: 2011.
18 MS. ROBESON: 2011.
19 THE WITNESS: Previously I was the vice president,
20 doing what's referred to as co-president --
21 MS. ROBESON: Right.
22 THE WITNESS: -- and then halfway through 2010 or
23 in the fall, I suddenly realized that Jeff had left, and I
24 didn't know that. The secretary told me, you're now it.
25 So, so I --

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1 MS. ROBESON: No good deed goes unpunished. Okay.
2 Go ahead.
3 THE WITNESS: So at that point, when this came
4 along and we were having discussions in 2010, the latter
5 part, and 2011 and I saw an opportunity now, with Mr. Ball
6 saying that he -- and it's in writing, writing to Jeff
7 Williams -- that he would begin the construction in June and
8 complete it by December of that year -- maybe it was written
9 to the board -- that he would have a six-month window and he
10 would fix everything that was outstanding and the tar paper,
11 and I thought, my God, finally, after suffering through at
12 least six years that I'd been consciously on the board,
13 maybe eight, this will finally be brought to a rest, I
14 switched my vote, though I was not as pleased with the
15 bump-out on the Crossing Creek side, just to enable this to
16 go forward, and it seemed to me an ideal opportunity. I
17 believed Mr. Ball, and I have no reason not to believe him
18 at that time, and I fully expected him to do exactly what he
19 said, that he would start.
20 MS. ROBESON: Okay.
21 THE WITNESS: And so that is sort of the
22 background to why the board -- there was no reason for us to
23 take the as-built drawing sheet and lay it on top of the
24 other, because there's no discussion of a raising of height.
25 We were -- I was not particularly pleased with the change

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1 from the double gable, but that's my taste; it doesn't
2 matter. The overall impact was there was a three-three tie
3 and we were going nowhere and here was a promise to correct
4 all the deficiencies, bring it into shape, and I said he's a
5 builder -- I had a builder's license in '86; so I know what
6 has to be done to get it done, and it could be done -- and
7 so I switched my vote and that's why we gave the initial
8 approval.
9 MS. ROBESON: All right. Ms. Rosen, any more
10 redirect?
11 MS. ROSEN: Just one other question.
12 BY MS. ROSEN:
13 Q I just wanted to clarify, on Exhibit 126(a) there
14 were certain drawings that are not part of 126, is that
15 correct?
16 A That's correct.
17 Q Okay. I would just like you to identify, just for
18 the record, which drawings are not part of 126 --
19 A Yes.
20 Q -- so we verify that.
21 A I'll just read the numbers because it's pretty
22 straightforward.
23 Q Okay.
24 A Every drawing that has got AB as a prefix, that's
25 AB1 through AB5 --

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1 MS. ROBESON: The as-builts.
2 THE WITNESS: As-builts -- are the same, of
3 course.
4 MS. ROBESON: Okay.
5 THE WITNESS: Drawings A1 through whatever is the
6 last one here --
7 MS. ROBESON: A5.
8 THE WITNESS: -- A5, are replaced by ones in 126.
9 MS. ROBESON: Okay.
10 MS. ROSEN: Okay. All right. Thank you.
11 THE WITNESS: Thank you.
12 MS. ROBESON: All right. Any recross,
13 Mr. Mohammadi?
14 MR. MOHAMMADI: No. I'll just leave it at this.
15 MS. ROBESON: Okay. All right. Thank you,
16 Mr. Barr.
17 THE WITNESS: Thank you.
18 MS. ROSEN: I hope that was helpful.
19 MS. ROBESON: It was actually very helpful. I
20 appreciate your doing that.
21 MS. ROSEN: All right. Let me just move this out
22 of my way, just so I don't have to look at it.
23 MS. ROBESON: And now we have Ms. Gowan on
24 redirect. Ms. Gowan, you're still under oath.
25 MS. GOWAN: Yes.

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1 MS. ROSEN: Just one second. I'm just getting my
2 bearings together.
3 MS. ROBESON: Take your time.
4 MS. ROSEN: It just drives me crazy all the --
5 (Witness previously sworn.)
6 REDIRECT EXAMINATION
7 BY MS. ROSEN:
8 Q Okay. Ms. Gowan, during Mr. Mohammadi's
9 cross-examination, you testified that you generally try to
10 avoid Mr. Peter Ball, is that correct?
11 A Yes.
12 Q Okay. And can you basically tell the Hearing
13 Examiner why you try to avoid Mr. Ball?
14 A I discovered, when I looked up some of the
15 judicial documents, that he's actually, has right now over a
16 hundred cases against him. One of them --
17 MR. MOHAMMADI: Objection.
18 THE WITNESS: -- appears to be --
19 MS. ROBESON: There's an objection. Ms. Rosen,
20 where are we going with this? I mean, what did it -- to
21 what did it respond in Mr. Mohammadi's cross?
22 MS. ROSEN: Well, Mr. Mohammadi asked a question
23 to her, to Ms. Gowan, and her response to it, I think it had
24 to do with when he was asking whether she had made an
25 obscene gesture towards Mr. Ball at one point and she

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1 testified that she generally tries to avoid Mr. Ball; you
2 know, there had been testimony about various litigation.
3 So, you know, I think that it's perfectly appropriate for me
4 to ask her on this redirect why, the reason why she tries to
5 avoid Mr. Ball.
6 MS. ROBESON: Well, can she just say she avoids
7 Mr. Ball?
8 MS. ROSEN: She could, but I mean, you know, in
9 terms of my, you know --
10 MS. ROBESON: I'll let it in and give --
11 MS. ROSEN: Just very briefly.
12 MS. ROBESON: I'll let it in and give it the
13 weight it deserves.
14 THE WITNESS: Okay.
15 BY MS. ROSEN:
16 Q Just very briefly tell why you avoid, try to avoid
17 Mr. Ball.
18 A Well, after the incidents that I've had, I checked
19 into some of the records, and right now he has around 110
20 cases that he's been involved in. One of them currently is
21 a domestic violence issue, and there was mention of guns.
22 So I really just --
23 MS. ROBESON: Wait.
24 MR. MOHAMMADI: I would object to all of this.
25 THE WITNESS: -- don't want to be involved.

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1 MS. ROBESON: Okay. That is very prejudicial and
2 it's not directly relating to the case. I think that -- and
3 plus, I don't know where you're coming up with the records
4 unless you have access to the judicial database. Where are
5 you getting these records?
6 THE WITNESS: It's, it's publicly -- I went
7 online --
8 MS. ROBESON: And are there any --
9 THE WITNESS: -- and it's --
10 MS. ROBESON: But has he been convicted?
11 THE WITNESS: Yes, on I don't know how many of
12 them, but he's, he has been.
13 MS. ROBESON: Okay. So it's your testimony that
14 you're concerned about litigation and violence?
15 THE WITNESS: I'm concerned about kind of my
16 safety, and some things just don't seem right about some of
17 his behavior --
18 MS. ROBESON: Okay.
19 THE WITNESS: -- some of the things that he says,
20 things that he does, truthfulness.
21 MS. ROBESON: Well, do you have --
22 MR. MOHAMMADI: This is --
23 MS. ROBESON: Just a second. Is there an
24 objection?
25 MR. MOHAMMADI: Yes, I'm objecting. This is, I

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1 mean, this is just --
2 MS. ROBESON: Yes. I'm not going to continue --
3 finish your objection. I'm sorry.
4 MR. MOHAMMADI: This is all not relevant. There's
5 no foundation. There's no basis for any of this, highly
6 prejudicial, and again, she has not established what exactly
7 she's even referring to. I saw some things. There were
8 some convictions. That's -- I don't know what the value of
9 any of that is.
10 MS. ROSEN: Well, like I said, I think he, you
11 know, I think he opened the door in his questioning. That's
12 why I think I can ask on my redirect because though -- he
13 did indicate at one point, he asked her did she make an
14 obscene gesture at Mr. Ball and was talking about the
15 litigations between them. He opened that door. So when she
16 answered the question -- when he asked her, you know, about
17 Mr. Ball and she said she generally tried to avoid him, I
18 just think he opened up the door. If he didn't want to go
19 there, he shouldn't have brought up these litigations, to
20 begin with.
21 MR. MOHAMMADI: You open up the door -- if you
22 open up the door, you can't just speculate on things. She's
23 just speculating at this point and not providing any factual
24 basis for anything. She's saying, I looked at some records
25 and that's, and there were some convictions for Peter Ball,

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1 I guess. We don't even know if it's this Peter Ball --
2 MS. ROBESON: Well --
3 MR. MOHAMMADI: -- what Peter Ball, and that's it.
4 That's all we have.
5 MS. ROSEN: Well, I think the Hearing Examiner can
6 just, can take notice of any cases involving Mr. Peter Ball
7 that'll show up on Maryland Judiciary Case Search, because
8 there's plenty of them. I can --
9 MS. ROBESON: Okay. All right. I will let it in
10 on the ones -- I won't let it in on the ones that have no
11 resolution, I mean, have not resulted, because that's highly
12 prejudicial and he hasn't, Mr. Ball hasn't been convicted
13 and there are many, you know, it's too speculative. You can
14 testify -- if you want to get into detail, you can testify
15 that the large number of lawsuits, in your opinion -- I
16 don't know how many that is -- caused you concern, but not
17 the specifics of the -- no convictions.
18 THE WITNESS: Uh-huh.
19 MS. ROBESON: All right?
20 THE WITNESS: Okay.
21 MS. ROBESON: So if you can go through, if you
22 want to go through and say, you know, he had this conviction
23 and he had that conviction, you can, but not on the ones
24 where there's no conviction.
25 THE WITNESS: Okay. I looked at 20 or 30 out of

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1 the 110-ish. Most of them are tax liens --
2 MS. ROBESON: Of the 110?
3 THE WITNESS: Cases.
4 MS. ROBESON: Cases or convictions?
5 THE WITNESS: Right now, most of them have been
6 settled. I think there's three or four that are possibly
7 outstanding, but there are some -- there's one around the
8 time that he put the first sign up towards my yard.
9 Apparently, it was a divorce situation and there --
10 MS. ROBESON: What was a divorce situation?
11 THE WITNESS: His previous wife.
12 MS. ROBESON: Okay. All right.
13 THE WITNESS: And there was mention in there --
14 MS. ROBESON: How do you know apparently?
15 THE WITNESS: She -- it mentions in --
16 MS. ROBESON: Okay.
17 THE WITNESS: -- their divorce, and she mentions
18 she wanted her name changed, and it states that it was
19 violence, and they're divorced. He's remarried.
20 MR. MOHAMMADI: Objection.
21 MS. ROBESON: Well, okay, sustained. Okay.
22 Let's --
23 MR. MOHAMMADI: Just --
24 MS. ROBESON: -- that is very speculative. Is
25 your concern a physical safety concern, or is it just that

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1 he's very litigious, or is it -- can you put it some way
2 without getting -- he has no domestic violence conviction.
3 So I'm not going to get into -- it's very, you're too
4 speculative on that. All right? You're surmising a lot
5 about him. So can you just stick to your feelings about
6 what you feel?
7 THE WITNESS: I feel very much that he kind of
8 bullies, and I've been in a couple of situations where he
9 has. He, when he erected his fence, he erected on my
10 property. He wouldn't leave until I called the police.
11 MR. MOHAMMADI: Objection.
12 THE WITNESS: The fence is --
13 MS. ROBESON: Just -- there's an objection.
14 MR. MOHAMMADI: Those records were already
15 testified to, that there was two back-and-forths, one in
16 favor of him and one in favor of her on the fences.
17 MS. ROBESON: Well, that is something you can
18 bring out on recross. Go ahead.
19 THE WITNESS: And so when he erected his fence, he
20 put part of it in my yard and he and his worker, because
21 there was just two of them, they wouldn't get off my yard.
22 They damaged a protective fence that I put up, and it took a
23 police officer to get them to leave. He approached me in a
24 confrontational manner last, I think it was last summer at a
25 board meeting. He approached me in May. I, I have a

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1 security system now. It's really the only thing that I
2 found that keeps him off my property.
3 MS. ROBESON: Okay.
4 BY MS. ROSEN:
5 Q Ms. Gowan, I'm going to --
6 MS. ROBESON: Let's move on to another --
7 MS. ROSEN: Okay. I'm just going to make note
8 then --
9 MS. ROBESON: Well, let me ask you one question.
10 Do you think that you can be fair in approving or
11 disapproving Mr. Ball's applications?
12 THE WITNESS: I can in the sense that when I
13 review work in my field, I deal with a lot of contractors
14 that --
15 MR. MOHAMMADI: Objection.
16 THE WITNESS: -- you either like or don't like
17 personally --
18 MS. ROBESON: Stop when there's an objection.
19 MR. MOHAMMADI: She's not qualified as an expert.
20 So I don't know what that has to do with anything.
21 MS. ROBESON: Well, I'm going to withdraw my
22 question, and continue with your redirect.
23 MS. ROSEN: I'm just going to note for the record,
24 I'm just going to note that there were photographs
25 introduced in the other case that involved --

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1 MS. ROBESON: 73-12?
2 MS. ROSEN: Yes, just to keep note of that.
3 BY MS. ROSEN:
4 Q Okay. Now, at the last hearing, you were
5 requested to look for some additional documents, is that
6 correct?
7 A Yes.
8 Q Okay. And you were asked to produce part of that.
9 You were asked to produce the copies of the official HOA
10 minutes and copies of meeting notices, is that correct?
11 A Yes.
12 Q Okay. And I'm going to show you a stack of
13 documents that you gave to me. Do you recognize those
14 documents?
15 A Yes.
16 Q Okay. And are all the official minutes of the
17 board and membership meeting for the years 2010, '11, '12,
18 '13, and '14, to date, part of the package of these
19 documents?
20 A They are.
21 Q Okay. And were you able to locate board minutes
22 for the years 2008 or 2009?
23 A No additional.
24 Q Okay. And were you secretary during that time
25 period?

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1 A No.

2 Q Okay. And in this package I'm going to ask you to

3 look --

4 MS. ROBESON: Are you asking to admit this as a

5 new exhibit?

6 MS. ROSEN: I think what I'm going to do is the

7 way -- I have clipped off all of the minutes in here --

8 MS. ROBESON: Yes.

9 MS. ROSEN: -- and I'm just going to have her go

10 through this, and then I was just going to admit this

11 package, basically --

12 MS. ROBESON: Okay. That's fine.

13 MS. ROSEN: -- as a whole, because I don't have

14 mine -- I don't have the set of mine clipped; so it's easier

15 for me to let her go through it.

16 MS. ROBESON: Okay. Well, I'm just going to mark

17 it board minutes -- was it 2010 to 2013?

18 MS. ROSEN: Yes, it's basically, yes -- well, it

19 goes into a little bit of 2014 and also has some -- she had

20 testified last time that there was some general type of

21 agendas and meeting notices they use, and that's also in the

22 package. I'm just going to have her identify it --

23 MS. ROBESON: Okay.

24 MS. ROSEN: -- and I'm just going to give you the

25 whole package. I think it's easier.

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1 MS. ROBESON: That's fine. That's fine. I'm just

2 marking it as 127, board minutes, 2010 to 2014.

3 (Exhibit No. 127 was marked

4 for identification.)

5 MR. MOHAMMADI: Give me one second so I can take

6 note of that. I'm sorry.

7 MS. ROSEN: It's the same package that I gave to

8 you; so -- in the same order.

9 MR. MOHAMMADI: Thank you.

10 BY MS. ROSEN:

11 Q Okay. And at the top of this package, there's a

12 couple of documents that look like it's marked as agendas,

13 looks like the first, first five or so pages. Are those --

14 can you tell me what those are?

15 A I pulled this off of e-mails. These are some

16 agendas that were sent out, and it just outlines what the

17 agenda is.

18 MS. ROBESON: Okay.

19 BY MS. ROSEN:

20 Q And do they basically kind of reflect what the

21 general agendas look like?

22 A They do.

23 Q Okay. And then there's another document that I've

24 marked together, just marked with a green paper clip, and if

25 you can explain what that is.

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1 A This is the mailers. I basically put these in the

2 mailboxes. They're for the people that want mailers.

3 Q Okay. And the other documents, if you could just

4 flip through, and you'll see that I've marked what are, what

5 are representative of -- what are designated as Minutes of

6 Board Meetings. I've marked them with paper clips in color

7 here, and if you could just go through each document that's

8 been paper clip marked and just identify what that document

9 is.

10 A Okay.

11 Q Start with, if you could just --

12 MS. ROSEN: Just basically they're -- they're

13 basically minutes. I just want her to go through what the

14 different minutes are.

15 THE WITNESS: Special Meeting, Thursday, March

16 6th, 2014. Board Meeting, Monday, October 28th.

17 BY MS. ROSEN:

18 Q What year?

19 A Oh, I'm sorry, 2013. Special Meeting, October

20 7th, 2013.

21 Q And that's an agenda that you're looking at?

22 A It's an agenda, sorry.

23 Q Okay.

24 A Board Meeting, Monday, April 29th.

25 Q What year?

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1 A 2013.

2 Q Okay.

3 A Board Special Meeting, October 7, 2013. Board

4 Meeting July 17th, 2013. Board Meeting, Monday, April 29th,

5 2013.

6 Q Okay. You can just go through the ones with the

7 clips because there's some extraneous.

8 A This might be a duplicate, Board Meeting, Monday,

9 April 29th, 2013.

10 Q Okay. Now, I'm just going to actually bring your

11 attention, there's a document that's marked, it looks like,

12 Potowmack Preserve, Your Neighborhood News Source, Spring

13 2014 Issue. Want to go ahead and flip that, and if you

14 could identify -- there's a section that refers to

15 architectural changes. If you could just explain what that

16 is.

17 A This is our spring 2014 issue, and over in the

18 right side, we have, Prior Approval Needed, Exterior

19 Changes, and it goes through the process, and --

20 Q Okay.

21 A -- somewhere on the back it shows who we are and

22 who they need to contact, meaning the board members.

23 MS. ROBESON: Are your architectural procedures in

24 the HOA depository?

25 THE WITNESS: We have the guidelines and the

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1 procedures, and they are right -- they are on the LISTSERV.
2 They are --
3 MS. ROSEN: I'm not sure she understands what the
4 depository is, what you're referring --
5 MS. ROBESON: Okay. There is a state law. It
6 requires HOAs to put their architectural procedures --
7 THE WITNESS: Oh.
8 MS. ROBESON: -- and guidelines in a depository,
9 and I think it's with the Clerk of the Circuit Court.
10 THE WITNESS: It is then. They are.
11 MS. ROBESON: They are in there? Mr. Barr, did
12 you just feed her that answer?
13 MR. BARR: No.
14 THE WITNESS: No. It's --
15 MR. BARR: I don't know that.
16 THE WITNESS: -- we, we signed -- we revised the
17 bylaws, and I know that we had to meet and have it notarized
18 and everything, and that also was put in the depository, if
19 I don't mispronounce it. And so we were, we had a
20 discussion about that, as far as developing a package for
21 new owners --
22 MS. ROBESON: Yes.
23 THE WITNESS: -- and one of it would be documents
24 from the depository, which would have the forms, the, you
25 know, the, we would -- we just updated our architectural

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1 application. So --
2 MS. ROBESON: When was that?
3 THE WITNESS: 2013/2014 --
4 MS. ROBESON: Okay.
5 THE WITNESS: -- so it's been fairly recent.
6 MS. ROBESON: Okay.
7 THE WITNESS: And we also have information about
8 our environmental. So those we're going to put together in
9 a package for new homeowners. So it was brought up.
10 MS. ROBESON: Well, are they or aren't they in the
11 depository?
12 THE WITNESS: My understanding is they are.
13 MS. ROBESON: Okay. Go ahead.
14 THE WITNESS: Okay.
15 BY MS. ROSEN:
16 Q Okay. And could you just identify these --
17 A Oh.
18 Q -- meeting minutes?
19 A This is Board Meeting, March 11, 2013. This is
20 Board Meeting, February 11th, 2013; Board Meeting, November
21 8th, 2012; Board Meeting, September 12th, 2012; Board
22 Meeting, May 7th, 2012; Annual Meeting, April 30th, 2012;
23 Board Meeting, January 30th, 2012; Board Meeting, September
24 27th, 2011; Board Meeting, May 5th, 2011; Annual Meeting,
25 April 11th, 2011.

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1 Q Okay. All right. Are those meeting minutes that
2 you identified, are those the actual official minutes of the
3 board meetings?
4 A They are.
5 Q Okay.
6 MS. ROBESON: Okay. Any objections,
7 Mr. Mohammadi?
8 MR. MOHAMMADI: None subject to cross.
9 MS. ROBESON: I'm going to change how I label
10 that, because I thought it was all minutes. I just put,
11 board minutes and documents, 2010 to 2014.
12 MS. ROSEN: That's why I tried to clip it. I
13 figured --
14 MS. ROBESON: No, that was very helpful. Thank
15 you --
16 MS. ROSEN: -- try to make it as easy as I could
17 do. You're welcome.
18 MS. ROBESON: -- thank you very much.
19 (Exhibit No. 127 was received
20 in evidence.)
21 MR. MOHAMMADI: Can I take a look at that during
22 the break, just so I can make sure mine line up as well?
23 MS. ROSEN: Absolutely. It should, but --
24 MR. MOHAMMADI: I moved stuff around. So I just
25 want to make sure we have it in the same order.

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1 MS. ROBESON: Okay.
2 MS. ROSEN: Okay. All right.
3 MS. ROBESON: Okay. Continue, Ms. Rosen.
4 BY MS. ROSEN:
5 Q Okay. Now, you had testified during the last
6 hearing that you thought you had seen a larger-size set of
7 the drawings of the approved plans, which were the exhibit
8 77, is that correct?
9 A Yes.
10 Q Okay. And you produced this document, which has
11 now been marked as 126, to me, is that correct?
12 A Yes.
13 Q Okay. And the drawings that you, they are the
14 drawings that -- you were referring to this drawing, is that
15 correct, as being the drawings in here as the larger-size
16 ones that you saw?
17 A Yes.
18 Q Okay.
19 MS. ROBESON: In 126?
20 MS. ROSEN: Yes --
21 MS. ROBESON: Yes.
22 MS. ROSEN: -- in 126. Okay.
23 BY MS. ROSEN:
24 Q Okay. And I believe you also had testified that
25 you -- that Mr. Ball had also submitted at one point an

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1 application to change the brick work and the siding, is that
2 correct?
3 A Yes.
4 Q Okay. And I'm going to show you a document, which
5 I guess we'll go ahead and -- it'll be 127, which I'll
6 mark --
7 MS. ROBESON: I think it's 128.
8 THE WITNESS: 128.
9 MS. ROSEN: 128? Whoops. Yes, that's right. I'm
10 sorry, 128. I can't keep the numbers straight.
11 (Exhibit No. 128 was marked
12 for identification.)
13 MS. ROBESON: And how would you describe this?
14 MS. ROSEN: This was, I guess, an application -- I
15 guess I'll call it application brick siding, change brick
16 siding.
17 MS. ROBESON: Okay. 2011 application to change
18 brick siding.
19 BY MS. ROSEN:
20 Q Okay. Again, can you identify this document?
21 A This is a letter from Peter Ball to Raj Barr, and
22 he states that he's in the process of applying for a
23 building permit. The letter is dated September 26, '11.
24 He'd like to change the color of the brick and siding.
25 Q Okay. And then the next page, what is the next

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1 page?
2 A It's an application for approval for exterior
3 architectural change.
4 Q Is that his application to change the brick siding
5 and color and put color and siding?
6 A Yes. It's says, change brick color, change siding
7 to vinyl, see attached sample.
8 Q Okay.
9 MS. ROSEN: All right. We would move to admit No.
10 128.
11 MS. ROBESON: Any objections?
12 MR. MOHAMMADI: Can I just take a look at the
13 document?
14 MS. ROBESON: Sure.
15 MS. ROSEN: I gave you that one, right?
16 MR. MOHAMMADI: Yes. No, I haven't -- my client
17 hasn't seen it yet. No objection.
18 MS. ROBESON: Okay. It's admitted.
19 (Exhibit No. 128 was received
20 in evidence.)
21 MS. ROSEN: All right. Okay. I believe, and I
22 wasn't given a copy of it, but I think what I need to -- I
23 think I need Exhibit 122. It was the last -- it was the
24 e-mail that Mr. Mohammadi had asked Ms. Gowan about the last
25 question before we stopped our hearing last time. I believe

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1 it was 122. I think even I was given a copy of it. Let me
2 check.
3 MS. ROBESON: There is --
4 MS. ROSEN: Oh, I do have it. Okay. It's 122,
5 sorry.
6 BY MS. ROSEN:
7 Q Okay. Ms. Gowan, I'm going to show you a document
8 which was previously admitted as Exhibit 122, and I believe
9 you were asked by Mr. Mohammadi at our last hearing about
10 the highlighted section at the top of the first page. Okay.
11 Now, are you, do you need to look at -- this exhibit is
12 actually a string of e-mails. Do you need to take a look at
13 them?
14 A Raj was --
15 Q No. My question is, would you like to review the
16 string of e-mails at this time?
17 A Yes.
18 Q Okay. Have you had an opportunity to look at
19 those? Okay. Can you please explain --
20 A Yes.
21 Q -- the context of your e-mail to Raj, that area
22 which has been highlighted?
23 A I had gone to the county and looked at some of the
24 plans that were submitted under permit and discovered some
25 gross, I considered, gross discrepancies, and I wanted --

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1 MS. ROBESON: Okay. I'm sorry. Plans of what?
2 THE WITNESS: Of the construction plans or the
3 permit plans that were submitted for the current
4 construction that's going on.
5 MS. ROBESON: Okay.
6 THE WITNESS: And I knew that Raj was out of town,
7 and I had tried to contact Raj, discovered he was out of
8 town, and I wanted -- basically, I felt we needed to meet
9 with our counsel or lawyer because there just seemed to be
10 something very wrong with the differences between the
11 approved plans and what was being built and I knew that --
12 MS. ROBESON: The approved DPS plans? The
13 approved plans? The county-approved building permit plans?
14 THE WITNESS: The approved plans that we, that we
15 approved.
16 MS. ROBESON: Okay. I'm just trying to get this
17 straight because there's a lot of plans. You're saying that
18 the -- that you saw discrepancies in the building permit
19 plans from the plans that the HOA had approved?
20 THE WITNESS: Yes.
21 MS. ROBESON: Okay. Go ahead.
22 THE WITNESS: And I knew that we had already filed
23 for litigation in CCOC for some of the problems that were
24 going on, the deck, the shed, things of that sort. I
25 noticed additional discrepancies. And so if you take the

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1 approved plans and the construction plans and you look at
2 what was built, you're looking at three different things,
3 because even the construction that was ongoing didn't match
4 the permit plans, and I felt it needed to be brought up as
5 part of the case.
6 MS. ROSEN: Okay. All right. Thank you,
7 Ms. Gowan.
8 MS. ROBESON: Anything else?
9 MS. ROSEN: I think that's it.
10 MS. ROBESON: Okay. Recross?
11 RECROSS EXAMINATION
12 BY MR. MOHAMMADI:
13 Q So let me make sure I understand. Your
14 explanation as why you said in this, on Exhibit 122, why you
15 said, I'm concerned it could jeopardize our future CCOC
16 meetings if he knows exactly what we are doing and he can
17 plan his excuses ahead of time, was because you thought
18 there was some discrepancies between his approved plans, the
19 construction plans? That's the reason why you didn't want
20 to notify him?
21 A He built a garden wall instead of building out the
22 deck --
23 Q My question is a yes-or-no question --
24 A -- so --
25 Q -- Ms. Gowan. So --

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1 MS. ROBESON: Wait. I'm sorry. The garden wall,
2 I thought that was the prior case. So when you said this
3 construction, are you talking about the, what's at issue in
4 this case or the prior case?
5 THE WITNESS: I wanted to talk to --
6 MS. ROBESON: No, no, no, just answer my question
7 because I need to get this clear. Are you talking about --
8 are the discrepancies between the construction that's at
9 issue here or the old deck? That's all I want to know, and
10 then you can say what --
11 THE WITNESS: It's the construction that's going
12 on now.
13 MS. ROBESON: Okay, but I thought that the garden
14 wall was part of the old one.
15 THE WITNESS: The garden wall was part of the old
16 one. It's an example of some of the issues. What I wanted
17 to do is, I felt that --
18 MS. ROBESON: Well, wait, just -- okay, I
19 understand. So you're going through both; you're going to
20 testify as to both?
21 THE WITNESS: If that's okay.
22 MS. ROBESON: Well, at this point, I'm going to
23 let -- Mr. Mohammadi, why don't you re-ask your question.
24 MR. MOHAMMADI: Okay.
25 BY MR. MOHAMMADI:

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1 Q All I want to know is, your statement in your
2 e-mail -- and I'll read it again: And I'm concerned it
3 could jeopardize our further CCOC meeting if he knows
4 exactly what we are doing and can plan his excuses ahead of
5 time -- that statement, you made that statement to Mr. Barr
6 in this e-mail because you were concerned there were some
7 discrepancies between construction plans and approved plans?
8 Is that the --
9 A Yes.
10 Q That's the basis?
11 A And what was being built.
12 Q Okay. And so, because there was discrepancies,
13 you didn't want to tell Mr. Ball what they were until,
14 basically, the meeting?
15 A Mr. Ball had been notified by the board about its
16 discrepancies.
17 Q Right, and I want to know why you, why that's a
18 problem for you. Why is that a problem that he was notified
19 before by the board?
20 A That isn't a problem with me.
21 Q So why do you say it's a problem in this e-mail?
22 A The problem is, is that the permit plans did not
23 match the approved plans --
24 Q Isn't really the --
25 A -- and I don't believe that the members of the

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1 board or our counsel knew that he had filed plans that were
2 different and we were in the throes of a court issue.
3 Q You're not answering my question. Okay? Isn't
4 the problem that, isn't the --
5 MS. ROSEN: I think she did answer the question.
6 MS. ROBESON: No.
7 MR. MOHAMMADI: I respectfully disagree.
8 MS. ROBESON: No.
9 BY MR. MOHAMMADI:
10 Q Isn't the problem really that if you told him, if
11 you told Mr. Ball ahead of time what the issues were, he
12 could prepare to explain what the issues were? Isn't that
13 exactly what you're saying?
14 A No.
15 Q If he knows exactly what we are doing and can plan
16 his excuses ahead of time, what does that -- how else would
17 you interpret that sentence?
18 A When I look and reread all of the adjoining
19 e-mails, that refers to me wanting to get together with
20 counsel and go over our case because I felt that I had found
21 evidence that he was deliberately not building according to
22 the plans.
23 MR. MOHAMMADI: I'll move on from this.
24 MS. ROBESON: Okay.
25 BY MR. MOHAMMADI:

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1 Q I think you testified you put up an alarm system.
2 A Yes.
3 Q Are you worried? I mean, you put it up because
4 you're afraid, right? Right?
5 A Yeah.
6 Q Okay. You put the alarm up and you don't want to
7 have contact with him because you and Mr. Ball just simply
8 don't get along, right? Right?
9 A We don't have that much of a --
10 MS. ROSEN: I'm going to object because that's
11 argumentative. Ask a question.
12 THE WITNESS: -- relationship, yeah.
13 MS. ROSEN: Excuse me. Wait a minute.
14 MR. MOHAMMADI: It's a question.
15 MS. ROBESON: I'm going to let it in.
16 THE WITNESS: The contacts that I've had with him
17 have not been very good, I guess is the best I could say.
18 BY MR. MOHAMMADI:
19 Q Okay. So, again, you don't get along?
20 A I avoid him.
21 Q Okay. I mean, you can --
22 MS. ROBESON: Well --
23 MR. MOHAMMADI: She's not answering the question.
24 I mean, it's a very simple yes-or-no answer.
25 MS. ROBESON: Do you get along or don't you get

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1 along? How would you characterize your relationship?
2 THE WITNESS: Well, I guess when I think of not
3 getting along, that's where you've had a lot of interaction,
4 you just don't like one another, you don't, you can't get
5 along. We don't and never really have had a whole lot of
6 interaction. Just the times that we have come and been
7 around one another for the last several years have not been
8 very good.
9 BY MR. MOHAMMADI:
10 Q Is it fair to say that every time you have had
11 interactions with Mr. Ball it was in some kind of litigious
12 matter?
13 A No.
14 Q So you know what I mean with litigious is, filing
15 lawsuits against each other, the CCOC complaints that are
16 being filed, the complaints about what the building is, the
17 complaints with DPS --
18 MS. ROSEN: I'm going to object. First of all, he
19 asked --
20 THE WITNESS: No.
21 MS. ROSEN: -- the question already and she said
22 no, and second of all, now he's asking six questions in one.
23 It's a compounding question.
24 MR. MOHAMMADI: I'm trying to explain what I mean
25 with litigious nature.

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1 MS. ROSEN: He already asked the question, and she
2 said no. That's it.
3 MS. ROBESON: Wait. Wait. You can re-ask your --
4 can you rephrase it?
5 MR. MOHAMMADI: Sure.
6 MS. ROBESON: Do you --
7 BY MR. MOHAMMADI:
8 Q I'm going to try to characterize your
9 interactions. Okay? So when you interact, for example,
10 isn't it true that part of that interaction involves filing
11 lawsuits against each other?
12 A We've only had one each.
13 Q So you have filed lawsuits against each other,
14 right?
15 A Yes.
16 Q Okay. And part of that interaction involves you
17 filing DPS complaints against the Balls or Mr. Ball
18 specifically?
19 A I've contacted them over the wall and over a water
20 runoff issue, but --
21 Q So is it fair to say you filed complaints with
22 DPS?
23 A A couple.
24 Q Okay. And isn't it true that you also filed
25 these, or you were involved in filing at least two CCOC

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1 complaints? Is that fair to say?
2 A As a secretary of the board.
3 Q Okay. And it's fair to say that you were the one
4 that compiled a list of supplemental issues that existed,
5 correct?
6 A I assisted in developing a --
7 Q Okay. And so --
8 MS. ROBESON: Wait. I thought Mr. Barr testified
9 that you came up with that list.
10 THE WITNESS: I developed a list and passed it to
11 the board and to the --
12 MS. ROBESON: So you developed the list?
13 THE WITNESS: -- attorney for them to review and
14 -- the final list.
15 MS. ROBESON: No. Did you develop the list? Did
16 you develop the list?
17 THE WITNESS: I developed a list.
18 MS. ROBESON: Okay. Go ahead, Mr. Mohammadi.
19 MR. MOHAMMADI: Okay.
20 BY MR. MOHAMMADI:
21 Q Would you characterize that sort of interaction as
22 litigious?
23 MS. ROSEN: Objection. It's asking for what the
24 legal conclusion --
25 MS. ROBESON: Do you know what -- no, it isn't.

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1 MS. ROSEN: -- seems to be litigious.
2 MS. ROBESON: Do you know what litigious means?
3 THE WITNESS: Well, I think that he's trying to
4 imply that --
5 MS. ROBESON: No. Do you know what litigious
6 means?
7 THE WITNESS: Not totally, no.
8 MS. ROBESON: Okay. She doesn't know what it
9 means.
10 MR. MOHAMMADI: Okay.
11 BY MR. MOHAMMADI:
12 Q Would you characterize these interactions as being
13 confrontational in nature?
14 A No.
15 Q Lawsuits are friendly, in your opinion?
16 A They're legal, but --
17 Q All right.
18 MS. ROBESON: Well, are they friendly or aren't
19 they friendly?
20 THE WITNESS: I mean, you --
21 MS. ROBESON: No. Just answer the question,
22 please.
23 THE WITNESS: I guess not like friends going out,
24 no.
25 MS. ROBESON: Well, do friends file lawsuits

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1 against each other?
2 THE WITNESS: They can if they disagree.
3 MS. ROBESON: Okay.
4 MR. MOHAMMADI: Okay. Can I get that exhibit, the
5 one that was, had all the paper clips? I apologize. I only
6 have -- mine is out of order, and I don't want to
7 necessarily ask her about that. Thank you.
8 BY MR. MOHAMMADI:
9 Q Ms. Gowan, you recall, last hearing we had, I had
10 asked you some questions about meeting minutes, correct?
11 A Yes.
12 Q And in response to that, you said you would look
13 for them and produce all the meeting minutes, right?
14 A Yes.
15 Q Is it fair to say that these, this Exhibit 127 is
16 all the meeting minutes?
17 A Those are all the final meeting minutes.
18 Q Okay. The official meeting minutes, right?
19 A Yes.
20 Q Okay. Remember I also asked you about notices of
21 meetings, right?
22 A Yes.
23 Q And in response you said you would find all the
24 notices that were sent out and produce those, is that right?
25 A Yes.

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1 Q Okay. And is it fair to say that Exhibit 127 is,
2 once again, includes all of those meeting notices? Right?
3 A It includes all the ones that I could find, and
4 they're, the first couple of pages are kind of a generic
5 that's sent out.
6 Q Okay. Well, let's look at the first couple of
7 pages. This looks like -- and correct me if I'm wrong -- it
8 looks like some kind of electronic publication.
9 A It is.
10 Q Where is this publication made?
11 A It's made on Yahoo. We have a number of
12 homeowners that requested to have the agenda sent to them.
13 Q On Yahoo. Is it some kind of blog or a forum?
14 A We have a forum, yes.
15 Q Okay. And are the notices then posted on the
16 forum?
17 A They're posted on the forum.
18 Q Okay. And are all the notices posted on the
19 forum?
20 A Yes.
21 Q And when was this forum set up?
22 A I don't know.
23 Q Has it been a year, two years?
24 A It's -- it was already established when I joined
25 the board.

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1 Q Which was in 2011, if I remember correctly?
2 Correct me if I'm wrong.
3 A '12.
4 Q 2012. So prior to 2012, it had already been
5 established?
6 A Yes.
7 Q Do you delete posts from forums, from the forum?
8 A We're -- I have recently. We're cleaning it out.
9 Q Okay. Would you say you have deleted some of
10 these notices?
11 A Yes --
12 Q Okay.
13 A -- I think they're gone.
14 Q Would you agree with me that this forum, the
15 production you have here, are two from May 12, 2014; October
16 28th, 2013; December 13, 2013; again, October 28th, 2013?
17 There's only five of them, right?
18 A Yes.
19 Q Okay. And of those five, there's actually only
20 three notices for the specific meetings, because there's two
21 duplicates, right?
22 A Oh, yes. The first two are the same.
23 Q And the October 28th is also duplicated twice,
24 right?
25 A Oh, yes.

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1 Q So, really, from the forums you were only able to
2 pull three meeting notices, even though all of them since
3 2012 have been posted?
4 A I'm sorry?
5 Q What I'm asking is, from the forum you were only
6 able to pull three notices, right, even though since -- that
7 the notices have been posted at least since 2012?
8 A Yes.
9 Q Okay. Between December 13, 2013, and May 12, were
10 there any other meetings that occurred during that time?
11 A The meetings that occurred, there are meeting
12 notes here.
13 Q Okay. Well, I'm looking at the meeting notes.
14 One of them is March 16, 2014, right?
15 A Yes.
16 Q The notice for March 16, 2014, is not, is not in
17 this compilation of notices, right?
18 A Right.
19 Q Okay. And I'm not going to go through all of
20 them, but you have a lot of meeting minutes attached here
21 but only, essentially, three notices?
22 A We generally use a generic notice, and so I've
23 attached -- and I mentioned it at the last hearing -- and I
24 attached samples of what I could find.
25 Q Okay. For these electronic forum posts, people

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1 have to opt in to receive that, right? I mean, members of
2 the community would have to opt in and be a member of the
3 forum before they would receive it, right?
4 A Yes.
5 Q Okay. So if somebody didn't opt in, they would
6 not know about any of these meetings?
7 A We also send -- we have an e-mail list, and we
8 also hand-deliver.
9 Q All right. Could you turn to one of these generic
10 meeting notices that you sent out by hand, not the forum
11 ones, but the, by the ones that you send out by hand? Okay.
12 I guess this is page 6 of 127 -- I'm sorry, I'm leaning over
13 you -- right? Page 6, right? I'm just trying to make sure
14 the record reflects what we're looking at.
15 A Yes.
16 Q Okay. And this is just a general type of notice.
17 It says what the agenda is, and there's seven different
18 agendas on there?
19 A Right.
20 Q Okay. And this is what's usually sent out to
21 notify homeowners about the agenda of the meetings?
22 A Yes.
23 Q Okay. When you have cases against homeowners that
24 you're deliberating, you know, whether you should file a
25 CCOC case or something like that, do you send out any other

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1 kind of notices to inform them, hey, we're going to have a
2 meeting about you?
3 A No. We have an agenda. We don't put people's
4 names on them.
5 Q Okay. How would Mr. Ball know that his, his case
6 is going to be heard on this meeting? He wouldn't, right?
7 If this is what's sent out, he wouldn't. Is that fair?
8 A Based on the outline of the agenda, it just states
9 that it's minutes, officers' report, things of that sort.
10 Q Okay. Wouldn't you agree that before you file a
11 case in CCOC, there's supposed to be an opportunity to be
12 heard presented to the person that was going to be taken to
13 the CCOC?
14 A At the -- yes.
15 Q Okay. And so in order for there to be an
16 opportunity to be heard, notice needs to be sent out to
17 that, to at least that person, but to the entire community,
18 correct, so they would know to be there, to present their
19 case, to be prepared, so they have time to prepare for what
20 they want to say? Is that right?
21 A We sent out notices.
22 Q These notices?
23 A We sent out these notices.
24 Q And you think that's enough to notify a homeowner,
25 your case, your house, or your construction specifically is

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1 going to be heard today, make sure you're there?
2 A I don't -- I wouldn't know. I know that we follow
3 basically a, kind of a blanket, average, typical agenda.
4 Q All right. Well, if you receive this notice,
5 okay, and the board was -- let's assume you're not on the
6 board now, okay, so you don't know what the board is
7 contemplating yet, and you receive this notice. Would you
8 think your house is part of a potential CCOC complaint now,
9 from this notice?
10 A I wouldn't know. I would go to the meeting.
11 Q Okay. And since you didn't know that your house
12 is going to be part of that HOA complaint, would you know to
13 prepare, to present your case, and know what the issues are
14 and prepare your case for it?
15 A I don't know.
16 Q Well, are you telling me that every time you
17 receive a notice you prepare for the worst-case scenario,
18 you prepare all your arguments, all your defenses, and
19 everything so in case your house is subject to an issue, you
20 have it ready to present? Is that what you do?
21 A I don't know.
22 MS. ROBESON: She's answered. She doesn't know.
23 BY MR. MOHAMMADI:
24 Q If you don't know the answers to these questions,
25 who would know?

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1 A Probably other members of the board.
2 Q Okay. If you received some kind of training in
3 administering your duties as a secretary or a member of the
4 HOA, would that help you know the answer?
5 A Know the answer as far as when someone should be
6 notified?
7 Q What type of notices should be sent, whether the
8 notices that you sent actually give notice of what the
9 issues are, somebody's supposed to prepare for, the
10 questions you answered I don't know. Let me strike that
11 question. Let me ask you a different question.
12 Weren't you ordered to go to training in being
13 able to administer your duties better?
14 A We went for training to, under, to -- it was a
15 CCOC order, and we were sent to learn how to hold
16 meetings --
17 Q Learn how to send notices.
18 A -- give notices, and they talked about generic
19 agendas.
20 Q And that would be CCOC 30-12, right? Is that
21 fair? That would be the case?
22 A I believe that's the number.
23 Q And you were one of the members that went?
24 A Yes.
25 Q And is it fair to say that one of the reasons you

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1 were chosen as one of the members to go is because you were
2 the secretary, responsible of making sure notices and things
3 like that go out, right?
4 A Right.
5 Q Ms. Gowan, just, you're not an architect, right?
6 A I'm not a registered architect.
7 Q Okay. But you have some experience reading
8 drawings and things like that?
9 A Yes.
10 Q Okay. And have you ever had a chance to look at
11 Exhibit 126 prior to today's hearing?
12 A Yes.
13 Q Okay. And you would agree, these are the set of
14 approved drawings?
15 A Yes.
16 Q And you would agree that the set of approved
17 drawings include as-built drawings?
18 MS. ROSEN: I think the drawings speak for
19 themselves.
20 THE WITNESS: The drawings that you have show
21 as-built drawings.
22 BY MR. MOHAMMADI:
23 Q Have you ever compared for your own edification
24 the as-built drawings to the approved
25 what-is-going-to-be-built drawings?

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1 A I've compared the as-builts to the approved
2 smaller scaled drawings, or smaller unscaled drawings, and
3 they're, they're the same.
4 Q The as-built drawings are the same as the --
5 A The as-built drawings -- let me rephrase. The
6 as-built drawings show some things that were deleted or
7 removed, like the gable; there's a clerestory, some other
8 things.
9 Q Okay. Well, that's part of the stuff I want to
10 ask you about, but for now all I want to know is, have you
11 ever compared -- you're bringing this case, so I'm trying to
12 figure out if you did this -- have you ever compared the
13 drawings, the as-built drawings, to the approved drawings of
14 what is supposed to be built?
15 A No.
16 Q Okay. Did you think, you know, in voting to
17 decide whether you should take this case to the CCOC, you
18 don't think that was something you should do in order to
19 make an informed decision of whether there were in fact
20 violations? Yes or no?
21 A No.
22 Q Okay. All right. Well, can you show me on the
23 as-built drawings --
24 MS. ROBESON: On 126?
25 MR. MOHAMMADI: 126.

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1 MS. ROSEN: We have a set here, sir.
2 MR. MOHAMMADI: Okay.
3 BY MR. MOHAMMADI:
4 Q On 126 could you show me where it shows the shed?
5 MS. ROSEN: Which shed are we now referring to?
6 MR. MOHAMMADI: Any shed.
7 MS. ROBESON: Good question.
8 BY MR. MOHAMMADI:
9 Q Could you show me any shed?
10 A It's here.
11 Q On the as-built drawings. I'm not looking at
12 the --
13 A It's not --
14 MS. ROBESON: No. Okay. Where are -- what's
15 here?
16 THE WITNESS: I'm sorry. It's A1.
17 MS. ROSEN: No, that's not an as-built drawing.
18 BY MR. MOHAMMADI:
19 Q That's not the as-built drawings. On the as-built
20 drawings, where's any of the sheds?
21 A On the as-built, it doesn't show the sheds.
22 Q Correct. Yet the approved plans do show a shed?
23 A A1 here shows a shed.
24 Q Okay. And now, let's be clear here. A1 shows a
25 shed, and that's the shed that was subject to the other CCOC

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1 case, right?
2 A Yes.
3 Q Okay. The two sheds that are subject to this,
4 this CCOC case, where are they shown on any of the drawings?
5 A On -- they appear to show on A1 as blocks --
6 MS. ROSEN: I think we'd have to look at --
7 THE WITNESS: -- but we'd have to really look at
8 the -- on the approved plans, they don't show either.
9 MS. ROSEN: I think it might be more illustrative
10 if we look at what the Hearing Examiner marked on Exhibit
11 77.
12 MR. MOHAMMADI: Well, I would prefer to look at
13 126, which is also, apparently, the exact same drawings that
14 were on 77. So it's the same thing.
15 THE WITNESS: The, the sheds on the side are, are
16 missing on these plans, but they exist.
17 BY MR. MOHAMMADI:
18 Q And you're also saying they're missing on the
19 as-built plans and they exist?
20 A And they're also missing on the approved plans,
21 but they exist.
22 Q So none of the plans at any stage, be it the
23 as-built or afterwards, show any of these two sheds, right?
24 A But they exist.
25 Q And your testimony previously was they've existed,

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1 basically, since you've moved in, right?
2 A No, I didn't say they existed when I moved in. I
3 said that, that there's been continuous construction on that
4 side, and I think Mr. Ball said that they existed when he
5 moved in.
6 Q Well, I'll take a look at the transcript again so
7 we can make sure we say the same thing, but to the best of
8 my --
9 MS. ROBESON: Okay. Well, you're not
10 testifying --
11 MR. MOHAMMADI: Okay. Well, I'm going to --
12 MS. ROBESON: -- and she answered.
13 MR. MOHAMMADI: -- I'm going to ask it again.
14 BY MR. MOHAMMADI:
15 Q Isn't it true you stated --
16 MS. ROBESON: Well, no, you don't get to keep
17 asking it unless you've got a different question.
18 MR. MOHAMMADI: I got a different date for it.
19 MS. ROBESON: Okay.
20 MR. MOHAMMADI: Okay.
21 BY MR. MOHAMMADI:
22 Q Isn't it true that you testified that at least for
23 the last 10 years it's been there?
24 A I think both of them have been there the last 10
25 years.

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1 Q Okay.
2 MS. ROBESON: Are you -- okay. Go ahead. I
3 thought there was a shed on A1 of 126.
4 MR. MOHAMMADI: Well, I'll clarify.
5 BY MR. MOHAMMADI:
6 Q Isn't A1 on 126 the shed that was subject to the
7 previous CCOC case?
8 A Yes.
9 MS. ROBESON: Okay. Thanks.
10 BY MR. MOHAMMADI:
11 Q To clarify, we were, the last time you testified,
12 we were talking about three separate sheds -- one of them
13 subject to the previous CCOC case, two subject to today's
14 CCOC case?
15 MS. ROBESON: Right.
16 THE WITNESS: Shed 2 is under 73-12.
17 MS. ROBESON: Okay.
18 BY MR. MOHAMMADI:
19 Q Ms. Gowan, would your knowledge about reading
20 plans, if you took a, take a look at as-built on 126, the
21 as-built drawings, and compare them now to the, what is now
22 approved plans, to-be-built drawings, can you now tell that
23 the roof is supposed to be raised?
24 A The, no, and the reason being is -- I noticed it
25 on the approved plans -- the elevations, even when you line

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1 them up, don't match.
2 MS. ROBESON: Which elevations don't match?
3 THE WITNESS: The building elevations. Whoever
4 draw, excuse me, whoever drew them --
5 MS. ROBESON: Well, first, can I -- it's easier
6 for me if I know exactly what you're --
7 THE WITNESS: Okay.
8 MS. ROBESON: -- comparing. So can you do that
9 for me --
10 THE WITNESS: Yes.
11 MS. ROBESON: -- on AB1, or I guess it would be
12 maybe AB5 and A5.
13 THE WITNESS: Yes. When --
14 MS. ROBESON: Well, wait. What was the, first
15 answer -- well, ask the question again. It's --
16 MR. MOHAMMADI: Sure.
17 BY MR. MOHAMMADI:
18 Q My question was, now looking at Exhibit 126, okay,
19 and comparing the as-built drawings to the to-be-built
20 drawings --
21 MS. ROSEN: Which as-built? There were various
22 drawings. Can we, like, talk it out --
23 MR. MOHAMMADI: It's --
24 MS. ROSEN: -- which ones you're referring to?
25 MS. ROBESON: You can address --

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1 MS. ROSEN: I'm sorry.
2 MS. ROBESON: -- your objections to me and not
3 directly to Mr. Mohammadi.
4 MS. ROSEN: Right. I'm going to object --
5 MR. MOHAMMADI: Let me finish my question, I
6 guess; then maybe we can do the objection.
7 MS. ROBESON: Well, why don't you clarify.
8 MR. MOHAMMADI: Well, I'm giving her the
9 opportunity to compare whatever she wants to. I'm being
10 vague on purpose. I want to find out if she --
11 MS. ROBESON: Oh, I understand.
12 MR. MOHAMMADI: -- based on what's --
13 MS. ROBESON: Okay. So ask your question again.
14 MR. MOHAMMADI: Okay.
15 BY MR. MOHAMMADI:
16 Q Taking a look at Exhibit 126, by looking at all of
17 the as-built drawings and comparing it to any or all of the
18 to-be-built drawings, can you tell from those now, today,
19 that the roof is supposed to be raised?
20 A No.
21 Q Okay. And why is that?
22 A Because each elevation doesn't match. In other
23 words, the two sides don't match; they're not the same
24 height. Even if you line them up, they're not the same
25 height.

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1 MS. ROBESON: Which two sides?
2 THE WITNESS: The left and the right sides.
3 They're not --
4 MS. ROBESON: Okay. So is it --
5 MS. ROSEN: I'm sorry. I'm going to ask her,
6 maybe if she can refer to the actual drawing she's looking
7 at would be helpful.
8 MS. ROBESON: That would be great, and I'm not
9 trying to be hard on you. It's --
10 THE WITNESS: No, I understand, and I'm --
11 MS. ROBESON: -- they're trying to --
12 THE WITNESS: -- I'm looking at the as-builts, but
13 I compared the approved drawings when I noticed that
14 difference.
15 MS. ROBESON: What difference?
16 THE WITNESS: That the --
17 MS. ROBESON: Wait. Start, back up. His question
18 is, can you, on these drawings -- ask your question.
19 MR. MOHAMMADI: She answered that she could not
20 tell the, she could not tell --
21 MS. ROBESON: Right.
22 MR. MOHAMMADI: -- that the roof would be raised,
23 and I asked why can't she tell from these drawings.
24 MS. ROBESON: Okay. So be specific --
25 THE WITNESS: Okay.

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1 MS. ROBESON: -- as to why you can't.
2 THE WITNESS: Because the elevations aren't the
3 same scale from elevation to elevation. The, the heights of
4 the roofs are different.
5 MR. MOHAMMADI: Okay.
6 MS. ROBESON: So the as-built versus the proposed
7 are different scales?
8 THE WITNESS: If these as-builts are the, are
9 basically photocopied the same as the approved plans. When
10 I reviewed the approved plans, I noticed that the elevations
11 don't match; they're, they're four different elevations with
12 various heights of the roofs.
13 MS. ROBESON: When you say approved plans, what
14 are you referring to?
15 THE WITNESS: These.
16 BY MR. MOHAMMADI:
17 Q Is that --
18 MS. ROBESON: I thought there was testimony just
19 now --
20 THE WITNESS: And these.
21 MS. ROBESON: -- that 126 is the approved plans.
22 THE WITNESS: These are part of this.
23 BY MR. MOHAMMADI:
24 Q Just smaller, right?
25 A Just smaller.

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1 Q Okay. And when you say --
2 A But the elevations don't match.
3 MS. ROBESON: Okay. Which elevation doesn't
4 match? Let me try it this way.
5 THE WITNESS: The, the elevations --
6 MS. ROSEN: Refer to the page so that the Hearing
7 Examiner knows what you're looking at.
8 THE WITNESS: AB5. The --
9 MS. ROBESON: Of 126?
10 MS. ROSEN: Of 126.
11 THE WITNESS: Right.
12 MS. ROBESON: Okay. AB5, I've got that. What --
13 go ahead.
14 THE WITNESS: The -- even if you line up the upper
15 floor or the lower floor one to the other, they're, they're
16 different.
17 MS. ROBESON: Okay. What are you lining it up
18 with?
19 THE WITNESS: I'm sorry. If you line up the lower
20 floor and --
21 MS. ROBESON: On AB5 --
22 THE WITNESS: On --
23 MS. ROBESON: -- of 126.
24 THE WITNESS: Right, for the right-side elevation
25 against the left-side elevation, they're different heights.

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1 The overall top peak of the ridge of the roofs are
2 different.
3 MS. ROBESON: And how do you know that?
4 THE WITNESS: I lined them up.
5 MS. ROBESON: So you're saying the right-side
6 elevation, the roof ridge, to the left of the chimney is a
7 different height. Starting from where?
8 THE WITNESS: From the lower floor.
9 MS. ROBESON: And define lower floor. What are
10 you looking at?
11 THE WITNESS: It's the first floor.
12 MS. ROBESON: I know. I mean --
13 BY MR. MOHAMMADI:
14 Q Can you point it out on the, on the drawing?
15 MS. ROBESON: Are you talking about the hatched,
16 the dashed line?
17 THE WITNESS: Yes.
18 MS. ROBESON: Going through -- the lower dashed
19 line on A5 of 126, is that where you measured from?
20 THE WITNESS: Yes.
21 MS. ROBESON: Okay. So you measured from the
22 lower of the dashed lines to the highest ridge, the highest,
23 the ridgeline of the roof?
24 THE WITNESS: Right.
25 MS. ROBESON: Okay. And you did the same exercise

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1 for both the right and the left elevations. So your
2 testimony is -- and I assume you measured it with a ruler?
3 THE WITNESS: I did, and you can kind of do the
4 same thing with a paper and --
5 MS. ROBESON: No, it's okay. I can -- I use a
6 scale, but go --
7 THE WITNESS: I do and I did, but --
8 MS. ROBESON: Okay. So I just wanted to make sure
9 that -- I couldn't understand your reference. So I do now.
10 Okay. Go ahead, Mr. Mohammadi.
11 MR. MOHAMMADI: Okay.
12 BY MR. MOHAMMADI:
13 Q Correct me if I'm wrong, but when I just asked you
14 whether you compared the drawings prior to this, you
15 testified no, and now you're saying you did compare them to
16 each other?
17 A I compared them, I don't remember when, but I
18 compared them and noticed the heights were different, and
19 this was as they were going back and forth over whether the
20 roof was the correct height, and I said, well, you're never
21 going to know because the elevations are not right.
22 Q Isn't it true that --
23 MS. ROBESON: Did you ever tell Mr. Ball this?
24 Did you ever look at this when you were reviewing the plans?
25 THE WITNESS: I, I wasn't on the board that

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1 approved the plans.
2 MS. ROBESON: Oh, I see. Okay. All right. Go
3 ahead, Mr. Mohammadi.
4 BY MR. MOHAMMADI:
5 Q But it was the board that did approve these plans,
6 right?
7 A The board approved the plans.
8 Q Okay.
9 MR. MOHAMMADI: Nothing further, Your Honor.
10 MS. ROBESON: All right. Now, it is 20 to noon.
11 Ms. Rosen, how many more witnesses do you have?
12 MS. ROSEN: The only other person that we were
13 going to call was Rande Joiner, but she's not here at this
14 time. I'm not sure whether she's going to be here or not.
15 So I think at this point I would just like the right to call
16 her --
17 MS. ROBESON: Absolutely.
18 MS. ROSEN: -- if she were to appear, but other
19 than that, I think Mr. Mohammadi can start his case.
20 MS. ROBESON: Okay. Great. All right. Well,
21 with that, because it's almost noon, I'm going to break for
22 lunch a little early, and when we come back, Mr. Mohammadi,
23 who is your first witness?
24 MR. MOHAMMADI: Well, with respect to Ms. Joiner,
25 I would prefer to get the witnesses out of the way because I

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1 will be making a motion for judgment after the complainant
2 rests. So I don't want there to be something open still to
3 say, well, you can't rule on this now until all the
4 witnesses have testified. So I'd like to get their
5 case-in-chief completed before I proceed with my motion for
6 judgment. Thereafter, I'm going to have Mr. Schwartz
7 testify on our case-in-chief.
8 MS. ROBESON: Where is Ms. Joiner?
9 MR. BARR: She was supposed to be here from a case
10 that she's appearing in around now.
11 MS. ROBESON: Okay. What we'll do, let's take an
12 hour break, and if you can see if you can contact Ms. Joiner
13 and see where she is, and we'll come back at -- let's come
14 back at 1:00, all right, and see if you can contact her and
15 bring her back.
16 MS. ROSEN: Okay.
17 MS. ROBESON: Thank you.
18 MS. ROSEN: I'm going to give that to you.
19 MS. ROBESON: Thank you.
20 MR. MOHAMMADI: Thank you.
21 MS. ROBESON: Thank you, Ms. Rosen.
22 MS. ROSEN: You're welcome.
23 (Whereupon, at 11:41 a.m., a luncheon recess was
24 taken.)
25 MS. ROBESON: All right. Ms. Rosen, I see a new

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1 face.

2 MS. ROSEN: Okay. We have a new witness.

3 MS. ROBESON: Okay. Please raise your right hand.

4 (Witness sworn.)

5 MS. ROBESON: All right. Ms. Rosen.

6 DIRECT EXAMINATION

7 BY MS. ROSEN:

8 Q Okay. Can you please state your name and address

9 for the record?

10 A My name is Rande Joiner, R-A-N-D-E J-O-I-N-E-R,

11 and my address is 8804 Hidden Hill Lane, Potomac, Maryland

12 20854.

13 Q Okay. And do you live in the Potowmack Preserve

14 community?

15 A I do.

16 Q Okay. And do you own the property that you live

17 in?

18 A I do.

19 Q Okay. And how long have you lived there?

20 A Twenty-five years.

21 Q Okay. And where is your home in relation to the

22 Ball property, 10600 Vantage Court?

23 A It's not within visual distance. It's a couple of

24 blocks in the interior of the community.

25 Q Okay. And what is your occupation?

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1 A I'm an attorney.

2 Q Okay. And how long have you been practicing law?

3 A Thirty-five or 36 years, something like that, a

4 long time.

5 Q Okay. Okay. And how are you familiar with the

6 property in this case?

7 MS. ROBESON: Sir, excuse me one second, can you

8 shut that door? Thank you.

9 THE WITNESS: I have two dogs who need a lot of

10 exercise, and I walk them frequently, and at the cul-de-sac

11 of Vantage Court, where Mr. Ball lives, is an entrance to a

12 park, a soccer field and a park, and I frequently take my

13 dogs there for long walks or to toss balls to them. So I'm

14 there, I walk by his house probably, maybe not every day,

15 but every other day.

16 BY MS. ROSEN:

17 Q Okay. And for how long have you been walking your

18 dogs by that area?

19 A Nine years.

20 Q Okay. So it's fair to say that you see that --

21 you've seen that property on a pretty regular basis over the

22 past nine years?

23 A Yes, and I also go out of the neighborhood that

24 way; so I see it on my way in and out of the neighborhood

25 every day.

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1 Q Okay. And is that property currently under

2 construction?

3 A Yes, it is.

4 Q And for how long has this property been under

5 construction, to the best of your knowledge, generally?

6 A As long as I can remember.

7 Q Okay. And how do you know that?

8 A Because I go by there almost on a daily basis, and

9 I don't know when the initial construction started, but it

10 was sort of half finished, and it's been under construction

11 since I've been walking my oldest dog.

12 Q Okay. And if you could generally tell the Hearing

13 Examiner, what have you generally observed with regards to

14 the ongoing construction at that property?

15 A Well --

16 MR. MOHAMMADI: Objection. It's --

17 MS. ROBESON: Basis?

18 MR. MOHAMMADI: -- pretty -- are we talking about

19 specifically part of this case or --

20 MS. ROBESON: Well, I think she --

21 MR. MOHAMMADI: -- for nine years?

22 MS. ROBESON: Well, you can ask that on

23 cross-examination.

24 MR. MOHAMMADI: Okay.

25 MS. ROBESON: That's not really an objection. So

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1 overruled and go ahead, Ms. Joiner.

2 THE WITNESS: It just seems to be an ongoing

3 construction that never gets finished. You know, I, I will

4 say this, that I think Mr. Ball is unlucky in that his

5 property is on a hill and it's also on a side lot so that

6 you can see three sides of his property and there's a lot of

7 runoff and erosion problems due to construction, but it just

8 has a very unfinished look, and it just seemed like the

9 house that kept growing. I mean, we -- in the neighborhood

10 there was always a lot of discussion about what's going on

11 and why isn't it finished and why is it so large and why

12 doesn't it look like anything else in the neighborhood.

13 BY MS. ROSEN:

14 Q Okay. And generally, as a neighbor, do you have

15 any concerns about the construction on this property?

16 A I do. I don't think it's -- I was, frankly, very

17 surprised. I had put something on the LISTSERV probably,

18 maybe two years ago, indicating a concern, you know, why was

19 this construction even going on. I wasn't aware of the fact

20 that the board had approved these plans because I wasn't a

21 board member.

22 As soon as I found out that the board had approved

23 the plans, this is our duly elected board and I felt, well,

24 you know, they went over it, they approved it, and so we

25 should all support them, but we'd like to see the

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1 construction done. But we were -- I was wondering and other
2 people have wondered why it was even approved because it
3 just seems so inconsistent with what's in the neighborhood.
4 Q Okay. And did you communicate your concerns to
5 the board?
6 A I did.
7 Q Okay. And how did you communicate them?
8 A By e-mail and I talked to probably Peter Gibson on
9 the phone. I may have talked to Raj on the phone. I went
10 to a couple of meetings. I went to at least one board
11 meeting, and I even agreed to serve on the board
12 temporarily, for a period of three months, when there was a
13 vacancy.
14 Q And you said you've been to board meetings. Do
15 you receive notices of board meetings?
16 A Yeah.
17 Q Okay. How do you receive those notices?
18 A Now they're coming through the LISTSERV. They
19 were in newsletters. I don't know, in general. We used to
20 either get something in the, in the mailbox -- I don't know.
21 I just know that I was always aware of them. They come in
22 different forms.
23 Q Okay. Has this ongoing construction affected the
24 enjoyment of your property, generally, as a neighbor?
25 MR. MOHAMMADI: Objection.

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1 MS. ROBESON: Basis?
2 MR. MOHAMMADI: Again, it's not subject to this
3 case. General enjoyment of another person's --
4 MS. ROBESON: Well, I'm going to let it in and
5 give it the weight --
6 MR. MOHAMMADI: Okay.
7 MS. ROBESON: -- it deserves. Go ahead,
8 Ms. Joiner.
9 THE WITNESS: No, it hasn't affected my enjoyment
10 of my property. I think that people in the neighborhood are
11 concerned about losing the character. It's kind of a unique
12 community because it's very wooded, and it's architecturally
13 unique because they're California contemporary houses. So
14 people are a little bit concerned about their, both the look
15 of the neighborhood and character of the neighborhood and
16 their property values, so in that sense.
17 BY MS. ROSEN:
18 Q Okay. To the best of, I mean, do you, for
19 example, do you drive around or walk around the community
20 somewhat generally? Are you familiar with the community
21 itself?
22 A I walk that whole community almost every day.
23 Q Okay. How many other homes have you seen that
24 have had the type of ongoing construction that this one has
25 had?

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1 A None.
2 Q Okay. I'm going to show you a document which I'm
3 going to mark as, I believe it's going to be 129.
4 MS. ROBESON: How would you describe that?
5 MS. ROSEN: It's an e-mail from Rande Joiner to
6 Peter Gibson, dated September 12 of 2013.
7 MS. ROBESON: I'm just going to call it 9/12/13
8 e-mail from Joiner to Gibson.
9 (Exhibit No. 129 was marked
10 for identification.)
11 BY MS. ROSEN:
12 Q Okay. Ms. Joiner, if you could --
13 MS. ROBESON: Just a second. Mr. Mohammadi, do
14 you have any objections to it?
15 MR. MOHAMMADI: I think so. I don't think I've
16 ever seen this e-mail. Let me read it. Yes, I don't think
17 I have ever been provided this e-mail. I can't, by reading
18 it, I can't tell because the contents sound familiar from --
19 and I don't know if that's because I've had discussions
20 about the things that came up here, but --
21 MS. ROBESON: Was it provided in discovery?
22 MS. ROSEN: Yes, I believe it was provided because
23 it was part of -- there was a discovery request, I think,
24 that asked about complaints, you know --
25 MS. ROBESON: Yes, there was a discovery request.

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1 MS. ROSEN: -- complaints of other people. So I
2 believe it would have been provided in that.
3 MR. MOHAMMADI: Okay. I have it.
4 MS. ROBESON: All right. Do you have any other
5 objections?
6 MR. MOHAMMADI: No.
7 MS. ROSEN:
8 MS. ROBESON: All right. Go ahead, Mr., or
9 Ms. Rosen.
10 (Exhibit No. 129 was received
11 in evidence.)
12 BY MS. ROSEN:
13 Q Okay. Ms. Joiner, can you please identify that
14 document, which has been marked as Exhibit 129?
15 A Yes. This is an e-mail sent by me on September
16 12th, 2013, to Raj Barr and to Peter Gibson, and the subject
17 was Ball construction.
18 Q Okay. Why do you write this e-mail to Raj and to
19 Peter?
20 A Because on my walk that day -- and I don't know
21 whether I walked the day before -- but on my walk that day,
22 I noticed that, that a roof was being put on on top of the
23 old roof. You know, I saw roof trusses on top of an old
24 roof without removal of the previous roof and also an
25 extension of the front porch area. I could see right

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1 through it and see the window inside.
2 The roof, one roof was being built on top of
3 another roof, and it didn't seem to me -- I'm not an
4 architect; I'm an attorney; I know nothing about these plans
5 -- but I just, I had asked earlier in the summer, probably
6 in June or July, for a copy of the plans, and they were
7 provided, and I'm not sure who provided them. I don't --
8 maybe it was the architectural control committee, but
9 someone sent them to me in a PDF form. And so I did have a
10 copy of them, and I just didn't see a roofline like that,
11 and I also didn't know whether you could build an old roof
12 on a new roof.
13 So I expressed my concerns in this e-mail. I just
14 did not understand the construction; you know, the old
15 wall/window weren't removed before building an addition; one
16 roof was built on another roof; the roof that was being
17 built was above the existing chimney line; and I just
18 thought this house is just out of control and I wondered
19 whether he is building what has been approved in the plans.
20 And I expressed my concerns in an e-mail because I go by the
21 front of the house, because I walk there, and I didn't know
22 whether they had.
23 Q Okay. Now, in this e-mail you reference on the
24 first sentence of the third paragraph, you say, however, I
25 and some others are troubled by the new roofline going up

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1 this week. Can you identify who some of these others are?
2 A Yeah. Let's see, well, Mary Blehar, Judy Dworkin,
3 my neighbors, the Yankavitches (phonetic sp.). I'm just
4 trying to think of what the guy's name is who lives on Quiet
5 Stream Court who keeps coming up to me at the pool. I have
6 so many people -- the Greens -- I have so many people who
7 either approach me on the street to talk about this or send
8 me e-mails that I've almost lost track of them.
9 Q Okay. Approximately how many people have
10 contacted you about this?
11 A Personally?
12 Q Yes, personally or by e-mail. If you can
13 indicate, you know, how many made personally, how many by
14 e-mail.
15 A At least, at least 15, at least 15 neighbors. I
16 have been, we had -- we invited people to come see our new
17 basement renovation, and I had five couples come to see
18 that, and all they wanted to talk about was the Ball
19 construction. We had a little yard sale, and everybody who
20 came by wanted to talk about the Ball construction. When I
21 walk the dogs, people always want to talk about the Ball
22 construction and complain about the house, and when I go to
23 the pool, people come up to me at the local pool and also
24 talk to me about it. There seems to be -- I mean, people
25 are upset about it; they have been for some time.

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1 Q Can you tell the Hearing Examiner, can you tell,
2 at least, what are the general complaints that people have
3 been making to you?
4 A Well, the character of those complaints is
5 twofold. One is that the construction never finishes, you
6 know, is that they want to see it be done, and the other,
7 the other avenue of complaint is that it just, just doesn't
8 go with the neighborhood; is that it just, it's just too big
9 and doesn't look like anything else in the neighborhood; the
10 finishing, you know, why did they allow it to go so large;
11 why does it have the red brick and the trim that it has; it
12 looks like a series of boxes put together. I mean, I've
13 gotten all kinds of complaints about it, and I don't know
14 why people talk to me, but they do because I've been in the
15 neighborhood for a long time.
16 Q Okay.
17 MS. ROBESON: Ms. Rosen, I've let her go on, but
18 the focus of this proceeding is whether -- not necessarily
19 whether other people like it, but whether it conforms to the
20 plans. So are you going to --
21 MS. ROSEN: I understand.
22 MS. ROBESON: I'm just telling you, we need to
23 keep it relevant to the issues at hand.
24 BY MS. ROSEN:
25 Q Okay. I'm just going to ask you just if you can

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1 identify the document, this document, which was previously
2 marked as Exhibit 77 in this case, if you've ever seen that
3 before.
4 A Yeah. These were the plans that were sent to me
5 in approximately, I think June of 2013.
6 Q Okay. Are those the same plans that you're
7 referring to in this e-mail?
8 A Yeah. These are the only plans I've ever gotten.
9 Q Okay. All right. Thank you very much,
10 Ms. Joiner.
11 MS. ROSEN: I don't have any further questions.
12 MS. ROBESON: Thank you. Cross-examination.
13 MR. MOHAMMADI: Thank you.
14 CROSS-EXAMINATION
15 BY MR. MOHAMMADI:
16 Q Good afternoon, Ms. Joiner.
17 A Hi.
18 Q How long have you been living in the community?
19 A Twenty-five years.
20 Q Twenty-five years. And for that entire 25 years,
21 there's been construction on that property?
22 A No. There's been construction on that property at
23 least since I've been walking my eldest dog --
24 Q Okay. So --
25 A -- which is nine years.

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1 Q For the last nine years. Okay. Are you aware
2 when the Balls submitted their first application with
3 respect to this current construction?
4 A No. I think it was 2011.
5 Q Would you be surprised if I told you it was
6 submitted in 2008?
7 A I don't know. I haven't kept track of when things
8 were submitted.
9 Q Well, would you be surprised if I told you that it
10 took three years from the first submission to the final
11 approval in 2011?
12 A No, I don't think I would be surprised. I'm
13 surprised that they approved it at all.
14 Q Okay. So it's normal for, in your opinion, in
15 your experience, it's normal that it takes three years for a
16 set of plans to be approved?
17 A No, of course it's not. Of course it's not
18 normal. It's -- if plans are, you know, within the
19 community standards, I would assume that they would be
20 approved rather quickly.
21 Q And so after the plans were approved in May of
22 2011, do you know what work was done after that?
23 A I don't know.
24 Q Okay. Again, would you be surprised that work was
25 required to be halted due to various CCOC filings and issues

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1 that came up?
2 A No, I wouldn't be surprised.
3 Q Okay. Would that explain why it has taken so long
4 to complete the project, because the Balls were required to
5 wait?
6 A I can't answer that.
7 Q Okay. Now, you said you were surprised that the
8 plans were approved, right?
9 A Yes.
10 Q In fact, you never got notice that the plans were
11 so approved, right? You didn't receive a notice of any kind
12 that plans were -- I think that's what you --
13 A Why would I?
14 Q I'm asking you, did you receive notice?
15 A No, uh-huh.
16 Q Okay. But you received notices of HOA board
17 meetings?
18 A Yes.
19 Q And those notices didn't inform you that there
20 would be a vote taken on the plans?
21 A No, uh-huh.
22 Q Okay. Were you aware that a board meeting was
23 held to take the Balls to the CCOC on this case?
24 A Yes.
25 Q Okay. And how were you aware of that?

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1 A I was aware of that because I was asked to serve
2 on the board. Someone resigned or left the neighborhood, I
3 don't know what the circumstances were, and they asked me if
4 I would temporarily serve on the board until the next
5 election, and I agreed. So I participated in that vote.
6 Q Okay. And when was that vote?
7 A You know, I don't know. It should be recorded in
8 the minutes.
9 Q Okay. When did you serve?
10 A I served from last, last January maybe until the
11 vote in April.
12 Q Okay. Are you sure you're not talking about a
13 different CCOC case and not this particular one? Are you
14 sure you're not talking about the CCOC case that involved
15 the deck and the shed?
16 A No, I wasn't -- I had no, I had no knowledge of
17 that at all.
18 Q Okay. So it is your contention the vote took
19 place on this CCOC case sometime in, between January and
20 April of 2013?
21 A No. I don't remember. I mean, it could have been
22 earlier.
23 Q Okay.
24 A I just know that I served on the board for a short
25 period of time and I was at the board meeting where,

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1 reluctantly, we had to vote on whether or not we'd proceed
2 with this case and that I, that I voted to proceed, that I
3 was part of that vote.
4 Q Can I ask you if you recall when that was?
5 A I told you that I don't --
6 MS. ROSEN: I think she just said she doesn't
7 recall.
8 MS. ROBESON: Just a second.
9 MS. ROSEN: I'm sorry.
10 MS. ROBESON: If you --
11 MS. ROSEN: Objection. It's been asked and
12 answered.
13 MS. ROBESON: Okay. It has been --
14 MR. MOHAMMADI: Okay.
15 MS. ROBESON: -- so I'm going to sustain it.
16 THE WITNESS: All I know is that I -- we had
17 discussions about the roof in September/October and that I
18 resigned as a board member at the next election in April.
19 So it had to have taken place between October of 2013 and
20 April of 2014.
21 BY MR. MOHAMMADI:
22 Q Okay. I think you took a look at a set of plans.
23 Was it Exhibit 77? If you don't mind looking at it again.
24 A Sure.
25 Q Is this the format you saw the plans in?

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1 A Yes.

2 Q Okay. Have you ever seen plans like this? I'm

3 showing you what's been marked as Exhibit 126.

4 A No, I've never seen those.

5 Q Okay. So you've never seen these approved plans?

6 A I have not.

7 Q Okay. You're not an architect, you said, right?

8 A No. I'm an attorney.

9 Q Okay. And do you have any experience in reading

10 architectural drawings?

11 A I do not.

12 Q Okay. Do you have any experience in, you know,

13 home renovation or home construction?

14 A All homeowners have experience in home

15 construction, home renovation, but not professionally, no.

16 Q Okay. So, in your opinion, the only problem is it

17 just doesn't seem to conform with the rest of the community

18 and that the house is sort of, the construction is ongoing,

19 right?

20 A Yes, and particularly, my objection at the time

21 was the roofline because one roof was put on top of another

22 roof and was quite high.

23 Q And you just thought it was odd to put trusses on

24 top of an existing roof? Is that, is that what you thought?

25 A Yes, and I also thought -- again, you know, I'm

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1 totally a layperson and I admit that -- but in looking at

2 the side elevations of the house, it just seemed like the

3 roofline was a lot higher than what appeared on the plans.

4 Q Okay. When you say seemed like, what are you

5 basing that on, what measurements or something like that?

6 A Just, just my, just my eye measurements.

7 Q Okay.

8 MR. MOHAMMADI: Okay. Just Court's indulgence for

9 one second. Nothing further.

10 MS. ROBESON: All right. Redirect, Ms. Rosen?

11 MS. ROSEN: No redirect.

12 MS. ROBESON: All right. Thank you, Ms. Joiner.

13 You can --

14 THE WITNESS: Thanks.

15 MS. ROBESON: -- be excused.

16 THE WITNESS: Okay.

17 MS. ROBESON: And does that end your

18 case-in-chief?

19 MS. ROSEN: Yes, it does.

20 MS. ROBESON: Okay.

21 MR. MOHAMMADI: Can I stand up or do I need to --

22 MS. ROBESON: Yes, you may.

23 MR. MOHAMMADI: All right. Thank you. All right.

24 We'll be moving for judgment at this time on the complaint

25 and the supplemental complaint filed by the complainants in

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1 this case, Potowmack Preserve, for a number of reasons, and

2 I'll try to, I'll try to stay as organized as I can with

3 this, make it a little easier.

4 First off, I'd note, this -- what we're talking

5 about here is a person's home, the Balls' home. They're the

6 ones living in it. They're the ones that have to put up

7 with this ongoing process where they're seeking approval,

8 stops, starts, stops, starts to their constructions. If

9 anybody is suffering, they are suffering. They're the ones

10 that live in it. They're the ones that have to go through

11 it every day. It may be an eyesore, as some people say, for

12 them as they walk by or whatever, but the ones that are

13 truly suffering are the Balls.

14 This is not the first time they've ever been taken

15 to the CCOC. You're aware of that. Everybody is aware of

16 it. This has happened before, and as you're aware, part of

17 our case, our countercomplaint is this whole, is about bad

18 faith, that this is all being done in such a way that it's

19 specifically targeting the Balls because of some disputes

20 that arose years ago, and now everything is looked at so

21 critically, and every little thing is taken into account and

22 presented to the CCOC or brought up at board meetings or

23 otherwise when it shouldn't be, when nobody else in the

24 whole community is subject to that same, same issue. Now,

25 that's sort of -- I'll leave it at that for right now, okay?

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1 The burden of proof is on the complainants to

2 prove their case. At this stage, they have not met that

3 burden. They have not shown that, one, the roof was higher

4 than what was shown on the plans -- and I'm going to address

5 that separately -- and, two, none of the items on the

6 supplemental complaint have been shown to be an actual

7 violation or deviation from the plans.

8 Okay. I'm going to start off with the original

9 complaint. Now, when I say original complaint, I mean the

10 complaint that was filed, that all it talked about was, was

11 the roof. I have it right here in front of me, and it's a

12 15-paragraph complaint, and the only thing in this complaint

13 that is discussed is the roof and that it is substantially

14 higher than what was built.

15 There are two paragraphs that are of importance in

16 this, in this filing: paragraph 7 and 8. Those two are the

17 crux of this roof issue, okay, and I'll quote it. Paragraph

18 7: The plans and drawings submitted by Peter Ball as part

19 of his construction application, which was approved by the

20 association, showed that all new roofs over the house as in

21 line with the existing roof height and were approved as such

22 by the association. They're saying the approved plans,

23 Exhibit 126 specifically, shows that the plan built shows

24 the same roofline as the as-built designs.

25 Now I'll go on to paragraph 8. It says, instead

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1 of complying with the plans submitted and approved by the
2 association for the new roofs, the responses have built a
3 roofline at a higher than existing roofline, okay, again,
4 saying the roof that now exists is higher than what existed
5 on the as-built drawings. I don't think anybody is
6 disputing that. Nobody is saying that trusses were not put
7 on top of the roof. Nobody is saying that the roof height
8 has in fact been raised. That's clear. It has been raised.
9 That's not the question. The question is, is that not shown
10 in the plans? Is that different than what was approved,
11 that the roof would be raised?
12 And, again, I want to be very clear on this.
13 Okay? The complaint doesn't say it was raised two feet too
14 high than what was shown, doesn't say they said the roof is
15 going to be raised by six feet but what was actually built
16 is eight feet. Some things that are put in the supplemental
17 complaint are specific like that; they say it's supposed to
18 be two windows but now there's three windows. That's not
19 what the complaint says. What the complaint says is it
20 should never have been raised, and the mere fact that it has
21 been raised is the violation that we're here on. That's
22 completely wrong. Okay? It has to be completely wrong.
23 If you look at the plans yourself, okay, it
24 appears to me throughout these discussions -- and you've
25 been doing this for a while -- that you have some

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1 experience, probably a lot more than I do, with reading
2 plans, with going through how to scale drawings, and things
3 like that. Okay? If you compare the as-built drawings --
4 they're in 126 -- to the plan drawings, okay, it's, there's
5 no question that they show that the plan drawings are
6 higher, the roofline of the plan drawings are higher than
7 the as-built drawings. It has to be that way.
8 We are talking about an as-built drawing -- I'm
9 looking at AB5 -- we're talking about an as-built drawing
10 that does not have a second addition over the garage, that
11 does not have an addition over the back of the house. We're
12 talking about a plan that was submitted that specifically
13 said the roof pitch would be kept the same as the existing
14 plans. Everybody is saying that: the roof pitch is the
15 same.
16 How is it even possible to put two additions on
17 two sides of the home, keep the existing roof pitch, and
18 still meet up at the original roof height? It's not
19 possible. It can't be possible. Common sense says there's
20 no way that can happen. It's, again, looking at the plans
21 yourself -- and I have a scale, okay, and if it goes
22 forward, I'll have my expert do this, but I have a scale.
23 You can look at the plans and do the scale yourself. It
24 clearly shows that the as-built and the plan drawings, the
25 roof is raised. There's no question whatsoever about that.

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1 So I again ask, if it's that clear, if it's
2 clearly in the drawings, how can that be a violation? If
3 the complaint says the violation is you raised the roof
4 higher than the existing roofline and you didn't tell us in
5 your drawings that you were doing that, well, the drawings
6 tell the complainant exactly what was going to be done, that
7 the roof is going to be raised.
8 I would also note, if you look at the complaint,
9 they're specifically addressing the plans that were
10 approved. Okay? There doesn't -- there's no talk about
11 Mr. Ball told us in person or in a letter or anything like
12 that that what they're going to do is not raise the roof.
13 The complaint specifically references and only cares about
14 the approved plans, Exhibit 126, and that's what the focus
15 should be: look at the enforced plans, approved plans, and
16 that's it.
17 What you have here, at best, I think, is the board
18 possibly -- and this is, I think I'm being generous --
19 possibly having been confused themselves, not knowing, not
20 having done their due diligence when they approved the
21 plans. It kind of shocks me that after three years of
22 submitting plans back and forth, back and forth, back and
23 forth, the HOA still doesn't know, still didn't know that
24 the plans were going to require the roof to be raised.
25 Dr. Barr today testified, when I pointed out,

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1 don't you see there's an addition being built over the back,
2 this is the first time I saw it now that you pointed it out.
3 He's the architect, not me. He's the one that was allegedly
4 responsible for going through these plans and making sure
5 they met whatever the architectural committee or HOA
6 required before they were approved, and I say that because
7 -- and I say allegedly because we don't know what was done.
8 I don't think it's clear what process they took to
9 review these plans and to do their due diligence. In fact,
10 I don't think they really did their due diligence. No
11 experts, independent experts were hired to come and look at
12 plans. Moreover, no independent experts were hired to come
13 and bring this case, to come and see is there in fact a
14 violation before we go and file this complaint. Nobody did
15 that.
16 I would also point out, not a single expert
17 testified today or in these last three days with respect to
18 anything. No, Dr. Barr was not qualified as an expert, and
19 I think you said it's really strange to have the president
20 of the board, who is filing the complaint, also serve as an
21 expert. I would agree with you, it's very strange.
22 Ms. Gowan was not, was not an expert. So there's not one
23 expert here to say, in fact, there's deviations from these
24 approved drawings, not one. And, again, that just goes to
25 have they met their burden of proof in this case, and I

1 simply don't think they have. They can't have with respect
2 to the roof, at all.

3 Now, my focus there was just on the roof, and I
4 did that because, essentially, this case comes down -- it
5 was split up into two things. One was an original complaint
6 that was filed. Thereafter, there was a supplemental
7 complaint added on after the fact. Okay? I'm going to
8 address the supplemental complaint, but I'm going to address
9 it as procedural issues at this point, okay, not factual
10 anymore, but procedural. Okay? And when I say procedural,
11 I mean, there's a lot of procedural issues in this case,
12 okay?

13 It first, it first starts out with board meetings,
14 board votes, and board notices. All you have in this case
15 are generic notices sent out to, what is testified, to the
16 homeowners, some of them through electronic means, others by
17 mail. Ms. Joiner testified she doesn't know how she got
18 them. She got them, but she doesn't even know how she got
19 them. She was aware of meetings, doesn't even really know
20 how that's, how she's aware of it.

21 These meeting notes and notices are completely
22 vague. You have a house that you want, and a family, that
23 you want to take to the CCOC. You want to tell them to stop
24 doing your construction, tear everything down, pay me my
25 attorney's fees for having to go through this; yet you don't

1 give the proper notice to let them explain, you don't take
2 the proper vote, you don't give them the requisite amount of
3 time to present their case and let the time pass before you
4 take your vote. That's not proper procedure. You have to
5 follow your own procedures as they're set out. You have to
6 follow the county procedures as they're set out, and those
7 require that notices be sent, an opportunity to be heard be
8 given, and that public votes be taken on whether you should
9 go to the CC or not. None of that happened.

10 There was one meeting that we have heard about,
11 October 7, 2013, where Mr. Ball was present with his, I
12 think somebody testified, his friend, who also happens to be
13 an attorney, and the board discussed the roof issue, and I'm
14 being specific, just the roof issue was testified to by
15 Dr. Barr. They discussed the roof issue at that hearing,
16 and he stated that they decided at that point, on October 7,
17 2013, not to take them to the CCOC, to try to resolve the
18 matter, to try to mediate it and see if they could come in
19 line, fix whatever was wrong with the roof that they thought
20 at that point. That was on October 7, 2013. I haven't seen
21 any notices for that, by the way, but since the Balls
22 attended, I presume at some point they got the notice for
23 it. Okay?

24 Subsequent to that, apparently a vote was taken to
25 take the Balls to the CCOC. That vote happened on October

1 28th, 2013, exactly three weeks later. That was done
2 without notices again, without an opportunity to be heard,
3 and behind closed doors, essentially, because nobody knew.
4 The Balls didn't know. They never got, they couldn't have
5 known if no notices are sent -- again, no evidence -- you
6 have all the notices -- no evidence that any notice was
7 sent.

8 It's really unusual to say you need the
9 opportunity to be heard, we have taken a vote, we have
10 decided that you're not going to go to the CCOC, and three
11 weeks later to change your mind, take a vote on the roof,
12 and take him back to the CCOC now. That is not following
13 procedure. They should not be here right now. They should
14 not be permitted to maintain this case because they have not
15 followed their own procedures. They have not afforded an
16 opportunity, the notice, and the time to allow Mr. Ball to
17 present his case prior to going to the CCOC, and that's
18 required and, again, as I said, that was not given.

19 Now, all I've -- again, everything I've said so
20 far deals with the roof only. The discussions have always
21 been about the roof. The discussions have always been
22 about, your roof looks too high, and I think Dr. Barr's
23 explanation of why he thought it was too high, well, the
24 roofline existed past the chimney, it was higher than the
25 chimney. Right, the chimney would also have to be raised

1 once the construction's done. It hadn't been raised at the
2 point he inspected the property on September 15th or 13th or
3 whatever it was, 2013, when he went to the property. The
4 only thing that had been done is roof trusses had been
5 placed on.

6 It's completely clear that the construction is
7 actually still ongoing. There's a lot of pieces that have
8 not been done. The addition on the back of the house hasn't
9 even been started. There is siding missing. There is all
10 kinds of windows and trim that are not completely finished
11 yet. So the construction is ongoing.

12 So, yes, when you go in the middle of a
13 construction, you see that the roof height shows that it's
14 higher than the original chimney, that's because the
15 original chimney has not been raised yet. That part of the
16 construction has not happened yet. That can't be your
17 measurement of whether there's a violation, that if I do a
18 visual inspection, it looks like there's a difference
19 between the roof height and the chimney, that that can't,
20 that cannot be meeting your burden of proof to show there's
21 a violation and a deviation from what the approved plans
22 are. That's simply -- and that's all that was done. That
23 is as far as it went, going mid-construction.

24 Nobody took measurements. Not a single person
25 testified about measurements. Nobody hired an independent

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1 expert or architect to come out or an engineer or a home
2 improvement contractor or anybody to come out. There's an
3 architectural committee which presumably -- and we don't
4 have too much information about them -- presumably they're
5 on the architectural committee because they have some
6 knowledge about architecture, construction, things like
7 that. Lee Alford was the chair of that committee. We have
8 yet to hear testimony from Lee Alford. I find that
9 surprising given that she probably has some knowledge about
10 this; yet she's not here, she never testified to say what
11 she thinks were the violations, why there were problems,
12 et cetera.

13 Now, going to the supplemental complaint, the
14 supplemental complaint that was in this case was apparently,
15 to the best of my knowledge, also part of the previous CCOC
16 case, 73-12. It was filed along with that complaint later
17 on, and it was then dismissed out as essentially being a new
18 case, as it not being part of the original filing, and it
19 was dismissed out.

20 The same thing happened here. You have an
21 original complaint that's filed that's just dealing with one
22 issue, the roof; then you add on after the fact 16 or so, 17
23 or so supplemental issues that go, have nothing to do with
24 the roof, it's just -- the same property but nothing to do
25 with the roof. It goes above and beyond the original

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1 complaint. So there, again, those supplemental portions
2 shouldn't even be here today. They should also be dismissed
3 out because they're not properly in front of the CCOC again
4 today.

5 Assuming for a second that they are properly, in
6 terms of they can be maintained with the original complaint,
7 not one time, not one person has said opportunities were
8 provided to the Balls to present evidence about those
9 deviations, whether they existed or not, no notices were
10 sent out, no discussions were had, no meetings took place
11 about those supplemental complaints, and no vote was taken
12 on the supplemental complaints and all the issues. The only
13 person that -- Dr. Barr testified and specifically said,
14 when we voted on October 28, 2013, we voted on the roof. He
15 said, we didn't vote on the -- he specifically stated, we
16 did not vote on the supplemental complaint.

17 How are we here on the supplemental issues if the
18 HOA itself never voted on it, if the HOA never gave the
19 Balls the opportunity to present their case before the HOA,
20 before the HOA took it to the CCOC? It can't be here if you
21 don't -- if you don't follow your own procedures and the
22 procedures set up by the county, you cannot be here today
23 and that should be dismissed out.

24 Now, with respect to the supplemental items, I
25 would point out, the only person that apparently has

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1 knowledge about these supplemental issues is Ms. Gowan.
2 Dr. Barr testified and he said, ask Ms. Gowan, ask
3 Ms. Gowan, she knows, ask Ms. Gowan, basically on every
4 single one.

5 Ms. Gowan is, true, a member of the HOA board; she
6 is the secretary, but I submit to you that she should have
7 recused herself from these proceedings altogether. There is
8 long history here. She has said she set up an alarm system
9 because she's worried. She wouldn't specifically say
10 whether they had friendly or not friendly relations, whether
11 there was conflicting relations or not. She sort of dodged
12 that question and says, I don't know, which I'm not sure how
13 you can say, but she said, I don't know, but it's clear
14 there's been history here. There have been lawsuits filed
15 in court and litigated fully through. She has filed several
16 DPS complaints -- and we have some of them in the record --
17 against, against Mr. Ball. She is the one that initiated
18 all of this additional supplemental stuff. She's the only
19 one that made this list, and nobody else did.

20 It seems to me what happened is she created this
21 list, gave it to the board, and the board just simply said,
22 add it on, add it on to this complaint, we'll go with it.
23 Nobody else knows about it. Nobody else can say what's
24 really wrong except for Ms. Gowan, and I will submit, she
25 doesn't also really know what's wrong. She never went on

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1 the property to take measurements. She never went to
2 inspect or hired somebody to come and determine whether
3 there's actually, in fact, issues with those items that she
4 listed. All she said was, well, I looked at these plans
5 and, you know, it looks like the trim here is wider than the
6 trim here. I find that extremely interesting given her
7 testimony today.

8 She testified today, I can't rely on these plans,
9 they're not to scale, I don't know if they're to scale, I
10 don't know if they're accurate, I can't tell because the
11 elevations are off, I can't tell from this that the roof is
12 raised, but she can tell how wide a trim of a window is
13 supposed to be? She can tell how many layers of brick are
14 supposed to be on for the knee wall? I don't think so. It
15 just simply doesn't make sense. Okay?

16 And I think that's just evidence of the bias that
17 she has towards Mr. Balls, Peter Ball specifically. They
18 don't get along, and she's trying to get him, okay, and this
19 is her way of getting him: tear everything down, don't do
20 any more construction and that's it; board, I'm on the
21 board, I tell them this is what's going on, they just sort
22 of rubber-stamped it and let's go with it, and that's what
23 happened here. Again, that is not following your
24 procedures. That is not doing what you're required, to be
25 here.

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1 To drag everybody to court for six months now,
2 seven months this is going on, this is now the third day of
3 hearings, I know there's going to be a fourth day of
4 hearings if this continues, possibly a fifth day, okay, and
5 I hope not, but that's not doing your job, that's not
6 following your procedures, that's not being fair, that's not
7 -- you know, this is unfair to the Balls.
8 They're expending attorneys' fees, just like the
9 board is, to defend something that's improperly here. It
10 should never have been brought. It could have been
11 resolved. It should have been resolved. Mr. Gibson
12 testified he was trying to mediate it -- officially
13 sometimes, unofficially sometimes, not sure how we're
14 supposed to tell the difference because he never said,
15 sometimes I was there officially, sometimes I was there
16 unofficially. Again, that goes to following their own
17 procedures, but it should just simply not have been here
18 today, and we should not be having these hearings today.
19 At best, what you have is speculation. At best,
20 what you have today and for the last three days is
21 speculation of what is wrong. That is not meeting your
22 burden of proof. You can't speculate that the roof is
23 higher than it's supposed to be. You can't speculate that
24 the trim is wider than it's supposed to be. You cannot
25 speculate that the wall, that the brick is higher or that

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1 the door is wider or that the pitch is a little different or
2 that the plans are not where they're supposed to be. You
3 cannot speculate about these things when we are in court.
4 That is not meeting your burden of proof, and all you have
5 today is speculation and that's it.
6 I want to address one last thing. I sincerely
7 believe that everybody that testified is looking at the
8 incorrect set of plans. The correct set of plans that
9 should have been subject to whether there's any
10 discrepancies are the December 16, 2013, plans that were
11 submitted. They were submitted. They were dropped off, and
12 they were deemed approved after 45 days because the board
13 took no action on them. That's within their own guidelines,
14 within their own bylaws and procedures.
15 I think the attempt was made to show, well, it was
16 irregular how they were, the application was submitted,
17 there was no form submitted with it. I think we have shown
18 clearly that many times before, applications were submitted
19 without the form and, although rejected, notice was given:
20 hey, you didn't do this correctly, go fix it; you need to do
21 this, x, y, and z are missing, go get it done. In this
22 case, no notice given. Mr. Gibson stated, I never told him.
23 Dr. Barr said, I didn't even know until a month later that
24 they were submitted, and they didn't take any action.
25 Nobody took action on those plans; so they are

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1 deemed, pursuant to the HOA's own rules and procedures, they
2 are deemed approved, and what needs to be done -- and nobody
3 testified about this -- what needs to be done is, what is
4 currently built needs to be compared to those plans from
5 December 16, 2013, and those are the ones that should have
6 been used to determine whether there are any material
7 deviations, whether the roof shows that they're not supposed
8 to be raised, all of that. Not one person testified about
9 it, and I think, again, that by itself, as well, is grounds
10 for judgment in this case at this point. Thank you.
11 MS. ROBESON: Okay. Thank you. Ms. Rosen.
12 MS. ROSEN: Okay. Well, I guess I will first
13 start with the Montgomery County Code, Section 10B-9:
14 Filing disputes; exhaustion of association remedies. And,
15 basically, what it says that the Commission -- a party is
16 not to file a dispute with the Commission until the party
17 makes a good-faith attempt to exhaust all procedures or
18 remedies provided in the association's documents.
19 This association's documents have no procedures
20 with regards to resolving disputes. What the association
21 did do, however, as the evidence, I think, clearly showed,
22 is that long before the association filed in CCOC, it
23 attempted, in good faith, to meet with and work with
24 Mr. Ball.
25 The mere fact that it took -- first of all, start

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1 with the application. It was filed originally in the year
2 2008. The association -- and these are all, these are
3 volunteers; these people do not get paid for their time;
4 they are volunteers -- for three years we're going back and
5 forth with Mr. Ball on this complicated construction project
6 in order to help him achieve the goal that he wanted, and
7 then in 2011 a plan was approved. And there's been
8 substantial evidence shown as to what was going on before
9 that in terms of the issue about, you know, what the roof
10 was going to be like and other aspects, and then we had an
11 approved plan. So there's no question that was an approved
12 plan. That is the approved plan, but what basically
13 happened is, is that Mr. Ball, down the line he started
14 doing construction that was outside of the parameters of
15 that approved plan.
16 We had the previous case, which is CCOC
17 73-12, and clearly that was -- quite frankly, that was, I
18 believe, a 16-or-so-page, single-spaced decision. It was,
19 it was quite, it was scathing. It was an absolutely
20 scathing decision that basically said that, you know -- and
21 the same type of situation. I think in that decision the
22 hearing panel referred to eight different meetings at which,
23 you know, the association board members were meeting with
24 Mr. Ball or his attorney or others to try to work with
25 Mr. Ball to make sure that the project went okay and without

1 any form of litigation. It didn't happen. We had to take
 2 him to the CCOC, had a hearing, just very similar to this
 3 one; CCOC ruled in the association's favor and awarded
 4 attorney's fees. That wasn't the first case of this nature.
 5 This is a history.
 6 You know, Mr. Mohammadi would like to just take
 7 this completely out of context. It cannot be taken out of
 8 context because, prior to that case, there was another case
 9 a few years before that. I believe it was 6, I can't
 10 remember the number now, but it was referred to in the 72-13
 11 case -- once again, another similar situation: a
 12 construction application approved by the association and,
 13 once again, Mr. Ball started constructing and doing things
 14 that were not in accordance with that application; again,
 15 went into -- after many efforts made by the, by the board to
 16 work with Mr. Ball, nothing was working out, they took it to
 17 the CCOC. The CCOC decided in favor of the association and
 18 awarded the attorney's fees.
 19 In this particular case, with regard to the roof
 20 in the supplement, we actually did try to amend the
 21 complaint in 72-13 to bring it in, precisely to avoid having
 22 to do yet another hearing. Unfortunately, because I think
 23 it was too close to the hearing date, is my recollection,
 24 they didn't want -- they said you're going to have to file a
 25 separate, separate case now. So that is what we did.

1 In this case -- and I think the evidence shows
 2 clearly here -- this board, once again, they tried to work
 3 with Mr. Ball. They tried to meet with Mr. Ball, even
 4 informally. There was, you know, Raj Barr and Peter Gibson,
 5 I believe, Lee Alford went to his home because they became
 6 concerned, as they testified, when they saw those trusses up
 7 on top of the roof -- and other people also were alarmed by
 8 this -- they didn't want Mr. Ball to keep on constructing in
 9 that manner that was not in accordance with what the plans
 10 were. But what they did tell him is, you know, we don't
 11 want you to stop constructing, we want you to finish, but
 12 you've got to do it in accordance with the plans.
 13 And basically, and it was also -- once the
 14 decision in CCOC 72-13 came down, what did Mr. Ball do?
 15 After getting hit with a scathing decision against him, he
 16 then decided he was going to immediately start, you know,
 17 continue with constructing the roof at issue here, finishing
 18 it off -- you know, first it just had the trusses --
 19 finishing it off after getting this decision.
 20 So what, I mean, I'm not sure what, what the Balls
 21 think that the association should or should not have done,
 22 but we clearly made a good-faith effort to try to work with
 23 Mr. Ball to avoid having to come to the CCOC again, because
 24 contrary to what Mr. Ball may believe, Dr. Barr and
 25 Ms. Gowan and Mr. Gibson, these people actually have

1 something that's called real jobs, where they actually go to
 2 work every day, and this is really a waste of their time,
 3 quite frankly. They are, they and other volunteers are
 4 being forced to expend a whole lot of time to have to deal
 5 in litigation because Mr. Ball -- and this is over the
 6 years, and this is all in the record -- continues to apply
 7 for construction projects that get approved and then tries
 8 to do something completely different.
 9 And I find it very interesting with regards to
 10 this December -- you know, one thing that you'll notice, all
 11 the applications that have been put into evidence here --
 12 there's the, you know, original application that he
 13 submitted and then the application with the large sheet,
 14 126, and then there was a supplemental that he did for the
 15 brick and the siding -- one thing they all have in common is
 16 they all have an application form on it.
 17 Mr. Ball is very, very well aware of what the
 18 requirements are here. So it's not as though -- so now he's
 19 trying to make an issue -- and I find it very ironic that
 20 Mr. Mohammadi seems to think that it's my duty to put forth
 21 what he is claiming is the true application of December
 22 16th. Our position is that there's only -- the application
 23 that was approved is the one that's in evidence here and
 24 that was also put into, put into evidence in the previous
 25 case at which, by the way, the Balls were represented by

1 counsel, and during that case, Michael Ball decided he
 2 didn't even need to be there.
 3 But we have more than met our burden of proof
 4 here. In issue here is, does the, does the construction
 5 that is existing at this property now, with regards to the
 6 roof and the other areas of the supplemental complaint, do
 7 they or do they not meet with, with the approved plans? Our
 8 position is that they don't and that there's been ample
 9 testimony and evidence on the part of our witnesses,
 10 indicating that they do not. Now, at this point, it would
 11 be up to Mr. Ball, if he believes that it does and he has
 12 witnesses to testify to that effect, he can certainly
 13 testify to that effect.
 14 I will note, and I can't remember the name of the
 15 case off the top of my head at this point, but there is a
 16 case that the CCOC decided with regards to architectural
 17 applications where they basically said, to the extent that
 18 there's any ambiguity in architectural plans submitted, that
 19 ambiguity doesn't -- that gets construed against, not the
 20 association, but the person who actually submitted the
 21 plans. And I think, probably very arguably, and if there's
 22 -- there may be certainly some ambiguity here, and if there
 23 is any ambiguity, if the Hearing Examiner finds ambiguity,
 24 then my position is that the, that it would end up being
 25 construed against the person who created the plans, not

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1 against the association.
2 We have followed -- as far as meetings, Mr. Ball
3 and his attorneys, they have been at many, many, many of the
4 board meetings. There's really no question that he has been
5 an active participant, and in fact, interestingly enough --
6 and it's in the other case too -- Mr. Michael Ball didn't
7 even bother, or Peter Ball, they didn't even bother to tell
8 the association that Mr. Peter Ball was no longer the owner
9 of the property during the course of the application,
10 because Mr. Peter Ball in fact conveyed the property to his
11 son, Michael Ball. I believe it was probably shortly after
12 the first CCOC case that he lost, and then when the
13 application -- the original application in this case was
14 actually submitted by Peter Ball and Arianna Savinska
15 (phonetic sp.), who were, who were the owners and were the
16 first defendants in the first case, and then by the time
17 this application was approved, actually Michael Ball was the
18 owner, but at no time -- the association didn't even know
19 that at the time, and that's in the record in the other
20 case.
21 Our position is clearly, this case is meritorious.
22 We've met our prima fascia case, so to speak. We've made
23 our prima fascia case in this matter, and now it is time for
24 the, for the respondent/defendant to put forth their case if
25 they feel they have one.

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1 As far as expert witnesses are concerned, as far
2 as a comment, I mean, I was a bit surprised that the Hearing
3 Examiner didn't want to qualify, you know, Raj Barr or Lynn
4 Gowan as experts because in a court you could qualify, you
5 know, a party can be -- if your party is an expert, they can
6 be qualified, even though they may be a biased expert. But
7 clearly, both Raj Barr and Lynn Gowan have the, have the
8 knowledge and the training to be able to testify, as they
9 did, and there's certainly no requirement, you know, for a
10 homeowner's association -- I mean, he's indicating that the
11 homeowner's association should go out and hire experts or
12 engineers to come and measure and do things on Mr. Ball's
13 property. It is not the association's job to do that.
14 Mr. Ball has to construct in accordance with his
15 plans. We don't care how he gets there. He just has to do
16 what's in accordance with his plans. There are 159
17 homeowners in this community. Just imagine if every time
18 somebody wanted to make a change, we had to go through what
19 we've gone through with regards to the Ball matter.
20 I think it's very clear that Mr. Ball has a very
21 long history on the record of starting construction
22 projects, getting them approved, and then just going off the
23 reservation, and our position, he's basically done the same
24 here, and at this point, the burden shifts to Mr. Ball with
25 regard to this case.

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1 MS. ROBESON: Thank you. All right. I am going
2 to deny Mr. Mohammadi's motion. Ms. Rosen is correct as to,
3 there is a CCOC opinion, stating that if it's ambiguous --
4 and that's a question -- that it should be construed against
5 the drafter of the plan or the application. I haven't made
6 up my mind on anything, any facts yet, but I don't think
7 it's appropriate to decide it on a motion at the end of the
8 complainant's case.
9 And there is -- paragraph 2 of Exhibit 76, I think
10 it is, that is a, at least a textual, or appears to be a
11 textual communication to the effect that it would meet the
12 existing ridgeline. I would be interested in knowing, at
13 some point in your case, what the pitch would be if you went
14 from the flat roof to 28 inches below the existing
15 ridgeline, because I think the pitch would be higher than
16 three -- well, I don't know. I would be interested in
17 knowing what the pitch would be from the flat roof to 28
18 inches below the ridgeline. And in the end of the day, the
19 question that I have to answer, or I have to make a finding,
20 is whether the board's actions were reasonable in light of
21 all the information in front of them.
22 As far as the expert testimony, we generally do
23 not qualify, simply because the courts have said -- we do
24 not qualify parties as experts because the courts have
25 indicated that there is an inference, a direct inference

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1 that they are biased, and then their testimony is, is given
2 less weight. If the parties want to find some different
3 case testimony -- now, that doesn't mean that I'm -- when I
4 go through the evidence, it doesn't mean that I am
5 disregarding his 40 years of experience as an architect.
6 The other point is, I think Mr. Barr testified --
7 I haven't heard anyone say that the actual blueprint plans
8 were submitted. I did hear Mr. Barr say that the, that
9 reduction of blueprint plans, you can't trust the scale
10 anymore. So if these were the only things permitted -- and
11 so I haven't made up my mind in this case, but I am simply
12 not ready to grant a motion at this stage of the game. So
13 with that, we are going to take a five-minute break, and
14 then we'll come back, and Mr. Mohammadi, we will hear your
15 first witness.
16 MR. MOHAMMADI: Sounds good.
17 MS. ROBESON: Thank you.
18 (Whereupon, at 2:04 p.m., a brief recess was
19 taken.)
20 MS. ROBESON: All right. We're back on the
21 record. Mr. Mohammadi.
22 MR. MOHAMMADI: Thank you. I'd like to call
23 Mr. Leo Schwartz.
24 MS. ROBESON: Okay. Mr. Schwartz, please raise
25 your right hand.

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1 (Witness sworn.)
2 MS. ROBESON: Okay. Go ahead, Mr. Mohammadi.
3 DIRECT EXAMINATION
4 BY MR. MOHAMMADI:
5 Q State your full name for the record, please.
6 A Leo Schwartz.
7 Q Okay. And what do you do, Mr. Schwartz?
8 A I am a custom home builder and remodeler.
9 Q Okay. And what is your business address?
10 A 4412 Brookfield Drive, Kensington, Maryland.
11 Q How long have you been in this field?
12 A Thirty-eight years.
13 Q All right. Okay. I'm showing you what has been
14 marked as -- I believe we're on 130, right?
15 MS. ROBESON: Yes.
16 BY MR. MOHAMMADI:
17 Q Okay. I'm showing you what's been marked as
18 Exhibit 130. Could you identify that document?
19 A Yeah. This is a document. It's sort of a résumé
20 about me --
21 Q All right.
22 A -- and my experience.
23 Q And is this a true and accurate copy of your
24 résumé?
25 A Yes.

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1 MR. MOHAMMADI: Move to admit No. 130.
2 MS. ROSEN: I'm going to object because I asked in
3 my request for production of documents, I asked for the, I
4 believe, the curriculum vitae of any expert, and it was
5 never ever provided to me. So I'm going to object.
6 MR. MOHAMMADI: No, this one, they were clearly
7 provided.
8 MS. ROSEN: No. I never saw this. I've never
9 seen this.
10 MR. MOHAMMADI: I believe they were provided
11 separately once we identified Mr. Schwartz, because he
12 wasn't originally as part of the -- if you recall, he was
13 not one of the original experts. So --
14 MS. ROBESON: Yes, I remember.
15 MS. ROSEN: But --
16 MR. MOHAMMADI: -- when we identified him --
17 MS. ROBESON: Was it the supplemental pre-hearing
18 statement?
19 MR. MOHAMMADI: Yes.
20 MS. ROSEN: But the document itself wasn't
21 provided, number one, and number two, he was actually
22 identified in their answers to interrogatories as an expert
23 back in May. The document itself was never provided.
24 MS. ROBESON: Well, Mr. Mohammadi, I guess my --
25 you can have him testify to what's in here.

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1 MR. MOHAMMADI: I know I can. I know I can, but
2 -- I know I provided it because it was e-mailed to me and I
3 either forwarded the e-mail or I printed it out and mailed
4 it, but it wouldn't be in my original productions, which is
5 what I'm looking at right now. All right. Well, I'll just
6 have him testify about it. It's not really a big deal.
7 BY MR. MOHAMMADI:
8 Q All right. Mr. Schwartz, you stated you've been
9 in this business for 34 years?
10 A Thirty-eight years.
11 Q Thirty-eight years. And what specifically do you
12 do?
13 A I am a custom home builder and remodeler.
14 Q Okay. And what does that mean, you're a custom
15 home builder and remodeler?
16 A I build custom homes and I remodel homes.
17 Q Okay. And in doing so, does that require you to
18 have some kind of training or education?
19 A Yes and no.
20 Q Okay. Well, describe your education for me.
21 A High school --
22 Q All right.
23 A -- in that regard.
24 Q And do you have any certifications?
25 A Well, sort of, based on I'm a licensed -- you

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1 know, my remodeler's license and a Montgomery County
2 builder's license.
3 Q Okay. And when did you get your Montgomery County
4 builder's license?
5 A I don't know the exact date, to be honest with
6 you, probably 25 years ago.
7 Q Okay. And has that ever been revoked?
8 A No.
9 Q Has that ever expired?
10 A No.
11 Q Is it current still?
12 A Yes.
13 Q Okay. Besides that license, do you have any other
14 licenses?
15 A I got a, I mean, a State of Maryland Home
16 Improvement license.
17 Q Okay. And when did you receive that license?
18 A Probably around the same time, at least.
19 Q Okay. And has that license ever been revoked?
20 A No.
21 Q Ever expire?
22 A No.
23 Q Is it still currently active?
24 A It is.
25 Q Okay. And what do these licenses permit you to

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1 do?

2 A To build homes in Montgomery County and remodel

3 homes in the whole state of Maryland.

4 Q And just to be clear, when you say homes, you're

5 talking about residential homes?

6 A Correct.

7 Q Okay. Do you do any commercial work?

8 A I've done light commercial work, but primarily

9 it's residential.

10 Q Okay. And as a builder, are you responsible for

11 every aspect of the construction process from start to

12 finish?

13 A Yes.

14 Q Okay. Does that include reviewing drawings?

15 A Yes.

16 Q What kind of training and experience do you have

17 with the reviewing of drawings?

18 A Well, I started basically when I was 15 years old

19 as a laborer, and I worked all the way up from a carpenter,

20 reading plans, to build houses, superintendent, and working

21 for other companies, including one that was owned by my

22 father, and ended up 15 years ago starting Edgewood

23 Builders, my current company.

24 Q All right. And we'll get to your company in a

25 second, but specifically with plans, so you're familiar with

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1 architectural plans?

2 A Absolutely.

3 Q And you can read them?

4 A Absolutely.

5 Q Okay. And you work off of architectural plans

6 when you build?

7 A Yes.

8 Q All right. And now, let's talk about your

9 business. What is the name of your business?

10 A Edgewood Builders.

11 Q What does this business do?

12 A We build and remodel homes.

13 Q Okay. And you're the owner of that?

14 A I'm the owner, yes.

15 Q Okay. In your tenure as a home builder, custom

16 home builder, how many custom homes have you built in the

17 last 38 years, approximately?

18 A About 300.

19 Q Okay. And with respect to renovations, how many

20 renovations have you done in the last 38 years?

21 A Probably about 30, 40.

22 Q All right. And when you talk about renovations,

23 what are we talking about?

24 A Additions, putting second floors on houses,

25 bathrooms, kitchens, remodeling them.

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1 Q Okay. Have you ever done any work on roofs?

2 A Absolutely.

3 Q Okay.

4 MR. MOHAMMADI: At this point, I'd like to move

5 Mr. Schwartz in as an expert in the area of home renovation

6 and construction.

7 MS. ROBESON: Ms. Rosen.

8 MS. ROSEN: Okay. Just have a few questions I'd

9 like to ask him.

10 THE WITNESS: Yes.

11 MS. ROSEN: Okay. Mr. Schwartz, you are not an

12 architect, is that correct?

13 THE WITNESS: No, I am not.

14 MS. ROSEN: Okay. And you're not an engineer

15 either, is that correct?

16 THE WITNESS: Correct.

17 MS. ROSEN: Okay. Would it be fair to say you

18 don't actually create architectural plans and designs

19 yourself, do you?

20 THE WITNESS: I do.

21 MS. ROSEN: Okay. You do. You create -- you've

22 seen the plans in this case?

23 THE WITNESS: I've seen -- yes, I have, many sets

24 of them.

25 MS. ROSEN: What specific training do you have

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1 with regards to reading architectural plans?

2 THE WITNESS: Thirty-eight years of experience.

3 MS. ROSEN: No, I didn't ask you that. I asked

4 you, what specific training do you have? How are you

5 trained to read them? Did you go to school for that

6 purpose? Did you take any courses or any certifications?

7 THE WITNESS: No.

8 MS. ROSEN: Do you have any specific training in

9 construction of roofs?

10 THE WITNESS: No.

11 MS. ROSEN: Okay. I have no further questions.

12 MS. ROBESON: Have you ever qualified as an expert

13 in a court before?

14 THE WITNESS: I have.

15 MS. ROBESON: And what were you qualified as?

16 THE WITNESS: As an expert witness in

17 construction --

18 MS. ROBESON: Okay.

19 THE WITNESS: -- I don't know how else to

20 describe, but I can go into the details.

21 MS. ROBESON: And what did you want to qualify him

22 as?

23 MR. MOHAMMADI: As an expert in construction

24 and --

25 MS. ROBESON: Of residential homes?

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1 MR. MOHAMMADI: Of residential.
2 MS. ROBESON: Okay. I'm going to qualify him.
3 Ms. Rosen, if you disagree, our best practice is always not
4 to qualify a party for obvious reasons, and there's some
5 case law that says there's a per se inference that they're
6 biased. If you disagree with that ruling, on your rebuttal
7 case, I'm going to give you an opportunity to change my mind
8 on that, all right, because the test for an expert, you
9 know, is relatively subject to certain requirements. They
10 have to know more than a layman. So if you can find cases
11 saying, great, you know, qualify a party as an expert, I'd
12 be open to that.
13 MS. ROSEN: I would just note that Dr. Barr is not
14 a party. The party is the, is the association. He's not
15 the association. He's an -- you know, he's not a party.
16 MS. ROBESON: Well, that's true. That's true, but
17 he is the person here, prosecuting the case. Now, that is
18 true. So, anyway, I'm going to let you respond to that
19 issue if you wish.
20 MS. ROSEN: Would I be allowed to at this point,
21 would we be able to bring in a rebuttal expert at this
22 point?
23 MS. ROBESON: The rebuttal rules are that nothing
24 -- if it relates to their case-in-chief.
25 MS. ROSEN: Correct.

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1 MS. ROBESON: Yes. The rules on rebuttal are more
2 lenient than --
3 MS. ROSEN: Because we can always just bring in a,
4 we can always bring a rebuttal expert then to rebut his
5 testimony in our, on our rebuttal --
6 MS. ROBESON: All right. All right.
7 MS. ROSEN: -- we can do that then.
8 MR. MOHAMMADI: I will note, I would object to
9 that if that happens at this point because it's, was not
10 just part of my case-in-chief; it was part of theirs, as
11 well, to have an expert on this construction issue. So it's
12 not a new thing that just came up, and as I said, he was
13 listed as an expert later on, and certainly initially, even
14 though Mr. Schwartz wasn't listed, somebody else in his
15 field was listed. So it's not, there's no surprise here.
16 There's no --
17 MS. ROBESON: Well, you can share, whoever it is,
18 the résumé and the statements of what he's going to say in
19 advance of the hearing.
20 MS. ROSEN: Okay. If I may just very, also, just
21 before we get started, you know, in the answers to
22 interrogatories, it appears that Mr. Schwartz's testimony is
23 going to be limited to his -- that he's expected to testify
24 that the roof over the garage is built according to plan.
25 That's basically all it says in their answers, and it just

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1 says, he's an expert in the field of residential
2 construction and expected to testify about the plan
3 submission process and how DPS may alter plans in order for
4 them to comply with county codes. There's nothing else in
5 their discovery response that they're referring to anything
6 else he's going to testify to. So I'm asking that his
7 testimony be limited to what they responded in their
8 answers.
9 MS. ROBESON: And he said residential
10 construction.
11 MS. ROSEN: I understand, but what I'm saying is
12 that we had, in the answers to interrogatories --
13 MS. ROBESON: I understand that. I understand
14 that.
15 MS. ROSEN: So I guess what I'm basically saying
16 is that, you know, what I'm put on notice of is that he is
17 expected to testify that the roof over the garage is built
18 according to plan, he's an expert in the field of
19 residential construction, is expected to testify about the
20 plan submission process and how DPS may alter plans for them
21 to comply with county codes, which I personally think is
22 irrelevant, but all he's expected to testify about is that
23 the roof over the garage is built according to plan, not
24 about anything else. That's all I'm put on notice of. I'm
25 basically saying --

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1 MS. ROBESON: It's the pre-hearing statement that
2 is the controlling thing. So what did you put in your
3 pre-hearing statement or your supplemental pre-hearing
4 statement? Are you saying that he can't address the
5 supplemental complaint?
6 MS. ROSEN: Yes. Basically, I'm saying that I
7 asked in the interrogatories, my question in the
8 interrogatories asked them what they're being expected, what
9 the people are being expected to testify to, and I think
10 when you -- and when you ask in an interrogatory what
11 someone's going to testify to, it basically, even
12 Interrogatory No. 9, it basically -- in Interrogatory No. 9,
13 I said, identify all persons whom you expect to call as an
14 expert witness, state the subject matter on which each
15 expert is expected to testify, state the substance of the
16 findings and opinions to which the expert is expected to
17 testify and the summary of the grounds for each opinion.
18 His answer to that --
19 MS. ROBESON: Well, let me hear -- okay. I
20 understand.
21 MS. ROSEN: Right. His answer to that is: Mike
22 Hancock, Leo Schwartz, and/or William Hancock are expected
23 to testify as experts. Please see the response to
24 Interrogatory No. 2. And then --
25 MS. ROBESON: Well, why don't you show me the

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1 pre-hearing statement.
2 MS. ROSEN: Well, the respondents' pre-hearing
3 statement doesn't --
4 MS. ROBESON: 102.
5 MS. ROSEN: Oh, I have the respondents'
6 pre-hearing statement, and it doesn't say anything about an
7 expert.
8 MR. MOHAMMADI: I don't think it says anything
9 about the specific testimony of the experts on the
10 pre-hearing statement.
11 MS. ROSEN: Yes. It just basically says
12 prospective witnesses: Leo Schwartz, expert --
13 MS. ROBESON: I understand. I guess I, at the
14 length of delaying this, you know, I guess I have discretion
15 to allow him to go ahead and testify on matters not. It's
16 hard for me to make a judgment at this point about what he's
17 going to say -- without knowing what he's going to say,
18 about how important it is. It would seem -- and if you
19 could get the interrogatory or the pre-hearing --
20 MS. ROSEN: I have them both right here.
21 MR. MOHAMMADI: I think it does say he's an expert
22 in the field of construction.
23 MS. ROBESON: Yes, but if we're going to parse
24 this language through, I'm going to --
25 MS. ROSEN: Yes. I'm always dealing in court,

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1 when someone --
2 MS. ROBESON: Is this --
3 MS. ROSEN: -- answers an interrogatory, they
4 don't --
5 MS. ROBESON: Is this --
6 MS. ROSEN: -- identify things --
7 MS. ROBESON: Okay. This is your pre-hearing
8 statement and your interrogatories. Okay. But --
9 MS. ROSEN: Interrogatory No. 2 and No. 9 are
10 what's pertinent here.
11 MS. ROBESON: Okay. Do you have a copy of this?
12 MR. MOHAMMADI: I do.
13 MS. ROBESON: Because we're going to be arguing as
14 he testifies.
15 MR. MOHAMMADI: I do.
16 MS. ROBESON: Okay. Why don't you get it out.
17 MR. MOHAMMADI: I'm not sure if I brought it with
18 me, but I do --
19 MS. ROBESON: Well, then can you give this to, is
20 there a volunteer from the audience -- not you Mr. Barr,
21 stay here -- who can ask --
22 UNIDENTIFIED SPEAKER: Over in the office to make
23 a copy?
24 MS. ROBESON: Yes --
25 UNIDENTIFIED SPEAKER: Okay.

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1 MS. ROBESON: -- exactly, two copies.
2 UNIDENTIFIED SPEAKER: Okay.
3 MS. ROBESON: All right. Now, rather than wait,
4 I'm going to let you proceed with your direct testimony,
5 okay, and if an objection comes up, we will have to wait for
6 the documents.
7 MR. MOHAMMADI: Okay.
8 MS. ROBESON: All right. Go ahead. And what are
9 you, what are you asking me to mark?
10 MR. MOHAMMADI: This is pictures of homes in the
11 community, I guess, would be --
12 MS. ROBESON: Okay. So this would be, I think
13 we're on 130.
14 MR. MOHAMMADI: 131. I think we're on 131.
15 MS. ROBESON: Well, I'm going to mark them as
16 (a) --
17 MS. ROSEN: You can go (a), (b), (c), (d).
18 MS. ROBESON: -- (a) through (g). So 130, (a)
19 through (g).
20 (Exhibits No. 130(a) through
21 130(g) were marked for
22 identification.)
23 MS. ROSEN: I think it's (a) through (f). Let me
24 check. Let me see.
25 MS. ROBESON: Is it?

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1 MS. ROSEN: Yes, (a), (b) -- nope, I'm wrong. I'm
2 sorry. She's marked it the same because I had grass (c),
3 (d) --
4 MS. ROBESON: Okay.
5 MS. ROSEN: I think it's (a) through (f).
6 MR. MOHAMMADI: I have through (g).
7 MS. ROSEN: Maybe I'm losing my mind. Let's go,
8 let's do it this way: (A)?
9 MR. MOHAMMADI: Yes.
10 MS. ROSEN: (B)?
11 MR. MOHAMMADI: Yes.
12 MS. ROSEN: (C)?
13 MR. MOHAMMADI: Yes. Oh, you're missing this
14 picture.
15 MS. ROSEN: (D). Okay. I'm missing one, and that
16 was this one. Is that (e)?
17 MR. MOHAMMADI: That's (e) for me.
18 MS. ROSEN: Okay. Yes, I'm missing one.
19 MR. MOHAMMADI: Your Honor, do you have the full
20 set? I think it's --
21 MS. ROBESON: Well, I go to --
22 MR. MOHAMMADI: (G)?
23 MS. ROBESON: Some of them I -- (c), (d), (e),
24 (f). I have (g). I have enough to have a (g).
25 MR. MOHAMMADI: I don't know what happened to the

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1 one page for you.
2 MS. ROBESON: Should I have (f)?
3 MR. MOHAMMADI: You should have (g).
4 MS. ROBESON: Yes.
5 MR. MOHAMMADI: You should have all the way
6 through (g).
7 MS. ROBESON: Okay.
8 MR. MOHAMMADI: All right. Well, Ms. Rosen's
9 missing, apparently she's missing -- in her copy she's
10 missing (d).
11 MS. ROBESON: (B)?
12 MR. MOHAMMADI: (D).
13 MS. ROSEN: (D). (D), as in dog.
14 MS. ROBESON: (D).
15 MR. MOHAMMADI: Yes, and I don't know why that, at
16 all.
17 MS. ROBESON: Okay. Well, do you have -- you
18 don't have an extra copy?
19 MR. MOHAMMADI: I can't even explain why the one
20 is missing, and you have it and I have it, but hers doesn't.
21 MS. ROBESON: Well, I can't explain it. Ms. --
22 MR. MOHAMMADI: It's pictures we submitted
23 previously, before.
24 MS. ROSEN: I can probably find it in my --
25 MR. MOHAMMADI: It's the same pictures that

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1 were --
2 MS. ROBESON: Well, let me cut to the chase. Are
3 you going to object to admission of (d)?
4 MS. ROSEN: I'm actually going to be objecting to
5 admission of all of them because they're not photographs --
6 I think I've indicated previously that while I was not going
7 to object to the photographs that were taken of the subject
8 property, Mr. Ball's property, that I was going to object to
9 photographs of other people's property in --
10 MS. ROBESON: Well, unless I'm mistaken, (d) is --
11 is (d) Mr. Ball's property?
12 MS. ROSEN: I think --
13 MR. MOHAMMADI: Yes, (d) is Mr. Ball's property.
14 MS. ROBESON: Okay.
15 MS. ROSEN: (D) is Mr. Ball's property? Okay.
16 MR. MOHAMMADI: (D) is Mr. Ball's property.
17 MS. ROSEN: All right. But the other ones are
18 not, I'm assuming?
19 MR. MOHAMMADI: Right.
20 MS. ROSEN: Okay. Well --
21 MS. ROBESON: And what's your basis for objecting
22 to the remainder?
23 MS. ROSEN: Because the issue in this case is
24 whether or not he has constructed in accordance with
25 approved plans, and I don't see how, number one, how these

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1 other properties would have any relevance to that, and
2 number two, as I've indicated, his answers to
3 interrogatories indicate that he's going to be, that his
4 testimony was going to be based upon just the, that the roof
5 was constructed in accordance with the plans. So, once
6 again, I don't see how other people's properties have
7 anything to do with that type of testimony, because the
8 question is, did he construct the roof in accordance with
9 approved plans? What somebody else's house looks like, I
10 don't see the relevance of it.
11 MS. ROBESON: I think -- well, Mr. Mohammadi, what
12 is --
13 MR. MOHAMMADI: Well --
14 MS. ROBESON: -- why are you proffering these
15 pictures?
16 MR. MOHAMMADI: First of all, the issue is whether
17 there were any material deviations from the approved plans,
18 and these pictures show that what's been constructed on the
19 Balls' property exists throughout the neighborhood as well.
20 So it's to show, basically -- there's also been testimony
21 that, doesn't conform to the rest of the community.
22 Actually, all of these features that we're talking about are
23 present throughout the entire community. So they're at
24 least relevant for that portion, and again, to --
25 MS. ROBESON: Are you saying it's the

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1 discriminatory enforcement issue?
2 MR. MOHAMMADI: Correct, that it's -- first of
3 all, that both the deviations that are talked about, that
4 they're not material deviations, and second of all, that it
5 is exactly that, that it's being enforced differently with
6 respect to the Balls than it is being enforced to the rest
7 of the community who also have some or all of these
8 features.
9 MS. ROBESON: What I'm going to do is -- does he
10 have testimony as to the roof?
11 MR. MOHAMMADI: Let me say this: Mr. Schwartz was
12 the one that took the pictures. Okay? So I need him to
13 authenticate it so they can come in. He's not going to
14 testify necessarily about what exists and what does not
15 exist because that's not what's in his expert testimony. He
16 didn't go and compare. He's the one that took pictures, but
17 I do need --
18 MS. ROBESON: Oh, I see. He's here only to
19 authenticate the pictures.
20 MR. MOHAMMADI: I need him to authenticate it
21 because he's the one that took the pictures.
22 MS. ROBESON: That took them. Okay.
23 MR. MOHAMMADI: Mr. Ball and other witnesses can
24 testify about that.
25 MS. ROBESON: I'll allow that. I'll allow that.

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1 MS. ROSEN: Wait. I'm getting a little bit
2 confused. He's only here to -- his only reason for being
3 here to testify is to authenticate --
4 MS. ROBESON: No, he didn't say that.
5 MS. ROSEN: -- these pictures? I'm getting, I'm
6 getting confused.
7 MS. ROBESON: His only role is to these pictures.
8 MR. MOHAMMADI: I'm trying to get my exhibits in,
9 and he --
10 MS. ROBESON: Exactly. I understand.
11 MR. MOHAMMADI: -- he is the one that has to
12 testify about the pictures. So that's what he's doing.
13 MS. ROBESON: Yes, and I'll allow that.
14 MR. MOHAMMADI: Okay.
15 BY MR. MOHAMMADI:
16 Q Just briefly then for the record, are these
17 pictures you took?
18 A Yes.
19 Q Okay. What are they pictures of?
20 A These are pictures of other homes in the
21 community.
22 Q Okay. If you turn to number (d), that is not a
23 picture of the community, right?
24 A No. (D) is a picture of Peter and Michael Ball's
25 house.

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1 Q Okay. And approximately when did you take these
2 pictures?
3 A I guess now about -- about six weeks ago, I guess,
4 at least.
5 Q Okay.
6 MR. MOHAMMADI: And I think you said they're
7 already admitted.
8 MS. ROBESON: Okay. Hold on one second.
9 MS. ROSEN: I'm objecting to their admission at
10 this point.
11 MS. ROBESON: Okay. The orange ones go to
12 Ms. Rosen, the orange --
13 UNIDENTIFIED SPEAKER: The original one?
14 MS. ROBESON: The originals, yes.
15 UNIDENTIFIED SPEAKER: And the other two?
16 MS. ROBESON: What?
17 UNIDENTIFIED SPEAKER: The other two?
18 MS. ROBESON: Yes.
19 MS. ROSEN: The original was mine.
20 MS. ROBESON: Yes. Okay. Since we're talking
21 about these, I'm going to mark them as exhibits before
22 Mr. Schwartz gets going. When I say these, I'm referring to
23 131, which is --
24 MR. MOHAMMADI: I thought the pictures were 131.
25 MS. ROBESON: I have 130.

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1 MR. MOHAMMADI: 130 was the résumé, which was not
2 admitted.
3 MS. ROBESON: That's why I didn't --
4 MR. MOHAMMADI: Oh, okay.
5 MS. ROBESON: -- I never marked it.
6 MR. MOHAMMADI: I see.
7 MS. ROBESON: 131 is Mr. Ball's answers to
8 interrogatories. Well, that's -- 131(a) is Mr. Ball's
9 answers to interrogatories, and 131(b) is the respondent's
10 pre-hearing statement.
11 MR. MOHAMMADI: Did you make -- I'm sorry.
12 MS. ROBESON: Oh, wait. The pre-hearing statement
13 is still, is in the record --
14 MR. MOHAMMADI: Right.
15 MS. ROBESON: -- so I don't need to add that.
16 Okay.
17 (Exhibit No. 131(a) was marked
18 for identification.)
19 MS. ROSEN: Just note with regard to, because I'm
20 looking at my copy on the answers to interrogatories, you're
21 going to see some handwriting, you know, chicken scratch.
22 That is me. So that shouldn't be -- you know, I'm just
23 letting you know. I think on the second page is a little
24 bit of chicken scratch.
25 MS. ROBESON: I see it. I see it. All right.

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1 MS. ROSEN: So that's, that's just me.
2 MS. ROBESON: All right. Now, Mr. Schwartz,
3 continue with 130.
4 MR. MOHAMMADI: Okay. Well, at this point, just
5 offering them in as evidence for --
6 MS. ROBESON: That's fine.
7 MR. MOHAMMADI: Okay.
8 MS. ROBESON: I understand.
9 MS. ROSEN: Well, they haven't -- what exactly are
10 they? I mean --
11 MS. ROBESON: Well, he's -- Ms. Rosen, is that an
12 objection, because --
13 MS. ROSEN: Well, I've already --
14 MS. ROBESON: -- he's here to tell us what they
15 are.
16 MS. ROSEN: Okay.
17 MS. ROBESON: All right.
18 MS. ROSEN: I've already made objection. I mean,
19 he hasn't -- it sounded like he was finished authenticating
20 them, and I don't think he is because I don't even know
21 quite what they are.
22 MS. ROBESON: No, I -- okay. Then you can express
23 that to me. I didn't -- I understood he was not finished --
24 MS. ROSEN: Okay.
25 MS. ROBESON: -- authenticating them. Let's start

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1 at 130(a) again.
2 MR. MOHAMMADI: Okay.
3 BY MR. MOHAMMADI:
4 Q Could you identify 130(a)?
5 A Yes. This is a picture that I took of the house
6 next door to Peter Ball's. As you're looking at his house,
7 it's to the right, the immediate neighbor.
8 Q Okay. And what kind of design is that house? Is
9 that -- what kind of design is that house?
10 A It's a contemporary house --
11 Q Okay.
12 A -- with an addition above the existing garage.
13 Q Okay. All right. Looking at 130(b) --
14 A Yes.
15 Q -- what is that?
16 A This is a house in the neighborhood, and I took
17 this picture, showing nice wide-type trim around the windows
18 and the corner boards.
19 Q Okay. And this is within Potowmack Preserve?
20 A It is.
21 Q Okay. Well, go to 130(c).
22 A Correct.
23 Q All right. Could you identify this picture?
24 A This is another house in the neighborhood. It's
25 got a clerestory window facing the front of the house, and

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1 it's got a stone veneer in the front of the house.
2 Q Okay. Going to 130(d).
3 A This is Peter Ball's house, and it's showing an
4 existing, what's being called a shed on the house.
5 Technically sheds are detached. This is attached, but
6 everyone is calling this a shed.
7 Q Okay. And we'll get to that, but this is Peter
8 Ball's house?
9 A Correct.
10 Q I mean, Michael Ball's house as well?
11 A Michael Ball's house, correct.
12 Q All right. Look at 130(e).
13 A This is a house with a front door that's centered,
14 with sidelights on either side, and it's also got casement
15 windows, which are very similar to windows that were
16 installed in Peter Ball's house.
17 Q Okay. And is this another house in the
18 neighborhood --
19 A It is.
20 Q -- in Potowmack Preserve?
21 A Correct.
22 Q Okay. And 130(f)?
23 A That might be additional pictures of wide trim
24 around the window.
25 Q Okay. And, again, is this within the

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1 neighborhood?
2 A It is.
3 Q All right. And 130(g)?
4 A (G). This picture didn't print completely, as
5 well as I would like, but it actually is Peter Ball's model
6 with no additions on it, and the part on the right,
7 unfortunately, does not show up where it shows the chimney
8 is lower on the right than it is on the left. I do have a
9 better picture with me --
10 Q Okay. That's --
11 A -- but that can be submitted.
12 Q All right. And is this another house in the
13 neighborhood?
14 A It is another house in the neighborhood.
15 Q And are these all true and accurate copies of the
16 pictures of the houses in the neighborhood when you took
17 them?
18 A Yes, and another point on this picture (g) is it's
19 showing horizontal, horizontal siding.
20 Q Okay.
21 A That's it.
22 MR. MOHAMMADI: All right. At this point, move to
23 admit 130.
24 MS. ROBESON: All right. Any objections?
25 MS. ROSEN: Well, just my continuing objection

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1 that I don't think that these photographs are relevant in
2 any way to this proceeding --
3 MS. ROBESON: Okay. Well --
4 MS. ROSEN: -- and I've indicated that previously.
5 MS. ROBESON: -- they're admitted.
6 (Exhibits No. 130(a) through
7 130(g) were received
8 in evidence.)
9 MS. ROSEN: Okay. And I would also just note --
10 and I have to look at his answer to complaint -- but as far
11 as when he was referring to discriminatory enforcement, I
12 believe in his original answer and/or counterclaim that he
13 was making a discriminatory enforcement complaint as to the
14 siding issue, which is no longer an issue because this body
15 is not hearing about the siding, that that was the only
16 so-called discriminatory enforcement issue.
17 So it's not an issue, if I'm correct, is what I
18 believe, based upon the answer and/or counterclaim that he
19 filed in this proceeding --
20 MR. MOHAMMADI: I think there's --
21 MS. ROSEN: -- doesn't get to bring new defenses
22 in, if I'm right. I'm going to have to look. It's hard to
23 keep track, but --
24 MS. ROBESON: Well, okay, all right.
25 MS. ROSEN: I believe, if you look at his amended,

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1 you know, if you look at his amended countercomplaint, which
 2 is where he basically takes that position that -- he's
 3 referring to the siding, where he's saying that other people
 4 have this horizontal siding, which, vinyl siding, he's not
 5 allowed to have. That is basically where he is --
 6 MS. ROBESON: Well, can you give me an exhibit
 7 number so I don't have to search?
 8 MS. ROSEN: I'm sorry. It's the amended
 9 countercomplaint, but -- amended countercomplaint would be
 10 Exhibit 21.
 11 MS. ROBESON: Thank you. Well, he also has --
 12 MS. ROSEN: What I'm saying is that Count 1 is
 13 basically where he's making this claim of, I'm going to use
 14 the term discrimination. He's making it with regards to the
 15 siding. He's basically saying that other people were
 16 allowed to have horizontal siding and they've been approved
 17 by others, so he's being discriminated against. If you look
 18 at that count, it's all in reference to that siding. That
 19 siding is not an issue before, in this case because that has
 20 not been, you know, you denied -- you said, basically, they
 21 had an opportunity, if they had wanted, to file an original
 22 complaint and consolidate it. They never did that. That's
 23 out of the picture now.
 24 So there is no countercomplaint or any other
 25 allegation that I'm aware of, of something being

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1 discriminatory, because what we have here is we have an
 2 approved application. We're dealing with an approved
 3 application in this case, whereas with the siding he was
 4 basically trying to say, well, you know, they're, they
 5 didn't approve something that I wanted, that he tried to get
 6 later, but this, these photos are irrelevant because this
 7 case is about whether or not he built in accordance with an
 8 approved plan or not. It's not about whether he applied for
 9 something and we're saying -- and the association said no
 10 and other people were given permission. That's what he was
 11 alleging in the siding case, but that's not an issue
 12 anymore.
 13 MS. ROBESON: Okay. Mr. Mohammadi.
 14 MR. MOHAMMADI: Just briefly, if you look at the
 15 amended answers to the supplemental complaint, for example,
 16 it does say, for example, that were not given opportunities
 17 to present their case --
 18 MS. ROBESON: I was just looking at that, and I
 19 think it goes --
 20 MR. MOHAMMADI: It's --
 21 MS. ROBESON: -- I think it's encompassed. Even
 22 though that specific relief wasn't allowed, there is an,
 23 there are allegations that the board acted in bad faith
 24 and --
 25 MR. MOHAMMADI: In contravention of their own

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1 procedures.
 2 MS. ROBESON: Yes. So --
 3 MS. ROSEN: What are we looking at? Wait. I'm
 4 sorry. Where are we?
 5 MR. MOHAMMADI: The amended answer to, I think,
 6 both the countercomplaint and the supplemental complaint, it
 7 was containing language, but in the supplemental
 8 complaint --
 9 MS. ROBESON: I construed that as an affirmative
 10 defense to the enforcement action, and so I'm going to let
 11 him present this testimony, or whoever. He's just
 12 authenticating the pictures.
 13 MR. MOHAMMADI: Right. There's a lot of pictures
 14 here.
 15 MS. ROBESON: Now, these are another set?
 16 MR. MOHAMMADI: Another set. Your Honor, just,
 17 just so you understand why there's two sets, if you recall,
 18 the discussions previously were to try to pick out a few
 19 that we wanted to use. That first set was the few that we
 20 picked out; it was seven of them. This second set is the
 21 remaining portions.
 22 MS. ROBESON: Okay. I'm marking this as 132(a)
 23 through (dd).
 24 MR. MOHAMMADI: How many do you have?
 25 MS. ROSEN: Just make sure I got my alphabet

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1 right, (e), (f), (g), (h), (i), (j), (k), (l), (m), (n),
 2 (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z).
 3 Yes, my set goes to (a), would be (a) through (ee).
 4 MR. MOHAMMADI: Yes, same here.
 5 MS. ROBESON: Okay.
 6 MS. ROSEN: I had to check, make sure I got my
 7 alphabet right.
 8 MS. ROBESON: I just did them, (a) --
 9 MR. MOHAMMADI: Yours only goes to (dd)?
 10 MS. ROBESON: Oh, I missed (q). I mean, I missed
 11 one. Okay, (a) through (ee), 132.
 12 (Exhibits No. 132(a) through
 13 132(ee) were marked
 14 for identification.)
 15 BY MR. MOHAMMADI:
 16 Q All right. Mr. Schwartz, are these also pictures
 17 that you took?
 18 A Yes, they are.
 19 Q And are these pictures of both the Balls' house
 20 and other homes in the community?
 21 A They are.
 22 Q Okay. I'd like to go through them one by one so
 23 that we can authenticate them properly. Okay? (A), what is
 24 that?
 25 A That's Peter Ball's existing house, of the rear of

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1 his house --
2 Q Okay.
3 A -- in the condition that it is to this moment --
4 Q Okay.
5 A -- or when I took the pictures, about six weeks
6 ago.
7 Q All right. And (b)?
8 A (B) is an existing house in the neighborhood,
9 showing wide trim and -- primarily is the wide trim around
10 the windows --
11 Q Okay.
12 A -- and a freeze board or a --
13 Q What's the freeze board?
14 A It's a board across the bottom between the brick
15 and the siding.
16 Q Okay. (C)?
17 A (C) is another house with wide trim and casement
18 windows.
19 Q (D)?
20 A (D) is Peter Ball's house in existing -- they're
21 sort of out of order in that regard, but they're in existing
22 situation as it is now.
23 Q And what part of the house does this show?
24 A This is basically, to the right is the edge of the
25 front door, and to the left, I forget what room that is. I

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1 think it's the living room to the left, and that's the brick
2 work that's currently installed.
3 Q Next to that on the left-hand side would be the
4 addition?
5 A Correct, and the next picture, (e), shows that.
6 Q Okay. So (e) is, again, is the Balls' house?
7 A Correct.
8 Q And that shows the addition?
9 A Correct.
10 Q All right. (F)?
11 A (F) is the, looking from the rear of the house --
12 excuse me. This is the left, looking to the left side of
13 the house from the side of the house, and it shows the
14 setback of the addition, shows the electrical panel box, and
15 there's, I think, a gas meter just to the left of the
16 electrical panel box --
17 Q Okay.
18 A -- in existing conditions. This picture, (g), the
19 next picture, is just showing another house with horizontal
20 siding.
21 Q All right.
22 A This is back to Peter Ball's house, number (f).
23 Q (H), you mean?
24 A (H), excuse me. Thank you. And it's just the
25 left side of his house in the existing condition --

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1 Q All right.
2 A -- and it's showing the, I think it's labeled on
3 the plans, the crawl space down below.
4 Q Okay.
5 A This is just another house in the neighborhood --
6 once again, showing horizontal siding. That is (i).
7 Q (I).
8 A (J) is just another shot from the, standing in the
9 backyard, the left side of the house, facing the house,
10 would be you're facing -- and it's just showing the existing
11 flat roof related to the new addition that -- as you're
12 facing the house on the left, but I'm in the rear yard,
13 taking this picture.
14 Q Okay. And this is Mr. Ball's house?
15 A This is Mr. Ball's house.
16 Q Okay.
17 A This is also Mr. Ball's house, standing in the
18 rear yard, facing the house, and this is the left side,
19 facing the rear of the house. This is his new deck, and
20 this is the supposed shed underneath the deck.
21 Q And you pointed to the bottom of the picture?
22 A I did point to the bottom of the picture.
23 Q Okay. And that was picture number (d) --
24 A Right.
25 Q -- (k), excuse me.

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1 A Right. (L) is Peter Ball's model, looks like
2 there's been no addition done to this house; so this is
3 original, and you can see that -- primarily I took this for
4 the chimneys. You've got a chimney on the left which is
5 higher than the chimney on the right in the existing,
6 existing house condition.
7 Q And is this a house in the neighborhood?
8 A This is a house in the neighborhood. This is (h),
9 or excuse me, (m), and this is just sort of out of order, in
10 a sense, in how I took them. But this is the rear of Peter
11 Ball's house with the existing addition on the back of the
12 house, with the flat roof.
13 Q Okay. Again, this is Mr. Ball's house, right?
14 A Mr. Ball's house, yes.
15 Q Right.
16 A And you can see the trim board between the floors.
17 Q Okay.
18 A (N) I don't think is actually in their
19 subdivision. It's next to their subdivision, is a
20 contemporary. It's very similar to the house I grew up in,
21 but I -- that was just inadvertently put in.
22 Q Okay.
23 A (O) is the right side of the house. It's showing
24 the -- in the lower part of the picture is the existing,
25 what's called the shed. It's not technically a shed because

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1 it's attached to the house.

2 MS. ROBESON: Well, just authenticate.

3 THE WITNESS: It is a picture I took.

4 MS. ROBESON: Is this Ball's house?

5 THE WITNESS: It is Peter Ball's house --

6 MS. ROBESON: Yes.

7 THE WITNESS: -- and it's showing the chimney on

8 the right, and it's showing the new roof then above, and the

9 chimney has not been raised yet.

10 BY MR. MOHAMMADI:

11 Q Okay. Does this show an existing condition?

12 A It shows an existing condition of what is known as

13 the shed.

14 Q As well as the chimney?

15 A As well as the chimney.

16 Q Okay.

17 A And (p) is basically the same picture at a

18 slightly different angle. You got the --

19 Q Of Peter Ball's house?

20 A Peter Ball's house.

21 Q All right.

22 A (Q) is a house also with the wide, wider trim

23 around it and overhangs, got very large overhangs.

24 Q Okay. And is this a house in the neighborhood?

25 A It is a house in the neighborhood.

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1 Q All right.

2 A (R) is the front, currently the front of Peter

3 Ball's house in the condition that it is today.

4 Q Okay.

5 A (S) is the same thing, pretty much almost in the

6 same position, just turned the camera slightly to the left

7 so it shows the front door, then your living room, and then

8 the addition on the left.

9 Q Okay. (T).

10 A (T), thank you. (T) is just a little more detail

11 of the second floor of the addition on the left side of the

12 house --

13 Q Okay.

14 A -- in the current condition. (U) is above the

15 garage on the right side of the house.

16 Q Mr. Ball's house?

17 A Mr. Ball's house. (V) is just a repeat of a

18 previous picture.

19 Q Okay.

20 A (W) is, once again, on the right side of the

21 house, of Mr. Peter Ball's house, and it's showing the

22 existing so-called shed and existing chimney and the

23 condition of the house at this point.

24 Q Okay.

25 A (X) is another house in the neighborhood, showing

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1 horizontal siding and wider trim on the corner boards.

2 Q And is this a house in the neighborhood?

3 A It is a house in the neighborhood.

4 Q All right.

5 A (Y) is also an existing house in the neighborhood

6 with horizontal siding, just around the corner. (Z) is just

7 the same shot of the front of Peter Ball's house -- you can

8 see it's pretty much covered by all the trees -- and the new

9 addition above the garage.

10 Q Okay.

11 A Double (a) is basically from the street, showing

12 Peter Ball's house.

13 Q Okay.

14 A Double (b) is also from the street, showing Peter

15 Ball's house.

16 Q Okay.

17 A Double (c) is another house with horizontal siding

18 and also wide window casing trim.

19 Q Okay.

20 A Double (d) is a house with horizontal vinyl

21 siding.

22 Q Okay. And both double (c) and double (d), are

23 they in the neighborhood?

24 A They are in the -- they are in the neighborhood.

25 Q Okay. And anything particular about the features

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1 of this house with respect to the doors on double (d)?

2 A It's got, just -- yeah, it's got doors and

3 sidelights on either side.

4 Q Okay.

5 A And double (e) is another house in the

6 neighborhood with vinyl siding and wide trim. It's another

7 house in the neighborhood.

8 Q Okay. When did you take all of these pictures?

9 A They were all taken approximately about six weeks

10 ago.

11 Q Okay. And are these true and accurate copies of

12 the pictures that you took at the time?

13 A They are.

14 Q Okay.

15 MR. MOHAMMADI: Again, move to admit 132(a)

16 through (ee).

17 MS. ROBESON: Objection?

18 MS. ROSEN: Well, I have no objection to the

19 photos that are of Mr. Ball's house, but I do object to the

20 photos of other people's houses and particularly with

21 regard, to the extent that anything is referencing

22 horizontal siding, since siding is not an issue.

23 MS. ROBESON: I'll admit them with the instruction

24 that we aren't --

25 MR. MOHAMMADI: Litigating --

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1 MS. ROBESON: The vinyl siding, yes. I'm sorry.
2 (Exhibits No. 132(a) through
3 132(ee) were received
4 in evidence.)
5 MR. MOHAMMADI: Understood.
6 BY MR. MOHAMMADI:
7 Q Okay. Mr. Schwartz, have you had occasion to
8 visit Mr. Ball's house yourself?
9 A Yes.
10 Q Okay. And how many times have you been there?
11 A I think, twice.
12 Q Okay. And have you looked at the house and taken
13 any measurements or anything like that?
14 A I have.
15 Q Okay. And have you also seen the plans that were
16 submitted and approved in this case?
17 A I have.
18 Q Okay. Now, I'm going to show you what's been
19 previously marked as Exhibit 126. Have you seen this
20 document?
21 A Well, I saw this exact document today, but I've
22 seen the smaller versions previously.
23 Q Okay. And the smaller versions would be -- well,
24 you mean on regular letterhead?
25 A On eight-and-a-half, eight-and-a-half by 11.

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1 Q Okay.
2 A This is the first time -- today was the first time
3 I've seen them in this format.
4 Q Okay. And based on your review of these pictures,
5 are they the identical ones that you have previously seen?
6 A As much as I've reviewed them, yes.
7 Q And they're just the larger versions?
8 A They look like they're just the larger version,
9 correct.
10 Q Okay. Based upon your visit of the property, your
11 review of the plans that were submitted and your own
12 expertise, have you reached any expert opinions with respect
13 to the roof of the height of Mr. Ball's house?
14 A In what, in what regard?
15 Q Have you reached any expert opinions with respect
16 to the roof height?
17 A Well, it's below the county requirement by a
18 number of feet.
19 Q Okay.
20 A It is close, very close, without getting laser on
21 it, to what the plans are showing.
22 Q Okay. And when you say to what the plans are
23 showing, are you talking about the approved plans?
24 A The approved plans, and the reason I say that, we
25 go back to scale, there's no actual scale to use. So I had

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1 to do some calculations to come up with what I did, and it's
2 pretty darn close.
3 Q Okay. Well, explain how you came up with your --
4 how you reached your decision, or your opinion, excuse me.
5 A By taking the addition on the front of the garage
6 and measuring --
7 MS. ROBESON: Can you tell me what sheet you're
8 on?
9 THE WITNESS: I will take, it will be the -- I'll
10 go through the approved plans. It should be on the next
11 page, correct --
12 MS. ROBESON: AB4?
13 THE WITNESS: -- page A5.
14 MS. ROBESON: Oh, A5. Okay.
15 THE WITNESS: And calculating -- you've got an
16 addition that's being built over top of the existing garage,
17 and calculating the length of that truss by the pitch, which
18 is 4-12, that you would end up with seven feet two inches
19 above the existing roof.
20 BY MR. MOHAMMADI:
21 Q And you can tell that by just looking at these
22 plans?
23 A I have to do a little bit of calculations, but
24 yeah, I can, because basically the pitch is --
25 MS. ROBESON: Tell me how you did it again.

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1 THE WITNESS: A 4-12 pitch means that every 12
2 inches the roof will raise four inches.
3 MS. ROBESON: Rise over run.
4 THE WITNESS: Rise over run.
5 MS. ROBESON: Right.
6 THE WITNESS: So if you take the plans, and I --
7 let me go back, refer to the correct page so that I can -- I
8 want the floor plan. If you take the basic floor plan, you
9 can measure out how far out from the approximate center of
10 the peak to the front edge of the roof, you can have a
11 distance --
12 MS. ROBESON: And which floor plan are you looking
13 at?
14 THE WITNESS: I'm looking at A -- well, you can do
15 it on a couple of them. I did it on AB3, and let me see if
16 I've got --
17 MS. ROBESON: Wait. Wait. Wait. Let me get to
18 AB3.
19 THE WITNESS: I got a couple of notes here.
20 MS. ROBESON: Okay.
21 BY MR. MOHAMMADI:
22 Q Is it A2?
23 A Yeah, A2 you can do basically the same thing.
24 MS. ROBESON: So where are --
25 THE WITNESS: You're measuring from --

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1 MS. ROBESON: Where's your measuring point here?
2 THE WITNESS: Okay. Well, actually, it's probably
3 easier on the cross section, the way I did it. So --
4 BY MR. MOHAMMADI:
5 Q Oh, cross section. Here.
6 A Yeah. And --
7 MS. ROSEN: If I --
8 MS. ROBESON: Yes.
9 MS. ROSEN: I would just like to know, because
10 he's talking about measurements and things of that nature,
11 is there any documentation of his -- did he make any report
12 or anything?
13 MS. ROBESON: Well, let's let him finish his
14 description, and then you can cross-examination, but I'm
15 trying to figure --
16 MS. ROSEN: No, I understand. I mean, quite
17 frankly, the reason I'm asking is because, you know, it goes
18 to my discovery request and, like, once again, in my
19 interrogatories where I say, identify all persons who you
20 intend to call as an expert, state the subject matter, the
21 substance of findings and opinions and a summary of the
22 grounds for each opinion.
23 I've never -- this is the first time I'm hearing
24 about measurements today, and it would seem to me that that
25 should have been responded to either in my, in the original

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1 interrogatory answers or in a supplement to the answers in
2 discovery --
3 MR. MOHAMMADI: There's --
4 MS. ROSEN: -- as opposed to me hearing it now for
5 the first time.
6 MS. ROBESON: Okay. Okay. I'm going to let him
7 testify. I'll give it, I just want to get --
8 MS. ROSEN: I understand.
9 MS. ROBESON: -- I understand what you're saying.
10 I want to get to the bottom of this, or this is going to go
11 on forever and ever and ever.
12 MS. ROSEN: Okay. Just for the record, noting it.
13 MS. ROBESON: You can note it. It's noted.
14 MS. ROSEN: Noted as an objection.
15 MS. ROBESON: And, but you were told -- but he did
16 say he was going to testify as to roof height.
17 MR. MOHAMMADI: Exactly.
18 MS. ROSEN: That's correct.
19 MS. ROBESON: And that's what this is. That's
20 what he's testifying to right now. This is how he
21 calculated roof height.
22 MS. ROSEN: Okay. I understand that, but
23 Interrogatory No. 9 asks to state the substance of findings
24 and opinions to which the expert is expected to testify and
25 a summary of the grounds for each opinion. So it would seem

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1 to me that his measurements, his methodology, that that
2 would be part of this answer, which is not --
3 MR. MOHAMMADI: There is no report prepared, and
4 so there's nothing --
5 MS. ROBESON: And that's --
6 MS. ROSEN: Okay. All right. That's what I was
7 asking about, too, whether there was, but I'm saying, even
8 in the answer to Interrogatory No. 9, when you say, state
9 the subject matter, state the substance of the findings and
10 opinions and a summary of the grounds for each opinion,
11 well, I would have to think that his measurements are part
12 of the grounds for his opinion, and it wasn't responded to.
13 MS. ROBESON: Well, I'll tell you what. If you
14 would like to postpone the July 25th date to allow yourself
15 -- I'm not going to go through this hearing and not let him
16 testify about how he --
17 MS. ROSEN: I'm not -- yes.
18 MS. ROBESON: -- figured out the roof height.
19 MS. ROSEN: I'm not going to -- I don't want to
20 postpone it, but I am just making the objection for the
21 record, you know.
22 MS. ROBESON: Well, I don't want to prejudice you.
23 What do you want to do?
24 MS. ROSEN: Well, I don't know. I guess whenever
25 I've been to court and somebody doesn't comply with

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1 discovery, they're not allowed to testify and/or use that
2 document. That's been my experience in a court, you know.
3 I've had that happen many times, where you come to court and
4 someone tries to introduce either testimony or a document
5 which was not produced in discovery and was requested and
6 the usual response to that by the judge is, I guess you're
7 not bringing it in.
8 MR. MOHAMMADI: Okay. First of all, there's no
9 report to produce; so nothing can be produced. Second of
10 all, I've gone through the transcript. I found six times
11 where there was discovery violations from the other side
12 that all of them came in eventually, either produced later
13 on or they're just, let them come in. This is not even a
14 discovery violation. He has an opinion that he formed based
15 on his inspection of the property. There is no report; so
16 there's nothing to produce. He's --
17 MS. ROBESON: This is an administrative
18 proceeding --
19 MS. ROSEN: I'm just making --
20 MS. ROBESON: -- and where in the CCOC rules does
21 it say I can't admit anything that isn't stated in the
22 answer? You get limited answers, but you did get an answer.
23 So where in this does it say I can't admit something that
24 wasn't in discovery?
25 MS. ROSEN: I don't know off the top of my head

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1 that there is something to that effect. I guess I'm
2 operating more along the lines of how things generally work
3 because, otherwise, what would be the point of, you know, of
4 doing the interrogatories if somebody, you know, because
5 normally you can supplement your answers. So the answer
6 could have been supplemented, but --
7 MS. ROBESON: Well --
8 MS. ROSEN: -- it wasn't. There was an
9 opportunity to do it.
10 MS. ROBESON: -- in administrative law, the
11 purpose of the -- this is supposed to provide a
12 less-expensive, more informal method of hearing a case, and
13 that's why we don't have all of the extensive discovery
14 rules that circuit court has. And there are times in this
15 case when I have given your side leeway well, in an effort
16 to get to the bottom of the case, which is really what I
17 want to do.
18 If you feel that you've been prejudiced -- it's
19 supposed to be, the key concern in these cases is
20 fundamental fairness -- if you're concerned that you haven't
21 had an opportunity to respond to Mr. Schwartz's testimony,
22 we can give you more time.
23 MS. ROSEN: Okay. I don't want more time. We'll
24 deal with it in cross-examination.
25 MS. ROBESON: Well, you also have rebuttal.

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1 MS. ROSEN: That's fine. We'll deal with it in
2 rebuttal then.
3 MS. ROBESON: I just don't know of any rule,
4 saying -- we're not governed -- we're governed by the APA.
5 There is a rule about listing the witnesses, but he made a
6 general statement about roof height and that's what he's
7 doing.
8 MS. ROSEN: Okay. We'll deal with it in
9 cross-examination.
10 MR. MOHAMMADI: Okay.
11 MS. ROBESON: Are you having a good time,
12 Mr. Schwartz?
13 THE WITNESS: We are.
14 MS. ROBESON: Go ahead.
15 THE WITNESS: There's no measurements here, and
16 you can't trust the scale, but --
17 MS. ROBESON: And why can't you trust the -- is
18 the, is it as --
19 THE WITNESS: Well, I worked off originally, off
20 of the eight and a half by 11s.
21 MS. ROBESON: Oh, okay.
22 THE WITNESS: Okay? And I did some overlays in
23 trying to get, as best I could, off the relationship between
24 the different pages, between the as-builts and the plans --
25 MS. ROBESON: Okay.

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1 THE WITNESS: -- okay, is how I could the best
2 come up with these calculations. Are they perfectly
3 accurate? No. Are they, do they tell you that the roof is
4 going to be raised? Absolutely. By --
5 MS. ROBESON: And go back. I want --
6 THE WITNESS: -- by --
7 MS. ROBESON: -- you to go back through and tell
8 me how you got there.
9 THE WITNESS: It comes down to basic simple math.
10 The plans show that it's a 4-12 pitch and that they're
11 supposed to keep the existing pitch, keep the plans -- the
12 new addition have the same pitch as the existing house,
13 which is 4-12, and the plans show a 4-12 pitch. So if
14 you're putting an addition on the front of the house above
15 the garage by eight feet, approximately, and you go 4-12
16 from there up, it's going to raise the roof. There's no
17 other way around it if you're trying to keep the existing
18 pitch.
19 MS. ROBESON: I think the missing link is, where
20 do you see the addition of eight feet?
21 THE WITNESS: The, on AB5, right-side elevation,
22 she's showing --
23 BY MR. MOHAMMADI:
24 Q This is Exhibit 126.
25 A Thank you. On the left side of the right

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1 elevation, you're showing lower floor and then you're
2 showing upper floor, and there's another dotted line, which
3 I think says top of ceiling. I think that's what it is.
4 MS. ROSEN: Excuse me. Which drawing are you
5 looking at?
6 THE WITNESS: This is AB5.
7 MS. ROSEN: AB5.
8 THE WITNESS: So on the left side, you've got a
9 couple dotted lines, bottom of joist, lower floor. The next
10 line up is unlabeled, but typically that would represent
11 bottom of joist, and then you've got upper floor, and above
12 that it looks like it's CLG, which would be your ceiling.
13 MS. ROBESON: That's labeled CLG.
14 THE WITNESS: Yes, correct.
15 MS. ROBESON: CLG-TOW.
16 THE WITNESS: Now, if you go to --
17 MS. ROBESON: Oh, they're all labeled: upper
18 floor, bottom of joist.
19 THE WITNESS: Correct.
20 MS. ROBESON: I see. And what's TOS? Do you
21 know? That's the very lowest line --
22 THE WITNESS: BOJ is --
23 MS. ROBESON: No, TOS.
24 THE WITNESS: Oh. Oh, probably top of slab, which
25 would be your basement.

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1 MS. ROBESON: Okay.
2 THE WITNESS: It goes all the way over your
3 basement, top of slab. And if you go to, I'm going to go to
4 the -- now go to A5, which is the plans, and you've got,
5 once again, your lower floor doesn't change, your upper
6 floor does not change, and your top of wall, it's changed to
7 the top of wall and ceiling, is, to what that original
8 height is, that, and you're starting your roof off at that
9 point, which is now the front of the garage. There's no way
10 that you can not raise the roof height if you're going to
11 maintain the existing roof pitch. If we go to -- keep it in
12 order for you -- there was a --
13 MS. ROBESON: In A5 --
14 THE WITNESS: Yes.
15 MS. ROBESON: -- do you know what that dashed line
16 represents?
17 THE WITNESS: The dashed -- what part of A5,
18 please?
19 MS. ROBESON: The top, the left-side elevation,
20 there's --
21 THE WITNESS: That --
22 MS. ROBESON: -- above what appears to --
23 THE WITNESS: Those are the --
24 MS. ROBESON: -- be a railing.
25 THE WITNESS: Right. Those are dash lines of the

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1 roofline on the other side of the house, of the new roofline
2 on the other side of the house.
3 MS. ROBESON: Okay. So it's proposed roofline.
4 THE WITNESS: It'll be the -- well, that's
5 correct.
6 MS. ROBESON: Well, the new roofline.
7 THE WITNESS: Correct.
8 BY MR. MOHAMMADI:
9 Q Is it dashed because it's on the back side; so
10 it's --
11 A It's on the back side, and so the plan -- you
12 cannot see through the house; so you put a dash line,
13 architecturally, so you can see where that roofline would
14 want to go.
15 Q Just in line with that set of questions --
16 A Right.
17 Q -- I just want to clarify something. On the A5,
18 left-side elevation, right where the dashed line is, that's
19 an open space, right?
20 A Correct. It's an open deck.
21 Q Where is the equivalent of that on the right-side
22 elevation?
23 A The architect did not actually draw it in. On the
24 right-side elevation, second floor, there actually should be
25 some white space on the top right elevation on the right

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1 side, and what happens --
2 MR. MOHAMMADI: May we approach so you can mark
3 what he's talking about so it's clear?
4 MS. ROBESON: Yes.
5 MR. MOHAMMADI: That might be easier.
6 BY MR. MOHAMMADI:
7 Q You can do it on that plan.
8 A Oh, okay. This is open.
9 MS. ROBESON: Wait. Wait. You're pointing --
10 THE WITNESS: Well, I'm going to -- okay.
11 MS. ROBESON: -- for the record, you're pointing
12 to A5, Exhibit 126.
13 THE WITNESS: Left elevation and you're showing
14 the --
15 MS. ROBESON: Left --
16 THE WITNESS: -- you're showing, you're showing
17 the open porch, and you're showing dotted lines that
18 represent the roof behind it.
19 MS. ROBESON: Okay.
20 THE WITNESS: On the lower elevation, right-side
21 elevation, it'll be now on the right side of the page. This
22 area here, right in this corner, should actually be open
23 just above this roofline because --
24 MS. ROBESON: Okay. So on the right-side
25 elevation, you're pointing to the --

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1 THE WITNESS: Rear.
2 MS. ROBESON: -- right upper portion of the --
3 THE WITNESS: Correct.
4 MS. ROBESON: -- right-side elevation.
5 THE WITNESS: Correct, and that should be open
6 because that -- this area here is open. Just the little
7 triangle there should be open.
8 MS. ROBESON: I wondered -- okay.
9 THE WITNESS: And what happens is, the architect
10 -- this is done on a CAD. So the architect highlights this
11 area and says, and literally picks, I want siding, and so it
12 fills this whole area in with siding.
13 MS. ROBESON: Okay.
14 THE WITNESS: So that's why that's a little
15 confusing when you look at this right side, because that
16 part is missing.
17 MS. ROBESON: Okay.
18 THE WITNESS: Okay?
19 MS. ROBESON: All right. Thank you.
20 BY MR. MOHAMMADI:
21 Q If I can just, and again, to clarify a little bit
22 more for the record --
23 A Uh-huh.
24 Q -- what we're looking at here, looking at A5
25 again, looking at the left-side elevation, okay, what side

1 of that upper drawing is the front of the house?
 2 A The right.
 3 Q Okay. And on the right-side elevation, the bottom
 4 portion, what side is the front of the house?
 5 A The left.
 6 Q Okay. So they're basically flipped, right,
 7 because you're looking at --
 8 A Well, it's how you look at them. So if you're
 9 taking a picture, you would stand on the right side of the
 10 house and take a picture. If you're taking a picture, you'd
 11 stand on the left side of the house and take a picture
 12 straight on.
 13 Q Okay.
 14 A Some of my pictures represent that.
 15 Q All right. Now, the Hearing Examiner asked you --
 16 and I want to, again, be specific about this -- how can you
 17 tell that there's supposed to be an addition over the garage
 18 from these plans?
 19 A You've got to compare the A5, which is showing the
 20 plan view or the elevations of the plan, compared to AB5,
 21 which is your as-builts.
 22 Q Okay. And specifically, can you describe again
 23 how you figure out that there's an addition over the garage
 24 from this?
 25 A Yes. You've got -- one, it's by looking -- but

1 you're showing your, the dotted lines, which represent your
 2 first floor and your second floor.
 3 Q Are you looking at the left-side elevation?
 4 A I'm looking at the left-side elevation. You've
 5 got your top of slab, and you got your lower floor, and then
 6 you got your upper floor, and then you've got your ceiling
 7 coming straight across, and you can see that there's an
 8 addition over top of a garage. Plus, if you look at A3,
 9 there are some hash lines above the garage, and clearly, it
 10 says, new office/bonus room/bedroom.
 11 Q And those hash lines, you see them in many places
 12 on A3, right?
 13 A Correct.
 14 Q Do those all indicate additions?
 15 A Correct.
 16 Q Okay. And so what we're talking about here is
 17 there's an addition that says, open to below?
 18 A Correct.
 19 Q There's an addition on the -- it says, new
 20 office/bonus room/bedroom?
 21 A Correct.
 22 Q There's an addition that says, new storage?
 23 A In the rear of the home, correct.
 24 Q That's in the back. There's an addition that
 25 says, new covered deck?

1 A Correct.
 2 Q Okay. And there's an addition that's part of the
 3 master bedroom on the left-hand side?
 4 A Correct.
 5 Q And these are all being built on the upper floor
 6 of the house, is that --
 7 A Correct.
 8 Q -- is that accurate?
 9 A Yep, upper floor plan, and then the roofs are
 10 above that.
 11 Q All right. Did you require anything else besides
 12 these plans to determine that the roof would be raised from
 13 the original roofline?
 14 A I saw another set of plans that had cross sections
 15 in them, and they were, had labels on them.
 16 Q Okay. Without that, could you tell that the roof
 17 was going to be raised just from these plans?
 18 A I can. It's a little easier with the cross
 19 sections, but I can.
 20 Q Have you formed any other expert opinions with
 21 respect to the roof and the roof height, besides what we
 22 have already discussed?
 23 A It's pretty close to plan.
 24 Q Now, shifting gears here, with respect to the
 25 construction generally, okay, the construction of the house

1 generally, have you formed any expert opinions with respect
 2 to the construction generally?
 3 A Well, number one, it's not complete --
 4 MS. ROSEN: I am, just for the record, objecting
 5 to him testifying beyond the roof, which is what discovery
 6 indicates he was going to testify to.
 7 MR. MOHAMMADI: I think the pre-hearing statement
 8 specifically says, construction of the home.
 9 MS. ROSEN: The pre-hearing statement just says,
 10 Leo Schwartz, expert in the field of construction, knowledge
 11 about the project as well as a permitting application
 12 process. That's what the pre-hearing statement says.
 13 MS. ROBESON: Well, it says, knowledge about the
 14 project.
 15 MS. ROSEN: It's pretty vague.
 16 MS. ROBESON: Let me ask you something. Could
 17 Mr. Ball file a supplemental complaint against the
 18 association?
 19 MS. ROSEN: I'm sorry? Are you --
 20 MS. ROBESON: Could Mr. Ball file a supplemental
 21 complaint against the association if he chose to?
 22 MS. ROSEN: At this point in time? I would
 23 certainly object to that. We're in the middle of a
 24 proceeding.
 25 MS. ROBESON: Well --

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1 MS. ROSEN: I mean, he had an opportunity --
2 MS. ROBESON: But --
3 MS. ROSEN: A little late in the game. It's kind
4 of similar to the situation, what we had in the CCOC case,
5 where we tried to file, put this into the other case and the
6 CCOC said, well, no, we're too close to a hearing date, so
7 you can't file it in this case.
8 MS. ROBESON: But don't you think at some point
9 it's got to be resolved?
10 MS. ROSEN: Well, I'm not really sure why you're
11 asking about a supplemental complaint. About what, I mean,
12 is what I'm even trying to figure out.
13 MS. ROBESON: Well, I'm just saying --
14 MS. ROSEN: I mean, at some point, you know,
15 generally, when you have a, you know, you're supposed to
16 file -- it's like claims and counterclaims. You know, you
17 have a, someone files a complaint, and if you have a
18 countercomplaint, a -- you know, you have mandatory and
19 permissive counterclaims, but if it's something that's
20 really the same transaction, you're generally going to file
21 it, your counterclaim, with that claim so it's all heard
22 together.
23 MS. ROBESON: Right, I understand. He did say
24 residential construction. I'm going to let it in.
25 MS. ROSEN: Okay.

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1 BY MR. MOHAMMADI:
2 Q Okay. So the question again is, have you formed
3 any expert opinions with respect to the construction project
4 generally?
5 A Well, the construction progress is being
6 constructed in a normal manner. He's using rough trusses,
7 and we've -- he's overlaid roof trusses on the existing
8 house. I've done it many, many times. I'm on a project
9 right now that we had currently done that, and I will
10 probably continue doing that.
11 MS. ROBESON: So this does relate to the roof.
12 MS. ROSEN: Okay.
13 THE WITNESS: It does relate to the roof --
14 MS. ROSEN: That's fine.
15 THE WITNESS: -- because that is a normal practice
16 and it's done very often. In relation to putting your
17 addition on first before you would dismantle an existing
18 house within the new addition is normal. You typically
19 wouldn't expose a house, when you're putting an addition on,
20 until after you get it weathertight; then you would take
21 down interior walls. You wouldn't do that beforehand, if
22 you can help it, in the -- if you're able to do it during
23 construction process, that's what you do. You try to close
24 it in, get it weathertight as best you can.
25 The construction being done is typical, normal

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1 practice. It's got, well, it's not actual Tyvek, but a
2 Tyvek-type product around the house. He's trying to trim
3 it. He's in the middle of construction.
4 BY MR. MOHAMMADI:
5 Q Okay. Does it appear that the construction is
6 finished?
7 A No.
8 Q Okay. Based on your observations, what needs to
9 be done still?
10 A Well, he's got to finish trimming, raise the
11 chimney on the right side until it matches the chimney on
12 the left side, which is what shows on the plans. You've got
13 to finish trimming the windows and put the siding on.
14 Q Okay. With --
15 A That's on the exterior. I'm not going towards the
16 interior work, but that's the exterior.
17 Q Okay. With respect to -- and I want to go back to
18 126, okay, Exhibit 126 -- if you look at Exhibit A5 --
19 A Uh-huh.
20 Q -- you said there is sort of a storage or an
21 addition that's over, that's shown over the back of the
22 house, right?
23 A This is underneath the deck?
24 Q No. I'm talking about the --
25 A Oh.

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1 Q -- A5 shows that there's going to be an addition
2 built on the --
3 A On top of the flat roof?
4 Q Correct.
5 A Okay. Yes.
6 Q Is that right?
7 A Yes.
8 Q And how do you know that based on just looking at
9 the plans?
10 A Well, you have to relate it to the as-built, which
11 I think, if I remember correctly, is No., As-Built No. 5 on
12 the right side.
13 Q Okay. And explain how you came to the conclusion
14 that --
15 A Well, you've got --
16 Q -- there's going to be an addition built?
17 A You've got your lines, which represent your
18 floors, first floor and second floor on the left side of the
19 elevation, which is the bottom elevation, right-side
20 elevation, and you -- those lines go all the way through the
21 house, representing the floor levels -- and you can find
22 those floor levels on the right side of the house. And you
23 can see that the, where it's going to be a storage area has
24 been raised up, I can't tell the exact footage, four or five
25 feet, and then the new roof is being put on top of that, and

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1 you can see it's above, considerably above the upper-level
2 floor lines.
3 Q Okay. You're looking at A5 versus AB5, right?
4 A I'm comparing AB5 and A5, correct.
5 Q Okay. How would adding that addition affect the
6 roof height, if at all?
7 A The same reason that it affects the roof on the
8 front of the house over top of the garage. If you're
9 raising that up and putting a pitch on there, it's -- well,
10 it's a flat roof; so it's going to raise it up, and it's
11 going to be higher than the existing roof.
12 Q Okay. And you can tell that, again, with, with
13 just looking at these plans?
14 A It a little tough in a sense because there's not
15 any measurements here, but you can do it, yes.
16 Q Okay. Could you describe for the Hearing Examiner
17 the process -- well, let me strike that.
18 Once the HOA has approved plans, okay, such as in
19 this situation, what do you do as a builder -- what does a
20 builder do next, usually?
21 A Well, these, these plans are not fully
22 permit-ready. So they -- you would have to, you know,
23 finish up the plans and then submit, submit them to the
24 county.
25 Q Okay. All right. And what happens next?

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1 A The county would review the plans and either
2 accept them or reject them or give any -- if there's any
3 issues with it, they'll let you know --
4 Q Okay. If --
5 A -- any corrections. They'll actually give you a
6 list of any deficiencies that are in the plans or things
7 that you need to change to meet code requirements.
8 Q All right. Let's say, once the plans are
9 approved, what's the next step?
10 A Start construction.
11 Q Is it normal that while you're doing construction,
12 there has to be deviations from the plans?
13 A In remodeling, very normal.
14 Q Okay. And statewide, that is, why is that the
15 case?
16 A Because there's a lot of unknowns when you're
17 remodeling a house. You even actually have unknowns when
18 you're building a new house. So it happens often in both
19 new and remodeling. Architects are good, but they can't get
20 every single detail perfect. There's too many elements
21 going into it.
22 Q All right. And when you come across one of these
23 unknowns and a deviation from the original plans you have,
24 what's the process there?
25 A Well, try to figure out, you know, depending what

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1 the problem is, what your solution would be to solve that
2 problem.
3 Q Okay. Are you required to submit new plans to the
4 county for that?
5 A Not always. Sometimes yes, but not always. If
6 it's a minor window adjustment, no; even interior partition
7 adjustment, no, those type of things are not required. Even
8 roof pitches can be changed as long as you don't go over the
9 county-required height on them, and this particular project
10 is well below that.
11 Q Okay. And does an inspection at some point occur
12 at the property?
13 A There are a number of inspections.
14 Q All right. Could you describe those?
15 A You would have -- when you pour your footage,
16 you'd have an inspection. After your walls are up, you
17 would have another inspection for waterproofing. You would
18 have plumbing inspections. You would have framing
19 inspections, final inspections. These days we have a few
20 more than we used to in the past, but we have insulation
21 inspections, HVAC inspections.
22 Q Okay. And, again, based on your review of the
23 plans and the visits to the house, do you believe there's
24 been any material changes to, to what has been approved and
25 what has been built?

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1 A No, not really. It's pretty close. Is it
2 perfect? No. It's pretty close.
3 MS. ROBESON: Well, I'm going to let him answer --
4 MS. ROSEN: Okay.
5 MS. ROBESON: -- but you can cross-examine. I
6 know where you're going to go to, but go ahead.
7 MS. ROSEN: And I was also just trying, I just
8 wanted to clarify if these are the approved plans. Is he
9 still referring to these plans, because he's now talking
10 about the county? That's why I'm getting a little confused.
11 MS. ROBESON: Oh, that's a good --
12 BY MR. MOHAMMADI:
13 Q Okay. When I said improvements, I meant HOA
14 approved plans. Are they -- are there any material
15 deviations from those?
16 A There are, you know, on the, on the, on the right
17 and left side on the second floor, there's some, showing a
18 balcony all the way across and it's recessed, and there is
19 still a recessed window, but it's not all the way across on
20 the right -- and that's on A4 of Front Elevation.
21 Q Okay. So --
22 A The rear elevation I can't answer because it's not
23 built.
24 Q Okay. And so you think the only -- and would you
25 say it's a material deviation?

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1 A I'm not sure if I'd call it material. There's a
2 slight deviation, but I'm not going to call it material.
3 Q Do you have any expert opinion as to why there's a
4 deviation for that?
5 A My understanding is wind-bracing issues with the
6 county.
7 Q Okay. And could you explain that?
8 A The county has a new, fairly new requirement that
9 -- and it's pretty stringent -- about how, that you have to
10 have wind bracing in your houses now. So it's eliminated
11 windows being in the corner of houses, and you have certain
12 distances from a corner that a window can be. I think 27
13 inches is the minimum. And in this case we had wing walls
14 on both those balconies, and the county -- there was no way
15 to hold that up or brace that, would be the term, for the
16 wind requirements that's now required in Montgomery County.
17 Q So that deviation occurred because it essentially
18 had to?
19 A Correct. It shows on the approved plans from the
20 county.
21 Q Okay. Any other deviations that are material, in
22 your expert opinion?
23 A Not material.
24 MS. ROBESON: Well, define material.
25 THE WITNESS: Well, I'll need a little

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1 clarification on that. He's got, I mean, he's got -- that's
2 the existing. Let's see what we got here.
3 BY MR. MOHAMMADI:
4 Q Well, I guess with material I mean that basically
5 don't stay in line with the design of the house.
6 A He's got windows where windows are supposed to be.
7 There are -- the window in the front of the living room and
8 the second floor are, they're now sliders instead of a
9 triple, I don't know what it'd be, a slider or a casement,
10 because it's not labeled, is a little different, and the
11 front door isn't slightly centered, but I don't know if
12 that's considered material. I mean, it's all in the same
13 spots. I mean, they're all right there. So if they're
14 moved over a little bit, is that considered material? I'd
15 ask a question.
16 Q Okay. Just to go through some of the pictures of
17 the property, okay, and if you recall, we have admitted
18 these photographs. I just want you to focus on the
19 photographs of Mr. Ball's property. Okay?
20 A Uh-huh.
21 Q Exhibit 132 is what we are looking at.
22 MS. ROSEN: The smaller package?
23 MR. MOHAMMADI: No, the bigger package.
24 MS. ROSEN: The bigger package. Okay.
25 BY MR. MOHAMMADI:

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1 Q All right. Taking a look at (a), I think you
2 testified that's Mr. Ball's house?
3 A Correct.
4 Q Okay. And, again, describe again what you see in
5 that picture.
6 A That is the existing condition of the house as it
7 is now --
8 Q Okay.
9 A -- with the flat roof on the slight left and the
10 new addition on the right.
11 Q Okay. There's no new addition built on top of the
12 flat, flat roof, correct?
13 A Correct.
14 Q All right. Can you see the roof, raising of the
15 roof in this picture?
16 A No, I cannot.
17 Q Okay. Can you tell what that blue tarp is?
18 A That may be covering the new roof.
19 Q Okay. On this picture what still needs to be done
20 to complete the home?
21 A On this picture he's got to put the deck on on
22 the, above the second floor and then raise the wall and
23 slide the, and put the roof on on the left side of the
24 addition. This picture would be hard to see through the
25 trees, but primarily what you'd be missing here is that open

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1 deck on the second floor.
2 Q What about the new addition -- what else needs to
3 be done on that?
4 A The new addition, basically it looks like he's got
5 to finish trimming it and put siding on it.
6 Q Okay. All right. Go ahead and flip to page --
7 let's see which one is the next one.
8 A This is --
9 Q (D)?
10 A -- (d).
11 Q Okay. What part of the house is that?
12 A This is, well, to the right of the picture is the
13 front door, and to the left, I think, is the living room
14 and --
15 Q Okay. What still needs to be done here?
16 A Obviously finish, finish the corner boards, finish
17 this front stoop --
18 MS. ROBESON: Wait. I'm sorry. Which picture are
19 you on?
20 THE WITNESS: (D).
21 MR. MOHAMMADI: Sorry. We're skipping to only the
22 ones that are --
23 THE WITNESS: Only --
24 MS. ROBESON: I see.
25 THE WITNESS: -- only Peter Ball's house.

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1 MS. ROBESON: Okay. Go ahead.
2 THE WITNESS: Have to put his corner boards on,
3 finish trimming on either side of the front door -- if I'm
4 reading the plans correctly, there's panels that go on
5 either side of the front door that would be, sort of mimic
6 the panels that are underneath the window on the left --
7 finish this front stoop, and put the siding on.
8 BY MR. MOHAMMADI:
9 Q Okay.
10 A In (e), which is the next page, you can sort of
11 see the panels on the second floor, see the recessed window.
12 He would have to still put his balcony railing between the
13 two panels in front of the window and finish the siding, and
14 I think that's it --
15 Q Okay.
16 A -- and that's for the exterior work.
17 Q All right.
18 A Number (f), same, same situation, he's got to, you
19 know, put the siding on, you know.
20 Q Okay.
21 A Skipping ahead to (h), that's just a better
22 picture of the left side of the house that needs the siding
23 put on. Looks like in that one, as far as I can see, he's
24 got the drip edge on it; it's pretty much ready to go.
25 Q All right.

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1 A Number (j) is the rear of the house again, like
2 the previous picture. He's got to finish a little bit of
3 soffit work, but he still has to finish above this flat roof
4 on the left, the balcony area, before he's ready to finish
5 the siding in that area.
6 Q And that would include also adding the roof on
7 top?
8 A That would include adding the roof on top,
9 correct.
10 Q Okay.
11 A (K) would be the other end of that flat, flat part
12 of the house, and it would be the same thing. He's got to
13 raise the rear of the house up and run the roof up to, looks
14 like underneath the blue tarp to line up the roofs.
15 Q All right.
16 A Number (m) is basically the rear of the house
17 again. So --
18 Q Similar. Okay.
19 A Similar, similar, similar. On (o), moving up to
20 (o), he'd have to raise the chimney up, finish the trim, the
21 overhangs, finish the corner boards, and get the siding on.
22 Q What about the chimney?
23 A He needs to raise it up. The code is required two
24 foot above the roofline.
25 Q Okay. Can you tell from the plans, the approved

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1 plans on 126, whether the chimney is supposed to be raised
2 or not?
3 A Yes.
4 Q Can you tell --
5 A If you look --
6 Q -- tell the Hearing Examiner how you reached that
7 conclusion?
8 A Well, besides just code-wise, it needs to be two
9 feet above the roofline for code, on the -- looking for the
10 as-built; they're showing the existing. It would be in AB
11 -- here is AB5. On AB4 you can, it's hard to tell, but the
12 chimney on the right is lower than the chimney on the left,
13 and the -- it's a little easier to see on the rear
14 elevation, but the chimney in that view is on the left side;
15 on the front elevation, it would be on the right side, is
16 lower than the chimney on the living room side, is probably
17 the better way to do it. And if you move to page A4, you
18 can see the chimneys are at the same height.
19 Q So the lower one would have to be raised?
20 A Lower one would have to be raised.
21 Q All right. Moving on -- oh, can you see any
22 portion of one of the sheds in (o)?
23 A (O)? Yes, the existing, it's really part of the
24 house, but it's called a shed, is in the lower part,
25 left-hand corner of that picture.

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1 Q Okay. Have you formed any --
2 MS. ROBESON: I'm sorry. I missed that. Which
3 picture are you on?
4 THE WITNESS: (O).
5 MS. ROBESON: Okay.
6 THE WITNESS: The lower part of the picture, where
7 the gutter is sort of hanging, just to slight left of that,
8 that is -- everyone refers to that as a shed, but that's
9 existing. It's really part of the house. Sheds technically
10 are detached, code-wise --
11 MS. ROBESON: Right.
12 THE WITNESS: -- if you get into details. And (p)
13 shows more of that shed.
14 BY MR. MOHAMMADI:
15 Q Okay.
16 A Moving on to (r), is the front of Peter Ball's
17 house. He needs to finish the soffit trim, which is where
18 the roof comes down and meets the walls, and then he's got
19 to finish some corner boards; then it looks like he's pretty
20 much ready for siding.
21 Q Okay. With respect to (r), on the right side, can
22 you tell whether that window is recessed or not?
23 A It is definitely recessed --
24 Q Okay.
25 A -- and I think there's a clearer picture coming

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1 up.
2 Q Okay. And this picture also shows that the
3 addition over the garage has already been built?
4 A Correct.
5 Q All right.
6 A Also shows your perspective when you're standing
7 on the ground. Perspective, when you're standing on the
8 ground, is a little different than what you see in plans.
9 Q Okay.
10 A (S) is basically the same, front of the house or
11 on the front door got to finish the soffits. You can see
12 the soffit on the left side of the front of the house is
13 completed but not above the front door yet.
14 Q All right.
15 A On (t) it's the same, finish his balcony railing
16 across the front of the windows that's recessed and then
17 finish up. That's almost ready for siding.
18 Q Okay.
19 A Here's the picture I was talking about, (u), or --
20 (u) is above the garage, and it's also a recessed area, and
21 he's still got to trim out, if I remember correctly in the
22 plans that refer to --
23 Q And please be specific what plans you're looking
24 at. Okay?
25 A Yep. I think it's still, this one doesn't show --

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1 this one shows the balcony all the way across, but you got
2 to put the balcony, the balcony across this window on the
3 plans, a railing.
4 Q Are you talking about on (u) there needs to be a
5 balcony still put up?
6 A Yeah, a little railing across there.
7 Q Okay.
8 A (W) is the same, right side of the house, showing
9 the existing shed, and the chimney needs to be raised.
10 Q Okay.
11 A (Z) is front of the house, just standing back a
12 little bit further, and you just see it still needs soffit
13 work, some trim work done before he's ready for siding.
14 Q Okay.
15 A Double (a) is just a different perspective from
16 the street, and I think that's, I think that's it.
17 Q All right. Based on your visits and review of the
18 plans, have you had a chance to see all the work that still
19 remains to be done on the exterior of the home?
20 A From the pictures and walking around the outside
21 of the house, I mean, it's what I've explained.
22 Q Okay. As a builder who would do similar work, in
23 your expert opinion, how long would it take for you to
24 complete the exterior of the home based on what's still
25 remaining?

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1 A What's still remaining?
2 Q Yes.
3 A Couple months.
4 Q Okay.
5 A Yeah.
6 Q When you say couple months, do you mean two months
7 or --
8 A Weather permitting, but two to three months, you
9 know, depending on how quickly you can get everything. You
10 still have an addition -- got to take off this roof that's
11 over the flat. The flat roof on the existing house needs to
12 be taken off, because the floor elevation comes across, and
13 still have to build that roof on that left side of the rear.
14 It still needs to be built, and you got to finish trimming
15 it; then you can put the siding on --
16 Q Okay.
17 A -- and raise, raise the chimney up.
18 Q Have you formed any other expert opinions with
19 respect to this particular construction project that we have
20 not already discussed?
21 A Related to the construction, that's about it.
22 Q Okay.
23 MR. MOHAMMADI: Nothing further.
24 MS. ROBESON: All right. I am only going to go
25 until 5 o'clock tonight, but that gives you over an hour for

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1 cross-exam. I don't know --
2 MS. ROSEN: I actually would prefer to not
3 cross-exam today. I mean, I feel that, you know, a lot of
4 things that have come in I don't feel should have come in
5 based upon the discovery, and I would actually prefer to
6 cross-examine the next time around.
7 MS. ROBESON: Okay. Exactly, exactly what do you
8 feel shouldn't have come in?
9 MS. ROSEN: Well, I think that anything that went
10 beyond the roof itself was not appropriate, and also, like I
11 said, in the discovery I asked for the substance --
12 MS. ROBESON: No, but you got to tell me what so I
13 can make a ruling.
14 MS. ROSEN: I guess we'll just start, what I
15 objected to initially, that the discovery -- I requested
16 that he state, you know, in addition to, the substance of
17 the findings and opinions upon which the expert was expected
18 to testify and the summary of the grounds for each opinion.
19 I've received nothing, I mean, absolutely nothing as to a
20 summary of the grounds for each opinion that he has given
21 with regards to this.
22 MS. ROBESON: So you're saying you didn't know how
23 he calculated the roof height?
24 MS. ROSEN: I have no idea how he did any of it
25 because nothing was provided in the responses to discovery

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1 and they should have been, and so it'd be very -- it's
2 difficult for me just to sit here now and try to
3 cross-examine him on.
4 MS. ROBESON: Okay. I understand. What else?
5 MS. ROSEN: On each of these photographs, for
6 example -- you know, he's going into the construction that
7 is not related to the roof on various aspects of these
8 photographs that he's gone --
9 MS. ROBESON: I didn't hear that.
10 MS. ROSEN: Well, he was talking about windows.
11 He was talking about various, you know --
12 MS. ROBESON: Yes, but --
13 MS. ROSEN: -- other issues. You know, he was
14 talking about other -- he was looking at other properties
15 when going through.
16 MR. MOHAMMADI: Well, I don't think that's true.
17 He didn't go other properties. He just said these were
18 pictures of other properties, and with respect to the
19 pictures that he did go through, he simply stated what still
20 remains to be done based on the --
21 MS. ROBESON: That's what I thought he was saying.
22 MR. MOHAMMADI: He didn't testify about any
23 deviations or anything like that from those pictures. All
24 he said --
25 MS. ROBESON: Well, he did on the plans.

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1 MR. MOHAMMADI: Right, but not on the pictures.
2 The pictures specifically, he just said, this is what still
3 remains --
4 MS. ROBESON: Yes, I agree with you.
5 MR. MOHAMMADI: -- this is what still remains,
6 this is what remains.
7 MS. ROSEN: Well, everything with regard to
8 initially when he starts talking about, you know, the
9 measurements and things like that, I have no idea how he's
10 calculating things. So I really have no idea how he's even
11 come to his opinions, but he says he's taken measurements,
12 but --
13 MS. ROBESON: I do, but I understand.
14 MS. ROSEN: I don't.
15 MR. MOHAMMADI: Your Honor, just -- maybe I can
16 make this easier. I don't have an objection to continuing
17 it so that she can have the opportunity to prepare the
18 cross-examination based on the testimony today. I don't --
19 I'm not conceding that we didn't provide what we needed to
20 in discovery. I'm just simply saying, if it'd make it
21 easier, I don't have a problem continuing the matter so that
22 she can, Ms. Rosen can have adequate time to prepare.
23 MS. ROSEN: If he wants to call another witness
24 now, that's fine, and I'll just cross-examine the other
25 witness next time.

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1 MR. MOHAMMADI: I'd prefer not to. I'd prefer to
2 finish this witness before I move on to any other witnesses.
3 MS. ROBESON: Okay. And it was a detailed
4 explanation that he gave as to the roof height, how he got
5 to the roof height.
6 MS. ROSEN: And I would, quite frankly, also like
7 to consult with Dr. Barr, you know, with regards to, because
8 these are technical issues. So --
9 MS. ROBESON: You don't want to have to do it
10 right now at the hearing.
11 MS. ROSEN: Correct, exactly.
12 MS. ROBESON: Yes, I understand. Okay. So -- and
13 you don't want to put on another witness?
14 MR. MOHAMMADI: The witness I'll put on depends on
15 what other testimony will be and what the cross is before
16 I --
17 MS. ROBESON: Well, it's hard when you get another
18 witness on and then you get another cross. It --
19 MS. ROSEN: All right. That's fine.
20 MR. MOHAMMADI: Right.
21 MS. ROBESON: -- makes it confusing. So I am --
22 MS. ROSEN: Okay.
23 MS. ROBESON: -- going to grant your request. Did
24 you agree to July -- it's my understanding --
25 MS. ROSEN: 25th, I think, is good for everybody.

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1 MS. ROBESON: July 25th at 9:30?
2 MR. MOHAMMADI: Let me just double-check one more
3 time, but I believe that was correct. I do need to consult
4 with my expert, make sure he's, since we're in the middle of
5 his --
6 MS. ROBESON: Ms. Rosen, how soon do you think you
7 would know about having your own expert -- well, we may not
8 get to rebuttal on the 25th -- how soon do you think you
9 would know about having your own expert on rebuttal? You
10 had mentioned --
11 MS. ROSEN: Well, we would like --
12 MS. ROBESON: -- you might have one.
13 MS. ROSEN: Yes. I think we will go ahead, and I
14 will discuss with Dr. Barr and we'll get one. Within one
15 week we'll designate.
16 MS. ROBESON: Well, if you -- Mr. Mohammadi, I
17 think normally a pre-hearing submission is 10 days before
18 the hearing. So if they go a week, that would be the 17th.
19 That would only be seven days before the hearing that he
20 might possibly come up. I don't know if he will come up on
21 the --
22 MR. MOHAMMADI: If you're saying next, on the
23 16th --
24 MS. ROSEN: I don't believe he would come up on
25 the 25th because he still has to put his whole case on.

1 MS. ROBESON: How many witnesses do you have?
 2 MR. MOHAMMADI: Well, I have Mr. Schwartz,
 3 Mr. Hancock, Charles Bruno, Ms. Bentolita, Peter Gibson, and
 4 then, oh, Lance Pelter -- I didn't see you here, Lance --
 5 MS. ROBESON: Okay. All right.
 6 MS. ROSEN: Okay. I think we got it.
 7 MR. MOHAMMADI: -- and -- there's a few, as you
 8 can see.
 9 MS. ROBESON: Okay. It's fine to stop now. If
 10 you can, if you can notify him in a week to 10 days --
 11 MS. ROSEN: Okay.
 12 MS. ROBESON: -- because people are on vacation --
 13 MS. ROSEN: Okay. Make it 10 days.
 14 MS. ROBESON: -- and with, if you want to
 15 introduce the CV with a CV, that would be helpful, and I
 16 assume that his testimony would be limited to, because it's
 17 rebuttal, would be --
 18 MS. ROSEN: Correct.
 19 MS. ROBESON: -- limited to the technical
 20 testimony here.
 21 MS. ROSEN: Absolutely, yes, that's the purpose.
 22 MS. ROBESON: So you don't have to -- if you could
 23 provide him, with a CC to our office, the name and the CV,
 24 then, within a week to 10 days, then I won't ask for another
 25 supplemental pre-hearing statement.

1 MS. ROSEN: We can do that.
 2 MS. ROBESON: Okay.
 3 MR. MOHAMMADI: Just one procedural matter, I
 4 guess, housekeeping matter, Michael Ball, I failed to clear
 5 the date, the 25th with him. I understand he's not
 6 available. I just want to make sure that he's -- he's
 7 waiving his right to cross-examine for that day and that
 8 he's not going to --
 9 MS. ROBESON: Is that, can you say?
 10 MR. MICHAEL BALL: Yes.
 11 MS. ROBESON: Yes. Okay.
 12 MR. MOHAMMADI: And that he won't be there on the
 13 25th.
 14 MS. ROBESON: Okay. And do you intend to call
 15 Mr. Michael Ball?
 16 MR. MOHAMMADI: I don't have any intention to call
 17 him.
 18 MS. ROBESON: Okay. All right. So with that, we
 19 will continue this case to July 25th at 9:30 a.m. in this
 20 room.
 21 MS. ROSEN: Thank you, Your Honor.
 22 MR. MOHAMMADI: Thank you, Your Honor.
 23 (Whereupon, at 3:54 p.m., the hearing was
 24 adjourned.)
 25

C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
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 Office of Zoning and Administrative Hearings for Montgomery
 County in the matter of:

Potowmack Preserve v. Michael and Peter Ball
 CCOC No. 72-13
 OZAH No. C14-01

By:

Wendy Campos, Transcriber

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