

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 25, 2014, commencing at 9:32 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.

PO Box 493

Rockville, Maryland 20848

For the Respondents:

Farrokh Mohammadi, Esq.

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E X H I B I T S

Exhibit No.		Marked/Received
138	Résumé of Leo Schwartz	5
139	Building permit	20 23
140	October 10, 2013, e-mail from Charles Bruno to Peter Gibson	137 146
141	September 9, 2013, e-mail from Peter Gibson to Raj Barr	175
142	February 25, 2012, e-mail from Tania Bruno to Raj Barr	180

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Leo Schwartz				
By Mr. Mohammadi:	12			39
By Ms. Rosen:		16		46
Mary Beth Bentolila				
By Mr. Mohammadi:	50			78
By Ms. Rosen:		70		82
Lance Pelter				
By Mr. Mohammadi:	84			112
By Ms. Rosen:		98		115
Charles Bruno				
By Mr. Mohammadi:	119			152
By Ms. Rosen:			133	
Raj Barr				
By Mr. Mohammadi:	157			236
By Ms. Rosen:		229		

P R O C E E D I N G S

1  
2 MS. ROBESON: All right. I am going to call the  
3 case of CCOC No. 72-13, OZAH Case No. 14-01, Potowmack  
4 Preserve, Inc., versus Peter and Michael Ball. Before we  
5 begin, I did see the e-mail exchange about Mr. Schwartz's  
6 résumé. I wrote on the one I have that says, not admitted.  
7 Do you have another one, and I can --  
8 MR. MOHAMMADI: Can we switch?  
9 MS. ROBESON: What?  
10 MR. MOHAMMADI: Can we switch?  
11 MS. ROBESON: Yes. That's what I'm asking you to  
12 do.  
13 MR. MOHAMMADI: Mine has 130 written at the bottom  
14 because that was the exhibit number, but --  
15 MS. ROBESON: Let me just -- oh, I see.  
16 MR. MOHAMMADI: That's all I marked on that.  
17 MS. ROBESON: Well, I'm going to cross it off --  
18 MR. MOHAMMADI: Okay.  
19 MS. ROBESON: -- and we'll make it 138.  
20 (Exhibit No. 138 was marked  
21 for identification.)  
22 MR. MOHAMMADI: And we don't have anything for 130  
23 then, it looks like.  
24 MS. ROBESON: I'm sorry?  
25 MR. MOHAMMADI: There's no Exhibit 130 then no,

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1 any longer?  
2 MS. ROBESON: No, there is an Exhibit 130. It was  
3 marked as the -- because this wasn't admitted, I didn't --  
4 MR. MOHAMMADI: I see.  
5 MS. ROBESON: Okay. So this Schwartz résumé will  
6 be 138, résumé of Leo Schwartz or --  
7 MR. MOHAMMADI: Yes.  
8 MS. ROBESON: Yes. Are there any other  
9 preliminary matters?  
10 (No audible response.)  
11 MS. ROBESON: Hearing none --  
12 MS. ROSEN: I know. I was going to say, she's  
13 going to be happy today.  
14 MS. ROBESON: I'm not giving you too much time to  
15 think about it. Hearing none, what I wanted to do -- did  
16 the parties get my e-mail about having the experts testify  
17 about the use of architectural, the use of scales in  
18 residential building plans?  
19 MS. ROSEN: Yes.  
20 MR. MOHAMMADI: Yes.  
21 MS. ROBESON: Okay. Is your expert prepared to  
22 testify about that?  
23 MR. MOHAMMADI: I'm going to ask him about it. I  
24 wasn't exactly sure what you meant with the question, but I  
25 can, I can certainly ask him.

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1 MS. ROBESON: Well, I can ask him --  
2 MR. MOHAMMADI: That's --  
3 MS. ROBESON: -- because I know why I'm asking the  
4 question.  
5 MR. MOHAMMADI: Okay.  
6 MS. ROBESON: All right. So, Ms. Rosen, he had  
7 ended his direct testimony, but I'm going to take this  
8 first --  
9 MS. ROSEN: Sure.  
10 MS. ROBESON: -- so you can cross-examine based on  
11 my questions as well. All right?  
12 MS. ROSEN: Okay.  
13 (Witness previously sworn.)  
14 MS. ROBESON: Okay. Mr. Schwartz --  
15 THE WITNESS: Yes.  
16 MS. ROBESON: -- what I -- maybe I didn't word it  
17 in the e-mail as well as I should have. I'm trying -- what  
18 I want to know is, is it customary to use scales as a means  
19 of measuring heights and dimensions in residential building  
20 plans? That's really what I wanted to know.  
21 THE WITNESS: The simple answer is absolutely,  
22 yes.  
23 MS. ROBESON: Okay. Were you here for Mr. Barr's  
24 testimony regarding the scales are no good, you have to rely  
25 on dimensions? Were you here for that?

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1 THE WITNESS: I was here for that.  
2 MS. ROBESON: And can you comment on that?  
3 THE WITNESS: I can. The typical rule of thumb is  
4 that you would rely on written dimensions over scale, but we  
5 use scale a lot in that regard. So if you've got a -- in  
6 this case, we're all talking about heights. So if you've  
7 got a height that's written, you would go over -- you would,  
8 you would use what's a written height over what you do on a  
9 scale, because the scale can be off.  
10 As we talked previously about, when you copy  
11 plans, especially when you reduce plans, the scale can  
12 change. It's still somewhat scaled, but you don't know what  
13 the scale is. It's not a standard type of scale, but with  
14 lack of measurements, then you would go to scale, what the  
15 architect drew.  
16 MS. ROBESON: Okay. Well, say, say you have the  
17 original blueprint drawings --  
18 THE WITNESS: Correct.  
19 MS. ROBESON: -- and you have a scale, you know,  
20 one inch equals 200 feet, whatever the scale is.  
21 THE WITNESS: Correct.  
22 MS. ROBESON: Is that, can that be used to measure  
23 or obtain dimensions on plans?  
24 THE WITNESS: Absolutely, yes.  
25 MS. ROBESON: And is that regularly used?

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1 THE WITNESS: Absolutely. You would, you would,  
2 as building a house, you would prefer to go to the written  
3 dimensions because that's what the architect would specify.  
4 They want a certain dimension; like, a door opening is three  
5 feet or six feet or whatever the door opening. You'd go to  
6 that dimension. You would use that over top of the scaling,  
7 but if you don't have that information, then you're, you  
8 would use the scaling all the time, and it's used quite  
9 often. We're using our scales quite often on plans to  
10 determine the intent of what the architect had drawn.  
11 MS. ROBESON: Is it typical to use dimensions for  
12 construction drawings but not necessarily for when you're  
13 getting more of an architectural approval?  
14 THE WITNESS: Well, I'll be honest with you, I was  
15 surprised with what I was presented as the approved plans  
16 with no dimensions on it after Mr. Barr's testimony saying  
17 they wanted plans with dimensions and to scale, and the ones  
18 that I was presented that were approved --  
19 MS. ROBESON: Yes, I had the same thought.  
20 THE WITNESS: -- had no, had no dimensions.  
21 They're either whited out or taken off or -- something did  
22 not make sense. I don't know of any architect that would  
23 submit plans without any dimensions on them. So I'm working  
24 with what I was sort of presented to review.  
25 MS. ROBESON: Is there a difference between a plan

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1 you would submit for a building permit and a plan you might  
2 submit for a more preliminary approval?  
3 THE WITNESS: There could be. I can't say there  
4 wouldn't be. You would think that they'd be close, very  
5 close to each other, but yes, they possibly could be  
6 because --  
7 MS. ROBESON: Would a building permit, would they  
8 require dimensions?  
9 THE WITNESS: Absolutely --  
10 MS. ROBESON: Yes.  
11 THE WITNESS: -- they'd require dimensions and on  
12 scale, which typically in Montgomery County it's a  
13 quarter-inch scale --  
14 MS. ROBESON: Okay.  
15 THE WITNESS: -- is what they want. So, yes, they  
16 would need dimensions, and when they're determining your  
17 roof height, they are not going to scale the roof height.  
18 They are going to go by the dimensions that are required to  
19 be on the plans --  
20 MS. ROBESON: Right.  
21 THE WITNESS: -- and the plans, the approved  
22 county plans have those dimensions on them.  
23 MS. ROBESON: Right. Okay.  
24 THE WITNESS: But -- which I'm surprised that the  
25 approved --

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1 MS. ROBESON: No, I --  
2 THE WITNESS: -- association plans don't have any  
3 dimensions written on them.  
4 MS. ROBESON: Okay. All right.  
5 THE WITNESS: That, to me, is a little out of the  
6 ordinary, and I thought that was a requirement, that  
7 Mr. Barr's testimony said that they wanted plans that had  
8 dimensions on it, if I recollect correctly.  
9 MS. ROBESON: But, in your opinion, you can also  
10 use a scale?  
11 THE WITNESS: Correct. With lack of dimensions,  
12 you sort of have no choice, in a sense. I mean, you like,  
13 you like dimensions written, and then you would know that  
14 you're scaling it correctly. Like, right here, they're, on  
15 the plans -- I'm picking up the, I think they were the  
16 original approved 11 by eight-and-a-half approved plans --  
17 they're showing the floor heights, you know, they're showing  
18 between the top and the bottom of the floor trusses, and if  
19 you scale it, it's eight feet. So, okay, that's getting --  
20 at least, if it's written eight feet and then you scale it  
21 eight feet, you know they're probably --  
22 MS. ROBESON: It's probably eight feet.  
23 THE WITNESS: -- probably eight feet and the plans  
24 are --  
25 MS. ROBESON: I understand.

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1 THE WITNESS: -- are pretty, are written to scale.  
2 In this case, with this being not here, which is unusual,  
3 especially on the smaller size, it's hard to, to determine  
4 that.  
5 MS. ROBESON: All right. Thank you. I'm going to  
6 let Ms. -- thank you --  
7 THE WITNESS: Yeah.  
8 MS. ROBESON: -- for your testimony. I'm going to  
9 let Ms. Rosen cross, and then you will have redirect based  
10 on her cross and his testimony.  
11 MR. MOHAMMADI: And on your questions as well?  
12 MS. ROBESON: Yes, everything.  
13 MR. MOHAMMADI: Okay.  
14 MS. ROBESON: Go ahead, Ms. Rosen,  
15 cross-examination. Or let me do this: Do you have any  
16 follow-up questions, and --  
17 MR. MOHAMMADI: Yes, I think it would make it a  
18 little bit simpler.  
19 MS. ROBESON: Yes, I think we better do it, and  
20 then she can cross based on your --  
21 MR. MOHAMMADI: Just a few.  
22 DIRECT EXAMINATION (Resumed)  
23 BY MR. MOHAMMADI:  
24 Q Mr. Schwartz, have you seen the actual approved  
25 larger-scale plans?

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1 A No, I have not had a chance to, except for our  
2 last hearing --  
3 Q Okay.  
4 A -- and I've not studied them --  
5 Q All right.  
6 A -- I've not gotten a copy.  
7 Q I'm showing you what's been marked as Exhibit 126.  
8 A Correct.  
9 Q Okay? Take a, take a moment and look through  
10 these, these approved plans.  
11 MS. ROBESON: While he's doing that, I just want  
12 to state for the record, I do not see Mr. Michael Ball here.  
13 What I am going to ask him to do is do a waiver of the right  
14 to cross-examine for all periods that he's not in  
15 attendance.  
16 MR. MOHAMMADI: Understood.  
17 MS. ROBESON: Go ahead. I just wanted to do that  
18 for the record.  
19 THE WITNESS: Yeah, they appear to be similar to  
20 the smaller -- eight-and-a-half by 11s.  
21 BY MR. MOHAMMADI:  
22 Q Okay.  
23 A Okay.  
24 Q Do you see any dimensions on these plans?  
25 A No, I do not.

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1 Q Do you see a scale on this plan?  
2 A Yes.  
3 Q What is the scale?  
4 A One-eighth to one -- one-eighth inch equals one  
5 foot.  
6 Q Okay. Now, do you have a scale with you?  
7 A I do.  
8 Q Take a look at the approved plans with respect to  
9 what is to be built, not the as-built, but the approved  
10 plans, essentially.  
11 A Okay.  
12 Q And take a look at A4, which is the front  
13 elevation --  
14 A And the rear elevation.  
15 Q -- and the rear elevation.  
16 A Yes.  
17 Q Using your scale, can you figure out how tall  
18 this, the roof is? Okay. Strike that.  
19 Can you figure out how tall the roof is over the  
20 garage?  
21 A Yeah, I think so. Let's see. If I've got -- this  
22 one's got an eighth-inch scale; that's -- I've got, scaling  
23 it, about 28 feet.  
24 Q And then if you go to the as-built plans and,  
25 again, looking at the front and rear elevations --

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1 A Here we go, AB4, yeah.  
2 Q -- can you do the same thing with the roof over  
3 the garage?  
4 A The house roof?  
5 Q Correct.  
6 A And it scales at 24 feet.  
7 Q Okay. And you can, just based on that, you can  
8 tell that the roof height would have to be raised; is that  
9 fair to say?  
10 A Yes.  
11 Q A couple more questions on this. There was some  
12 testimony about not being able to necessarily rely on scales  
13 once copies are made because the scale could -- the  
14 shrinkage or enlargement could throw off the scale, correct?  
15 A Well, absolutely, because this looks like it --  
16 the smaller version, the eight-and-a-half by 11, also says  
17 one-eighth-inch scale. This larger 17 by 11 says  
18 eighth-inch scale. So once you reduce those -- once you  
19 reduce that down, it's hard to use a scale.  
20 Q Right.  
21 A There's actually tricks to being able to do it,  
22 but, but it's hard to use a standard scale.  
23 Q So, basically, you would need to know what the,  
24 what size drawings the scale was based off of, correct?  
25 A Yes, correct.

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1 Q Okay. And if you were told that the drawings were  
2 based off of these, these size drawings on 126, you would be  
3 able to rely upon the scale to determine how high they --  
4 the size of everything?  
5 A Yeah.  
6 Q Okay.  
7 MR. MOHAMMADI: Nothing further.  
8 MS. ROBESON: Okay. Ms. Rosen, cross-examination.  
9 MS. ROSEN: Okay.  
10 CROSS-EXAMINATION  
11 BY MS. ROSEN:  
12 Q Mr. Schwartz, you've given testimony as an  
13 experienced builder who can read and interpret architectural  
14 drawings. Have you done projects in homeowners  
15 associations?  
16 A Yes.  
17 Q Okay. How many projects have you done in  
18 homeowners associations?  
19 A I'm trying to think, a couple, one, two. One I  
20 can think of was a house that burnt down. I had to rebuild  
21 it. I think it was a homeowners association.  
22 Q Okay. And you have reviewed the homeowners  
23 association-approved plans in this case, being the  
24 Exhibit --  
25 A 126 --

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1 Q -- 126?  
2 A -- only here in court.  
3 MS. ROBESON: Wait. Are we talking about, when  
4 you say approved plans, are we talking about Exhibit 77; are  
5 we talking about 126?  
6 MS. ROSEN: They're basically the same, but we'll  
7 say 126.  
8 MS. ROBESON: Well, aside from that  
9 characterization, which is a question --  
10 MS. ROSEN: All right.  
11 MS. ROBESON: -- of fact in this case, you've  
12 reviewed both -- your question pertains to 126?  
13 MS. ROSEN: Right. I'll ask him.  
14 BY MS. ROSEN:  
15 Q Have you reviewed the plans that are marked as  
16 126?  
17 A Yes, in court.  
18 Q Okay. Have you also reviewed the county-approved  
19 permit plans?  
20 A I have, yes.  
21 Q Okay. And do you see any difference between the  
22 floor plans and the elevations in these two sets of  
23 drawings?  
24 A I did not do that comparison.  
25 Q Is it your testimony that the building has been --

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1 that the building has been built according to the  
2 HOA-approved plans?  
3 MR. MOHAMMADI: Objection.  
4 MS. ROBESON: Basis?  
5 MR. MOHAMMADI: That was never his testimony, any  
6 part of his testimony. The only testimony he gave was with  
7 respect to roof heights. I don't know. It's not within the  
8 scope of direct.  
9 MS. ROBESON: I do recall that he testified that  
10 there were some differences relating to the wind loading --  
11 MR. MOHAMMADI: The wind bracing?  
12 MS. ROBESON: -- requirements and --  
13 MR. MOHAMMADI: I'll withdraw.  
14 MS. ROBESON: Okay. Go ahead, Ms. Rosen.  
15 MR. MOHAMMADI: Thank you.  
16 THE WITNESS: Yes, I guess is the answer.  
17 BY MS. ROSEN:  
18 Q Okay. Are there any differences between the  
19 HOA-approved plans and the construction as built, in your  
20 opinion?  
21 A Yes.  
22 Q Okay. And, in your opinion, why are there  
23 differences?  
24 A One is the county requirement for the wind bracing  
25 on the corners of the house, and others where windows were

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1 slightly rearranged in the front of the house but in the  
2 same locations and the construction is not completed yet.  
3 Q Are there not other ways of doing window bracing?  
4 MR. BARR: Wind bracing.  
5 BY MS. ROSEN:  
6 Q Wind bracing, I'm sorry. Are there not other ways  
7 of doing wind bracing on what was done?  
8 A There are many ways of doing wind bracing.  
9 Q Okay. What are some of the other ways it could  
10 have been done?  
11 A Well, there's requirements that you've got to have  
12 a corner and you've got to have plywood and they have,  
13 typically, 27 inches between the corner and the window. You  
14 -- there's two or three methods that the county uses. I  
15 don't, I'm not, I'm not an architect; so I don't know  
16 exactly all those different methods to doing wind bracing.  
17 There are areas where you can strap it, like on a garage,  
18 where the walls on either side of the garage get a little  
19 smaller, and bolting, typically; but there's a couple ways  
20 they can design wind bracing.  
21 MS. ROSEN: I need to mark -- I'm not sure what  
22 exhibit number we're up to.  
23 MR. MOHAMMADI: 139.  
24 MS. ROBESON: Okay. 138 or --  
25 MS. ROSEN: 138 or 139?

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1 MR. MOHAMMADI: 139.  
2 MS. ROBESON: Hold on.  
3 MS. ROSEN: Okay.  
4 MS. ROBESON: 139. Thank you. Have you shared  
5 this with Mr. Schwartz?  
6 (Exhibit No. 139 was marked  
7 for identification.)  
8 MR. MOHAMMADI: I'm looking at it right now.  
9 MS. ROSEN: He indicated that he has, I think,  
10 believe, that he's seen the permit. I was --  
11 THE WITNESS: Yeah, the building --  
12 MS. ROSEN: -- going to ask him if he's seen the  
13 building permit.  
14 THE WITNESS: I think I do remember seeing the  
15 building permit.  
16 BY MS. ROSEN:  
17 Q Okay. All right. I'm going to bring your  
18 attention to the part that is circled in a, kind of a  
19 purple-pink kind of color. Can you please read the  
20 underlined -- that sentence from this building permit?  
21 A Yeah. Many subdivisions and neighbors within  
22 Montgomery County have private deed restrictions and  
23 covenants regulating building construction. Obtaining a  
24 building permit does not relieve the property owner of the  
25 responsibility of complying with applicable covenants.

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1 Q Okay. And what does that mean to you?  
2 A Well, you have covenants on property, which, like  
3 in Kensington, the setbacks in the Town of Kensington are  
4 greater than what the setbacks are, allowed in Montgomery  
5 County --  
6 Q Okay. And are you --  
7 A -- and then sometimes you have covenants on  
8 properties that someone's deeded put in a deed and put in a  
9 property that says you can't build something on a property  
10 or you can't do something with a property that's put into a  
11 deed.  
12 Q Okay. And you know that, for example, you would  
13 have to bring any changes you were making back to the  
14 homeowners association for approval before going ahead and  
15 building, is that correct?  
16 A Once you've got approval from the homeowners  
17 association, I'm not -- explain to me what you mean.  
18 Q Okay. If you are making any --  
19 MS. ROBESON: Well, are you asking from his  
20 experience or -- because he's not an attorney. It seems to  
21 me you're kind of asking for a legal conclusion, although  
22 you can ask from his experience.  
23 MS. ROSEN: Right.  
24 BY MS. ROSEN:  
25 Q In your experience, is it your experience that if

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1 the homeowner is going to make changes in the actual  
2 construction or on the plans that are being submitted to the  
3 county, that they would have to take it back to their  
4 homeowners association first for approval?  
5 A I don't know the answer to that. I mean, I  
6 typically don't. When I have a -- well, when I have a,  
7 doing a remodeling project and even a new home project and a  
8 client wants to move a window or readjust something, I do  
9 not go back to the county for every single thing that's  
10 being done, and they usually don't care about that. They're  
11 looking at the overall intent of the property, and if I'm  
12 not making code violations, then they typically don't care.  
13 They don't care where you place a window and where you do  
14 with it. So --  
15 MS. ROBESON: Okay. What about --  
16 MS. ROSEN: I was asking --  
17 MS. ROBESON: -- in your experience, what about an  
18 HOA -- do you, have you ever gone back to an HOA to --  
19 THE WITNESS: No.  
20 MS. ROBESON: -- for changes?  
21 THE WITNESS: The one job that was a fire  
22 restoration job we did not go back.  
23 MS. ROBESON: All right. Go ahead.  
24 MS. ROSEN: Okay. I would move Exhibit 139 in.  
25 MS. ROBESON: Any objections?

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1 MR. MOHAMMADI: Yes. No.  
2 MS. ROBESON: It's admitted.  
3 (Exhibit No. 139 was received  
4 in evidence.)  
5 MS. ROSEN: Okay.  
6 BY MS. ROSEN:  
7 Q How would you normally understand that changes are  
8 being proposed to existing plans?  
9 A Explain that, what you mean.  
10 Q Basically, how would, how would you normally, if  
11 you have -- let's say you have, in the 126, you have  
12 as-built drawings and then you're going to have in the same,  
13 you have in the same exhibit, you have what is going to be  
14 built, what is proposed to be built. So I'm asking you, how  
15 do you understand that changes are being made from the  
16 as-built to the, to what is being proposed to be done?  
17 A Not to sound crass, you look at them. Sorry, I'm  
18 not sure -- I'm not understanding your question.  
19 MS. ROBESON: Well, if someone proposes changes --  
20 THE WITNESS: Well, I thought she was saying --  
21 how you could tell what's going to be changed?  
22 BY MS. ROSEN:  
23 Q Yes. What I'm basically -- if you look at the  
24 proposed, look at the --  
25 MS. ROBESON: I'm a little confused --

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1 MS. ROSEN: All right. Maybe I'm not --  
2 MS. ROBESON: -- by your question. So I --  
3 MS. ROSEN: All right.  
4 BY MS. ROSEN:  
5 Q If you look at the as-built plans --  
6 A Like, Front -- like, something for me to compare  
7 to.  
8 Q Okay. I'm going to pick one. Give me a second.  
9 A Thank you. There's AB4 and A4, are --  
10 Q All right. Well, one second. Let me just pick  
11 to, you know, try and illustrate this. Okay. I'm going to  
12 have you look at AB1, which says, As-Built Basement Plan.  
13 A Okay.  
14 Q And I'm going to have you look at A1, which says,  
15 Basement Plan.  
16 MR. MOHAMMADI: Yes, you're really messing up my  
17 exhibits.  
18 THE WITNESS: I'm sorry.  
19 MR. MOHAMMADI: It's okay.  
20 MS. ROBESON: Wait. I'm sorry. Your question is  
21 AB1 and what?  
22 MS. ROSEN: AB1, which says -- which is a drawing.  
23 It says, As-Built Basement Plan.  
24 MS. ROBESON: All right.  
25 THE WITNESS: And A1.

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1 MS. ROSEN: And then A1, which says, Basement  
2 Plan.  
3 MS. ROBESON: Okay, is the proposed. Okay.  
4 THE WITNESS: Okay.  
5 BY MS. ROSEN:  
6 Q Okay. So I'm going to ask you to look at the  
7 as-built plan, which is AB1 --  
8 A Uh-huh.  
9 Q -- and the A1, which is the proposed plan.  
10 A Uh-huh.  
11 Q Okay. So --  
12 A Yes.  
13 Q -- and compare them. How is the proposed plan  
14 different from the existing as-built plan?  
15 A Well, on the, on the A1 plan, clearly shows on the  
16 upper right-hand corner a new shed with hatch marks.  
17 Q Okay.  
18 A It's got hatch marks in the bottom center, which  
19 is, turns out to be the new foyer area, and then you've got,  
20 on the left side of the house, you've got hatch marks, which  
21 shows crawl space in, it says, New Addition, shaded area as  
22 typical. So there's a little label there, which makes it  
23 pretty easy.  
24 Q All right. And then also with regard to A2, I'll  
25 have you look at A2, which is Lower Floor Plan, and the AB2,

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1 which is As-Built Lower Floor Plan.  
2 A Okay.  
3 Q Okay. And the same thing, I mean, how do you --  
4 how was the proposed different from the existing?  
5 A Well, once again, on A2 you've got a labeling. It  
6 says, New Addition, with hatch marks saying, New Office, and  
7 you've got hatch marks where it says, New Deck, and then  
8 Expanded Foyer also got hatch marks, which correspond to the  
9 basement.  
10 Q Okay. So, basically, what you're referring to is  
11 the hatch marks, those portions on these floor plans. They  
12 show the proposed additions, isn't that correct?  
13 A Correct.  
14 Q Okay. And how are any changes to the footprint of  
15 the building shown?  
16 A The changes to the footprint of the building are  
17 shown on the previous set that we reviewed.  
18 Q Okay.  
19 A What --  
20 MS. ROBESON: On the previous page or A1 or --  
21 THE WITNESS: No. Let me go back because --  
22 MS. ROBESON: What do you mean by set? That's  
23 what I don't know.  
24 THE WITNESS: Let me get back to where her  
25 previous question was, and we're using the foundation plan.

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1 So if you compare AB1 and A1, which is your basement plan,  
2 you can see the footprint changes. Those are additions to  
3 the house with the hatch marks.  
4 BY MS. ROSEN:  
5 Q Okay. Now, are there any written dimensions on  
6 either A1 or A2 shown for the additions?  
7 A Yeah. They've got a dimension on the new shed,  
8 and that looks like the -- and it's got the total square  
9 footage, or the existing square footage.  
10 Q Okay. And why are there written dimensions shown  
11 for the additions? Why do you show them?  
12 A So you know what size they are.  
13 Q Okay. Now, do you see any reference to any, to  
14 increase in roof height in HOA-approved drawings?  
15 A Well, let's, let's take a look at those plans  
16 then.  
17 Q Okay. Well, we're going to go to AB4, which is  
18 the as-built front elevation --  
19 A Uh-huh.  
20 Q -- and one second, A4, which would be the, the  
21 proposed.  
22 A Correct.  
23 Q Now, comparing those two, do you see any, any  
24 reference to increase in roof height in the HOA-approved  
25 drawings?

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1 A There is no reference, if you're looking for  
2 something spelled out, but if you look at the plans, you can  
3 clearly see that the roof height is going to increase.  
4 Another --  
5 Q Okay. Now --  
6 A -- another trick you can do with the lack of --  
7 and, once again, I don't understand why they don't have any  
8 dimensions here, which that's another story, I guess -- but  
9 is if you overlay the plans, you can clearly see that the  
10 new plan would be higher, and also, if you look at the  
11 chimneys on the AB4 and the chimneys on A4, they are now the  
12 same height, and on AB4 the chimney on the right is lower.  
13 Q Okay. But do you see any shaded areas, indicating  
14 increase in roof height --  
15 A You --  
16 Q -- any cross-hatching?  
17 A You typically do not do that on elevations. I've  
18 never seen that on plans on elevations --  
19 Q Do you see any --  
20 A -- because it gets too confusing.  
21 Q Right. Do you see any written dimensions on those  
22 elevation drawings that show what that roof height --  
23 A That was what I was talking about earlier. It's  
24 very unusual that there isn't. There are on the approved  
25 county plans, and I think --

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1 Q Okay. So there are written dimensions on the  
2 approved county plans but not in these plans?  
3 A In these small plans, which I think are a scale  
4 down of these, which is the eight-and-a-half by 11s, the  
5 ones that I have do show 27 feet eight inches written on the  
6 small-scale plans that I have. I need my, a magnifying  
7 glass to see it completely, but I think that is written.  
8 MS. ROBESON: We do have a magnifying glass in our  
9 office for reading plans if you would like one. I can get  
10 you one because I have to use it all the time.  
11 THE WITNESS: Because it's -- the plan that I  
12 have, that I was given, which is the smaller scale, shows  
13 that dimension on it, and that's AB --  
14 MS. ROBESON: Well, let me just, if we're going to  
15 get into the --  
16 MS. ROSEN: Excuse me. I don't think, I don't  
17 know that I have that, if that -- unless there's something  
18 in evidence that's already been admitted.  
19 MS. ROBESON: Let me just take a brief -- you can  
20 look through your documents. I'll go get the magnifying  
21 glass. So -- I don't want to go all the way through this  
22 hearing and not have -- so we're going off the record for a  
23 few minutes.  
24 THE WITNESS: Okay.  
25 (Whereupon, at 10:00 a.m., a brief recess was

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1 taken.)

2 MS. ROBESON: We're back on the record.

3 MS. ROSEN: Okay.

4 MS. ROBESON: Okay. Now, repeat your objection.

5 MS. ROSEN: Okay. Well, my objection at this

6 point is that he's apparently looking at a different drawing

7 which is not the same drawing as what's in Exhibit 77.

8 Those, those figures, dimensions, whatever, are not on this

9 small-size drawing of what is included in Exhibit 126. This

10 is some different drawing. It's not the same thing.

11 MR. MOHAMMADI: May I respond?

12 MS. ROBESON: Yes.

13 MR. MOHAMMADI: Okay. This is part of why we have

14 a bad-faith claim. Okay? If you look at Exhibit 77, which

15 was submitted as the approved plans in this case, you don't,

16 it's sort of --

17 MS. ROBESON: Well, I'm getting confused on what

18 the approved plans are, but go ahead.

19 MR. MOHAMMADI: Right. That's, that's my point.

20 77 was initially introduced as the approved plans during

21 Mr. Barr's testimony.

22 MS. ROBESON: Yes.

23 MR. MOHAMMADI: Okay? It later on became clear,

24 after Day 3 or so, that there's actually other plans that

25 were the approved plans, which turns out to be 126. In

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1 essence, 77 and 126 are the same plans, but the, obviously,

2 the sizes are different which matters because, as we just

3 discussed, the scale is important in this. Okay? You can't

4 tell from 177 what the scales are.

5 MS. ROBESON: From 77.

6 MR. MOHAMMADI: Excuse me, 77. From 126 you can,

7 which were the actual approved plans. Here's where -- and

8 we haven't gotten into this yet because I just started my

9 case-in-chief -- the plans we have and the plans that were

10 submitted --

11 MS. ROBESON: You're proffering.

12 MR. MOHAMMADI: Correct -- have dimensions on

13 them. The plans that are being produced today by the, by

14 the complainant for some reason do not have dimensions on

15 them. I can't tell you why they don't have them, because I

16 know our architect prepared them with dimensions, I know

17 Mr. Ball submitted them with dimensions, but for some reason

18 the ones that have been so far submitted into evidence don't

19 have them.

20 MS. ROBESON: All right. Okay. Well, she's -- I

21 understand that you are going to get to that in your

22 case-in-chief.

23 MR. MOHAMMADI: Correct.

24 MS. ROBESON: Let -- but right now I think

25 Ms. Rosen, we need to, is cross-examining on what she says

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1 she or Potowmack, the complainant, alleges are the approved

2 plans. So I am going to -- can you provide Exhibit 77, and

3 we will, in your case-in-chief, we will continue -- I'm not

4 blocking your position. I'm simply saying she's

5 cross-examining on Exhibit 77. You have the ability -- he

6 doesn't have factual knowledge of exactly what happened

7 vis-à-vis the different plans.

8 MR. MOHAMMADI: Correct. It's --

9 MS. ROBESON: So --

10 MR. MOHAMMADI: -- not coming in through

11 Mr. Schwartz, correct.

12 MS. ROBESON: Exactly. So I would just -- I'm

13 going to allow Ms. Rosen to cross-examine him on Exhibit 77.

14 MR. MOHAMMADI: My explanation was --

15 MS. ROBESON: I understand. Thank you. That was

16 helpful because it made me understand why there's multiple

17 plans.

18 THE WITNESS: Is there a question?

19 BY MS. ROSEN:

20 Q One second.

21 A Okay.

22 MS. ROBESON: Well, we're going to let her

23 recover --

24 MS. ROSEN: Yes, now that we've gotten --

25 MS. ROBESON: -- and did you get your magnifying

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1 glass?

2 THE WITNESS: I did.

3 MS. ROBESON: Okay.

4 THE WITNESS: Thank you very much.

5 MS. ROBESON: Not that you need it. I rarely

6 admit to using it, but --

7 MR. MOHAMMADI: You need it for these.

8 BY MS. ROSEN:

9 Q Okay. So you admit, it's fair to say there are no

10 written dimensions on the proposed elevation drawings that

11 are in Exhibit 126 or the Exhibit -- Exhibit 77, is that

12 correct?

13 A There are no, there are no dimensions that I've

14 noticed in Exhibit 126.

15 MS. ROBESON: On the elevations?

16 THE WITNESS: On the elevations.

17 MS. ROBESON: Okay.

18 BY MS. ROSEN:

19 Q Okay. And with respect to Exhibit 77 --

20 A Yes.

21 Q -- also, there are no written dimensions on the,

22 in the proposed elevation drawings of the roofs in that

23 drawing, is that correct?

24 A On the roofs. There are some written dimensions

25 that are now on 77 that are not in 126 on the -- the way

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1 this is -- the third page, 177 --  
2 MS. ROBESON: Does 77 have the AB, the sheets  
3 labeled, or are you just --  
4 THE WITNESS: This one does -- no, it does not.  
5 MS. ROBESON: Okay. All right. So -- all right.  
6 Go ahead.  
7 THE WITNESS: It would be the third, third page,  
8 Basement, excuse me, First Floor Plan. It's got Lower Floor  
9 Plan. It's got the hatch marks showing the addition. On  
10 this plan it's got dimensions on the new deck, and it also  
11 has dimensions on the new addition on the left side which  
12 126 does not have, or excuse me, I take it wrong. 126 does  
13 have it. I apologize. It is there.  
14 BY MS. ROSEN:  
15 Q Does have it, yes. It's the same thing.  
16 A Yeah, it's the same thing. I thought it didn't.  
17 My other plan here does not have it.  
18 Q Okay. Okay. Now, you spoke about how you  
19 calculated the height of the roof by using a 4-12 pitch, is  
20 that correct?  
21 A Correct.  
22 Q And was it your testimony that you calculated the  
23 dimensions of this building using this type of method prior  
24 to beginning construction?  
25 A Explain that.

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1 Q Do you calculate the dimensions of the building,  
2 using methods like this, prior to beginning construction of  
3 a building? Is that how it's normally done?  
4 A Calculate dimensions? Well, the pitch would be  
5 submitted to your truss manufacturer, and by that pitch, it  
6 will determine what the height of that truss is going to be.  
7 Q What would happen to the roof height if the pitch  
8 used was 3-12?  
9 A It would be lower.  
10 Q Okay. And what would happen to the roof height if  
11 the pitch used was 2-12?  
12 A It would be lower, but you'd have to change the  
13 roof. You would actually, technically, need to change how  
14 you apply the roof at 3-12, and that is because the pitch  
15 gets so low that you have to use a special membrane  
16 underneath your shingles so it doesn't leak, because it's a  
17 low-pitch roof, anything under 4-12. When you get down to  
18 3-12, I'm not sure if you could actually even use shingles.  
19 You'd have to use like a rubber roof --  
20 Q Do you know what the --  
21 A -- because it becomes almost flat, is what's  
22 happening, and so the water is sitting a little bit more on  
23 the roof and not shedding off the roof.  
24 Q Do you know what the minimum allowable roof pitch  
25 is by code in Montgomery County for asphalt roof shingles?

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1 A Typically, you don't like to go much under 3-12.  
2 Q Did you know that 2-12 was actually the lowest  
3 roof pitch that's permitted by code in Montgomery County for  
4 asphalt?  
5 A That's -- if that's what you're telling me, that's  
6 fine.  
7 Q Okay. But it's fair to say that the roof height  
8 could have been much lower than it is now if a 2-12 or 3-12  
9 pitch was used, isn't that correct?  
10 A Yeah. You could build a flat roof if you wanted  
11 to, but the plans clearly show a 4-12 pitch on the approved  
12 126 plans.  
13 Q Where is it stated that it's going to be a 4-12  
14 pitch?  
15 A On A5. It's got a side elevation, and the --  
16 there's both one on the left-side elevation, you've got a  
17 little insignia up there that says 4-12, and on the right  
18 side it also says 4-12, and this is up on the roof.  
19 MR. MOHAMMADI: You're looking at the as-built.  
20 MS. ROSEN: I'm sorry.  
21 THE WITNESS: Please look at A5.  
22 BY MS. ROSEN:  
23 Q I'm sorry. I'm looking at --  
24 A So these are the approved plans, and this is 4-12  
25 and that's 4-12. So there's no indication that it's

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1 supposed to be a flat roof.  
2 Q Why is there no dimension in that drawing with  
3 regard to the roof?  
4 A That's the -- that's my point earlier, is that  
5 they approved plans without dimensions.  
6 MS. ROBESON: Could you have told the height by  
7 the --  
8 THE WITNESS: I've --  
9 MS. ROBESON: -- estimated the height by the  
10 scale?  
11 THE WITNESS: I've -- I can, which I just did a  
12 few minutes ago, I scaled it --  
13 MS. ROBESON: Yes, and it was --  
14 THE WITNESS: -- at 27 feet --  
15 MS. ROBESON: Right.  
16 THE WITNESS: -- and the plan that I have that  
17 shows that dimension shows 27 feet eight inches, and I  
18 scaled off these plans 27 feet, hence why you like  
19 dimensions better than scale, so --  
20 MS. ROBESON: Right.  
21 THE WITNESS: -- because scales, you know, how  
22 thick is your pencil line?  
23 MS. ROBESON: Right.  
24 THE WITNESS: So that's why you use scales  
25 secondary, but it's still pretty accurate in that regard.

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1 So you could go 35 feet here because it doesn't say you  
2 can't. There's no dimensions.  
3 BY MS. ROSEN:  
4 Q Is it not true that you could build a roof to not  
5 exceed the existing ridge height in several different ways?  
6 MR. MOHAMMADI: Objection.  
7 MS. ROBESON: I don't, I'm sorry, I don't  
8 understand the question.  
9 MS. ROSEN: All right. We have to rephrase it.  
10 MS. ROBESON: What is the basis of your --  
11 MR. MOHAMMADI: My objection was I don't -- it's  
12 really as to form, but I don't know what the question is.  
13 MS. ROSEN: Court's indulgence.  
14 BY MS. ROSEN:  
15 Q Okay. Is it possible, for example, can you use  
16 different pitches or a gable roof to not exceed the existing  
17 roof height?  
18 A You could design anything you want. I'm here  
19 testifying what was approved. If you want to redesign the  
20 house, sure, you can go to flat roofs, everything, and you  
21 can have very low-pitched roofs with metal roofs. Once you  
22 start getting down below your 2- and 3-12, you need to put a  
23 metal roof or you need to put a rubber roof on the house,  
24 and the plans don't show that. They show a shingled roof of  
25 some sort, and they're showing a 4-12 pitch on the approved

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1 plans.  
2 MS. ROBESON: Mr. Mohammadi --  
3 MR. MOHAMMADI: Yes.  
4 MS. ROBESON: -- do you plan to have a witness  
5 address -- I'm just looking, I don't have the exhibit  
6 number, but there was something in correspondence from  
7 Mr. Ball relating, that said something about the existing  
8 ridgeline -- do you have a witness that's going to address  
9 that?  
10 MR. MOHAMMADI: I'll have the original witness  
11 that wrote that letter address that.  
12 MS. ROBESON: Oh, okay. All right. All right.  
13 MS. ROSEN: All right. I have no further  
14 questions at this time.  
15 MS. ROBESON: All right. Redirect, Mr. Mohammadi?  
16 MR. MOHAMMADI: Thank you.  
17 REDIRECT EXAMINATION  
18 BY MR. MOHAMMADI:  
19 Q You were asked a little bit about other ways of  
20 performing wind bracing on a house --  
21 A Correct.  
22 Q -- and I think you testified one method you could  
23 use is called strapping?  
24 A You would, yeah, and when you, typically when  
25 you're doing a garage, which has -- the sidewalls on either

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1 side of a garage door are, are smaller, maybe within two  
2 feet. A lot of times you can put extra bolts in to bolt it  
3 to the foundation, and then some methods, when they get even  
4 below two feet, they actually through-bolt to the next floor  
5 down to that foundation.  
6 Q Do you have experience with that kind of wind  
7 bracing?  
8 A I've not had -- I've typically been able to do it  
9 with, all my wind bracing, with plywood and then just having  
10 the extra bolts.  
11 Q Using these other methods, what's the problem with  
12 using these other methods, for example, as to cost?  
13 A It's typically more expensive to do.  
14 Q Okay. And how much more expensive are you talking  
15 about?  
16 A It depends on each, each application and what's  
17 required to do it. That's where an engineer has to get  
18 involved and come up with a design. I'm not, I'm not  
19 qualified to actually come up with that, that design.  
20 Q So you would actually have to hire an engineer to  
21 come design wind bracing other than the 27-inch that was --  
22 A Correct. They've got some standards within the  
23 county, and if you build the house within those standards,  
24 then it's fairly straightforward to do; the construction  
25 methods are fairly straightforward to do.

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1 Q And I want to clarify something you said during  
2 your direct examination. As a builder doing renovation of a  
3 house --  
4 A Correct.  
5 Q -- or additions to a house, how typical in your  
6 experience is it to come across issues that require you to  
7 make changes to, to plans?  
8 A Very often.  
9 Q Okay. And every time that happens are you  
10 resubmitting plans?  
11 A No.  
12 Q You already pointed out that 126, Exhibit 126, A5,  
13 which is the side elevations, has actually written in the  
14 roof pitch, correct?  
15 A Correct.  
16 Q Okay. I'm showing you what's been marked as  
17 Exhibit 77, second to last page. Is there a roof pitch  
18 written in there as well?  
19 A I'm using the magnifying glass now --  
20 MS. ROBESON: Yes.  
21 THE WITNESS: -- and yes. It says 4-12 on  
22 Left-Side Elevation.  
23 MS. ROBESON: What page? Oh, okay.  
24 THE WITNESS: It is page --  
25 MR. MOHAMMADI: Second to last page.

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1 THE WITNESS: Second to last page.  
2 BY MR. MOHAMMADI:  
3 Q So both sets of the approved plans actually show,  
4 essentially, the exact roof pitch that's to be used?  
5 A Correct.  
6 Q Now, you were testifying as to some of your own  
7 notes or documents and drawings that you've seen, and some  
8 of them include dimensions?  
9 A Well, the county-approved plans have all the  
10 dimensions.  
11 Q Well, you're holding in your hand some, a small,  
12 small version of the drawings, is that --  
13 A Correct.  
14 Q And the ones you have in your hands have  
15 dimensions?  
16 A They, they --  
17 MS. ROSEN: Well, I'm going to object to this line  
18 of questioning. He's going beyond my direct. He's talking  
19 about the same little set of drawings that are not part of  
20 the approved plans. They haven't been authenticated in any  
21 way. I've never even seen them.  
22 MS. ROBESON: I'm going to sustain that unless you  
23 have something to say about it.  
24 MR. MOHAMMADI: Well, let me, let me ask a  
25 different question then.

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1 MS. ROBESON: Because that's a -- whatever he's  
2 holding in his hand may be a critical document, and it needs  
3 to be authenticated.  
4 MR. MOHAMMADI: Okay. Well, let me ask a  
5 different way then.  
6 BY MR. MOHAMMADI:  
7 Q You have seen plans that have dimensions for the,  
8 on the side elevations; is that fair to say?  
9 A Correct.  
10 Q And is there any reason why plans would remove the  
11 dimensions?  
12 A Not that I know of.  
13 Q So, in your experience, if an architect prepares  
14 drawings and those drawings have dimensions, there's no  
15 reason to remove those dimensions; is that fair to say?  
16 A Can't answer for someone else, but no, I can't see  
17 why, no.  
18 Q Well, I'm thinking, I'm trying to ask --  
19 A It helps clarify the design of the house.  
20 Q I'm trying to, I guess, for, in your -- in the  
21 industry practice, is there some preference over removing  
22 dimensions that you can think of versus not having --  
23 A No.  
24 Q -- versus keeping the dimensions?  
25 A Keeping the dimensions.

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1 Q All right. Now, there were some questions about  
2 the internal floor plans having shadings to show that there  
3 are some additions.  
4 A It indicates areas that are being modified or  
5 added onto in the plans --  
6 Q Okay.  
7 A -- so it helps clarify the differences between  
8 what's there and what's to be proposed.  
9 Q In your experience, is that typical for floor  
10 plans?  
11 A Yes.  
12 Q And, in your experience, is it typical that the  
13 side elevations don't have the same shading?  
14 A Yeah. I've seen, I've seen them with dotted  
15 lines, showing maybe where the existing house is with it,  
16 and I've seen it like this, where it doesn't show the  
17 existing --  
18 Q So both of them --  
19 A -- existing house.  
20 Q Is it fair to say that both of them are normal  
21 ways --  
22 A Yes. I've seen them done --  
23 Q -- in your practice?  
24 A I've seen them done both ways.  
25 Q Okay. Is there a standard used in the industry

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1 whereby you denote removing an item?  
2 A Typically, like, back to dimensions, you like to  
3 have dimensions and descriptions. So, typically, if you  
4 want something removed, it's spelled out, remove --  
5 Q Okay.  
6 A -- because if you're bidding on a project, if it's  
7 a bid situation, you want to know what all the work is  
8 entailed, but typically, typically, anything that's being  
9 removed would be labeled removed.  
10 Q Do you see anything in the plans that would  
11 indicate that something is being removed?  
12 A No, I do not.  
13 Q Take a look at, one more time, if you would,  
14 Exhibit 126, A1. Now, here we have, some of the floor  
15 joists have actual dimensions, is that correct?  
16 A Yeah. On this plan, I got it on the new shed.  
17 Q Okay. Using your scale, once again, if you don't  
18 mind --  
19 A Uh-huh.  
20 Q -- could you compare the scale to what's actually  
21 written, written there?  
22 A If I do the side elevation at 15 feet 10 inches  
23 and if I scale it and it's an eighth-inch scale, find my  
24 eighth-inch scale, and it's scaling, it's scaling pretty  
25 darn close to 14 feet 10 inches.

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1 Q Fourteen feet 10 inches or 15 feet 10 inches?  
2 A No, excuse me, 15 feet 10 inches.  
3 Q Okay.  
4 A See? Yeah. Thank you.  
5 Q And then if you do the other, other dimension?  
6 A Other dimension? It's 10 feet, and it's scaling  
7 10 feet.  
8 Q If you performed this, this exercise and you came  
9 up with these results that they're basically, the dimensions  
10 and the scaling are basically in line, would that give you  
11 more or less confidence about the accuracy of the drawings?  
12 A And that's exactly what you do do, is the exercise  
13 we just did, was you would scale something that's written to  
14 confirm that they are to scale.  
15 Q Okay.  
16 MR. MOHAMMADI: No further questions.  
17 MS. ROBESON: Any recross?  
18 MS. ROSEN: Okay. Yes.  
19 RECROSS EXAMINATION  
20 BY MS. ROSEN:  
21 Q The as-built drawings in the, in Exhibit 126 or  
22 Exhibit 77, those as-builts do not show the existing roof  
23 pitch, is that correct?  
24 A No, they do not.  
25 Q Okay. So --

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1 A Well, I, is there -- I don't know. Let me see.  
2 What page is the cross, because --  
3 Q AB4 and AB5.  
4 A No, they do not show the existing roof pitch.  
5 Q Okay. So you wouldn't know, for example, from  
6 looking at the as-built A4 and A5 --  
7 MR. BARR: No, proposed.  
8 MS. ROSEN: I'm sorry?  
9 MR. BARR: Proposed.  
10 MS. ROSEN: Right. I know.  
11 BY MS. ROSEN:  
12 Q I'm saying, from looking at the -- comparing the  
13 as-built A4 and A5 to the proposed A4 and A5, you wouldn't  
14 know that roof pitch was going to be changing, would you?  
15 A Well, explain that. What are you asking again?  
16 Q You wouldn't know from looking at the as-built  
17 drawings in AB4 and AB5 and comparing them to the drawings  
18 of A4 and A5, which are the proposed, you wouldn't be able  
19 to tell from looking at that that there's going to be a  
20 different roof pitch, correct?  
21 A Well, I'm looking at them. It looks like it's  
22 actually a little bit lower roof pitch on the AB5, which is  
23 the to-be-builts, but that's just by --  
24 MS. ROBESON: No, A5 is the to-be-builts.  
25 THE WITNESS: The A5, excuse me, and with

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1 dimensioning you could probably, I could probably figure out  
2 pretty close to what the roof pitch is on the AB5.  
3 BY MS. ROSEN:  
4 Q Okay. But it doesn't say in the as-built what the  
5 existing pitch is, correct?  
6 A It does not tell you what the existing, but it  
7 does tell you what the new pitch is supposed to be, and  
8 that's 4-12.  
9 Q Okay. But that doesn't tell you whether or not  
10 the pitch is going to be the same as it was from the  
11 as-built to the proposed. There's no -- there's nothing  
12 indicating there's going to be a change in the roof pitch.  
13 A I don't know how to answer that question. I  
14 apologize.  
15 MS. ROBESON: Can you rephrase that?  
16 THE WITNESS: Rephrase it, yeah.  
17 MS. ROSEN: I'm trying to --  
18 BY MS. ROSEN:  
19 Q Can you tell from looking at the as-built AB4 and  
20 AB5 --  
21 A Let me pull them out, please. Give me a second.  
22 MS. ROBESON: Now, let me just say, his redirect  
23 was limited to questions about practice in construction and  
24 dimensions. This is not an opportunity to recross him about  
25 how he calculated the roof pitch.

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1 BY MS. ROSEN:  
2 Q Okay. Just looking at these, the proposed -- I  
3 guess the comparison between the as-built drawings AB4 and  
4 AB5 and A4 and A5, do you see anything that's showing a  
5 chimney being raised?  
6 A All right. If you compare -- can I stick with  
7 apples and apples --  
8 Q Yes. Does anything --  
9 A -- and that'll be AB4 and A4, which are both front  
10 elevations --  
11 Q Does anything on these plans, does anything say  
12 that the chimneys are going to be raised?  
13 A It doesn't say anything, and that's one of the  
14 problems with approving plans that have no dimensions, as I  
15 said before, but if you physically look at the plans, you  
16 can see the chimney on the right is lower than the chimney  
17 on the right of A4, which is the proposed plans, both front  
18 and rear elevations.  
19 Q Okay. But you would agree that there's nothing  
20 that states that?  
21 MR. MOHAMMADI: Objection. Asked and answered.  
22 MS. ROBESON: Sustained.  
23 MS. ROSEN: Okay. No further questions.  
24 MR. MOHAMMADI: Nothing further.  
25 MS. ROBESON: All right. Mr. Mohammadi, your next

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1 witness, please.  
2 MR. MOHAMMADI: Can you give me one moment? Let  
3 me just get my things organized here again.  
4 MS. ROBESON: All right.  
5 MR. MOHAMMADI: Just give me two minutes or one  
6 minute. Okay. I think I'm ready.  
7 MS. ROBESON: All right.  
8 MR. MOHAMMADI: Would like to call Ms. Bentolila.  
9 MS. ROBESON: Ms. Bentolila, please raise your  
10 right hand.  
11 MS. BENTOLILA: Can I pronounce it correctly for  
12 you?  
13 MS. ROBESON: Oh, yes.  
14 MR. MOHAMMADI: It's also my fault.  
15 MS. ROBESON: Well, first raise your right hand.  
16 (Witness sworn.)  
17 MS. ROBESON: All right. Mr. Mohammadi.  
18 DIRECT EXAMINATION  
19 BY MR. MOHAMMADI:  
20 Q All right. Could you state your name for the  
21 record, please?  
22 A Mary Beth Bentolila.  
23 Q Could you spell your last name, please?  
24 A B-E-N-T-O-L-I-L-A.  
25 Q Okay. And, Ms. Bentolila, where do you live?

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1 A On Vantage Court, 10603 Vantage Court.  
2 Q Is that in the same neighborhood as Mr. Ball's  
3 case --  
4 A It's across the street from --  
5 Q -- house?  
6 A -- Mr. Ball's house.  
7 Q Okay. So you're directly across from the street?  
8 A Directly.  
9 Q And can you see his house from your, from where  
10 you live?  
11 A I look out my window, and I look in his window.  
12 Q All right. Now, just so the Court has an idea of  
13 the setup of that street, could you kind of describe the  
14 street? Is it on a hill?  
15 A It's a court. There's three houses on the left  
16 and three houses on the right and a circle at the top, and  
17 it --  
18 MS. ROBESON: At the top. Is there a slope?  
19 THE WITNESS: It slopes up.  
20 BY MR. MOHAMMADI:  
21 Q Okay. And does it slope sideways as well? So I  
22 don't know if that's a clear question, but if you're going  
23 up the street, it slopes upward, but if you're -- is it also  
24 sloped between the left side and the right side of the  
25 street?

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1 A Yes.  
2 Q Okay. So your ground floor would be higher than  
3 Mr. Ball's ground floor, even though you're across from each  
4 other?  
5 A Yes.  
6 Q Okay. How long have you lived in this community?  
7 A Since 1980.  
8 Q Okay. And has there always been an HOA since you  
9 were in the community?  
10 A Probably.  
11 Q Okay.  
12 A Yes, according to the, what it states about it,  
13 when it was started.  
14 MS. ROBESON: What what states about it?  
15 THE WITNESS: There's the HOA. There's the  
16 handbook or whatever --  
17 MS. ROBESON: Okay.  
18 THE WITNESS: -- that tells you everything you --  
19 MS. ROBESON: Okay.  
20 THE WITNESS: -- supposedly can and can't do.  
21 BY MR. MOHAMMADI:  
22 Q And that handbook states something that existed  
23 before you moved in?  
24 A Yes.  
25 Q All right. Are you aware of any meetings that

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1 take place in the HOA?  
2 A Yes.  
3 Q Okay. And how do you become aware of these  
4 meetings?  
5 A There's a blog --  
6 Q All right.  
7 A -- where it's stated that there's a meeting on  
8 such and such date and where the location is.  
9 Q Okay. And when you say blog, could you describe  
10 what you mean with blog?  
11 A Internet site that you join, the community joins.  
12 Q Is it a requirement that everybody joins?  
13 A No. In fact, very few of the neighbors do.  
14 Q All right.  
15 MS. ROSEN: I'm going to object to that. I don't  
16 think we got a foundation as to knowing what other people do  
17 or don't do in terms of joining. I think she can testify to  
18 herself, as to whether she's joined it.  
19 MS. ROBESON: Well, okay. Do you have personal  
20 knowledge of how many people join and how many people don't?  
21 THE WITNESS: My personal knowledge is I was told  
22 about 90 families out of 159.  
23 MS. ROBESON: Okay. All right. But that's -- do  
24 you actually know people that haven't joined?  
25 THE WITNESS: Yes.

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1 MS. ROBESON: Approximately how many people out of  
2 the ones you actually know haven't joined?  
3 THE WITNESS: My personal knowledge is three.  
4 MS. ROBESON: Okay.  
5 BY MR. MOHAMMADI:  
6 Q And, again, is there a requirement that you join  
7 this blog?  
8 A No.  
9 Q All right. Let me talk about the blog for a  
10 moment here, or let you talk about it. What does -- when  
11 you say there's notices, how are they delivered through the  
12 blog?  
13 A It's posted.  
14 MS. ROBESON: On the blog?  
15 THE WITNESS: On the blog.  
16 BY MR. MOHAMMADI:  
17 Q Okay. And so is it incumbent upon you to check  
18 the blog, to see what's being posted?  
19 A Yes.  
20 Q Do you receive any kind of notification that  
21 something was posted?  
22 A No.  
23 Q When you are on those blogs and you see postings  
24 for meetings, could you describe what those postings say?  
25 A It will say: Board Meeting, Tuesday, 7:30,

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1 Potomac Community Center, and the room -- and the room.  
2 Q Okay. Do these board meetings ever tell you what  
3 the subject of the meeting is --  
4 A No.  
5 Q -- or these notices? Excuse me.  
6 A No.  
7 Q Okay. Now, you've sat through some of the  
8 testimony throughout this trial, right?  
9 A Yes.  
10 Q All right. And you heard that on October 7th --  
11 did you hear that on October 7th, 2013, there was a board  
12 meeting?  
13 A Yes.  
14 Q All right. Did you attend that board meeting?  
15 A I think I did.  
16 Q Okay. Well, first of all, how do you know there  
17 was an October 7th, 2013, board meeting?  
18 A I'm not -- I don't recall if it was a blog or  
19 Peter Ball told me.  
20 Q Okay. But you found out somehow?  
21 A Yes.  
22 Q If you remember attending, do you recall what was  
23 discussed at that board meeting?  
24 A Probably Peter's plans and the lack of finishing  
25 his construction.

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1 Q Okay. Do you recall an October 23rd or  
2 approximately October 23rd --  
3 MR. MOHAMMADI: Court's indulgence, Your Honor.  
4 BY MR. MOHAMMADI:  
5 Q Excuse me, October 28th. Do you recall there  
6 being an October 28th board meeting as well?  
7 A What did you say the last one was?  
8 Q October 7.  
9 A I really don't recall.  
10 Q Okay. Now, going back to the notices, besides  
11 blogs, the postings, do you receive notices in any other  
12 way?  
13 A No.  
14 Q Are notices ever mailed to you?  
15 A No.  
16 Q Okay. Are notices ever hand-delivered to you?  
17 A No, and I have to state for your knowledge, I have  
18 been out of my house for the last two years. My house burnt  
19 down in January of 2012. So I was going back over to the  
20 property as it was being built, but -- so if they tried to  
21 hand-deliver it, wasn't there, I was not living in the  
22 neighborhood --  
23 MS. ROBESON: Okay.  
24 THE WITNESS: -- for the past two years.  
25 BY MR. MOHAMMADI:

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1 Q But your mailing address, did that change during  
2 that time?  
3 A No.  
4 Q And so notices that would be mailed would still go  
5 to your --  
6 A Yes.  
7 Q And did you check your mail on a regular basis?  
8 A Yes.  
9 Q I do want to now ask you about your house. Okay?  
10 You stated that it burnt down?  
11 A Yes.  
12 Q What did you do after it burnt down?  
13 A After I cried, I was put in the Bolger Center for  
14 six weeks, and after that I was in a temporary rental home  
15 in Bethesda.  
16 Q What did you do about your property?  
17 A What do you mean?  
18 Q Do you still own that property?  
19 A Yes, I still own it.  
20 Q Did you ever rebuild your house?  
21 A Yes, I did.  
22 Q Okay. All right. And with respect to the  
23 rebuilding process, what did you -- could you just sort of  
24 describe to the Court what that entailed?  
25 A Well, after fighting with the insurance company

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1 for months, it was demolished and I had plans to rebuild the  
2 house.  
3 MS. ROBESON: I think he's getting at, did you  
4 submit --  
5 THE WITNESS: Oh.  
6 MS. ROBESON: -- is that what you're getting at?  
7 MR. MOHAMMADI: Correct.  
8 THE WITNESS: I had to submit -- well, I was  
9 informed by the president of the, the head of the  
10 architectural committee that my best chances to get a home  
11 approved was to choose one of the four models and build  
12 that. In fact, I was asked if I was going to rebuild my  
13 home exactly like it was.  
14 MS. ROBESON: Okay. And who was that that --  
15 THE WITNESS: Lee Alford.  
16 MS. ROBESON: Okay. Go ahead.  
17 BY MR. MOHAMMADI:  
18 Q And did you rebuild it exactly as it was?  
19 A No.  
20 Q Did you inform the board that you would not  
21 rebuild it exactly as it was?  
22 A Yes.  
23 Q You were asked about the type of -- you should  
24 pick a model that's already in the neighborhood, right?  
25 A Yes.

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1 Q Did you do that, or did you choose something  
2 completely different?  
3 A I tried, I think I accomplished, I built something  
4 that would blend. They told me it had to blend, whatever  
5 that means. I used the same footprint of my home, but given  
6 the fact that the house was built in 1970 and the codes have  
7 changed tremendously, I was unable to build it back exactly.  
8 I also had the rare opportunity to change everything I  
9 didn't like.  
10 Q Okay. Did you submit any plans to the board for  
11 approval?  
12 A I submitted plans to the architectural committee.  
13 They received those plans, thanked me, and then told me they  
14 would discuss it behind closed doors.  
15 Q Okay. And then did they ever approve it or what  
16 happened?  
17 A It then went to a board meeting, and my builder  
18 presented the plans, and it was approved.  
19 Q Okay. And then you proceeded to build, rebuild  
20 the house?  
21 A Yes.  
22 Q How long did that process take?  
23 A To rebuild?  
24 Q Correct, from the actual beginning point of  
25 construction to the completion of the construction.

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1 A Not quite a year.  
2 Q Okay. And throughout the building process, did  
3 you or your builder come across things that needed to be  
4 changed from the approved plans?  
5 A Yes.  
6 Q Okay. And were those changes made?  
7 A Yes.  
8 Q And did the HOA do anything about that?  
9 A Not that I'm aware.  
10 Q Okay. So nobody came and complained to you about  
11 it from the HOA?  
12 A No.  
13 Q Did you submit new plans to get approval for those  
14 changes?  
15 A No.  
16 Q So you made changes to your house from the  
17 approved plans without submitting approval, and nobody came  
18 to you and said, this is a problem?  
19 A No.  
20 Q All right. Now, did you make any changes to your  
21 roof height?  
22 A From what it was before or --  
23 Q From what it was before.  
24 A Yes.  
25 Q Okay. And what did you do with your roof height?

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1 A I understand, I raised it.  
2 Q Okay. And that --  
3 MS. ROBESON: Well, do you know if you raised it?  
4 THE WITNESS: My builder told me.  
5 MS. ROBESON: Oh, okay.  
6 BY MR. MOHAMMADI:  
7 Q Okay. So from what was there previously, you  
8 actually raised the roof height?  
9 A Yes.  
10 Q And that was approved?  
11 A Yes.  
12 Q And what's currently there is a house with a  
13 higher-than-the-original-house roof height?  
14 A Yes.  
15 Q Okay. Do you know by any chance how tall, how  
16 tall your house is?  
17 A It's just shy of 35, which is the county's  
18 maximum.  
19 Q Okay. Now, I think you testified you see  
20 Mr. Ball's house pretty much any time you look out the  
21 house?  
22 A Yes.  
23 Q Okay. Does the condition of Mr. Ball's house in  
24 any way affect, affect you?  
25 A No. I understand it's under construction.

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1 Q Okay. And, I mean, you don't have any complaints  
2 at this time about the house?  
3 A It's his house.  
4 Q You've had, in your 33 years in the community, 34  
5 years in the community, you've had dealings with the HOA; is  
6 that fair to say?  
7 A No.  
8 Q Okay. Do you ever attend meetings?  
9 A Yes.  
10 Q Okay. On what regularity do you attend board  
11 meetings?  
12 A I've been attending board meetings since my house  
13 and then with Peter's dealings with the board.  
14 Q Okay. Have you observed any problems with how the  
15 board acts with respect to Mr. Ball's house?  
16 MS. ROSEN: Objection, Your Honor, the framing of  
17 that.  
18 MS. ROBESON: Can you rephrase?  
19 BY MR. MOHAMMADI:  
20 Q Well, have you observed any issues with the  
21 board's interaction and Mr. Ball?  
22 MS. ROSEN: Well, I'm going to object.  
23 MS. ROBESON: Well, why don't you just ask her to  
24 describe the board's --  
25 MR. MOHAMMADI: Okay.

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1 MS. ROBESON: -- interaction from her what, from  
2 her observations.  
3 BY MR. MOHAMMADI:  
4 Q Could you describe your observations of the  
5 board's interactions with Mr. Ball?  
6 A My personal opinion is --  
7 MS. ROSEN: I'm going to object to her giving her  
8 personal opinion. I mean, she can testify as to something  
9 she saw or a fact, you know, or something she's witnessed,  
10 but she's not here to give opinion testimony. That's --  
11 opinion testimony is for experts.  
12 MS. ROBESON: Well, it's --  
13 MS. ROSEN: If she saw something or she wants to  
14 describe an incident, that's one thing, that's factual, but  
15 her opinion, no.  
16 MS. ROBESON: Are you telling me no?  
17 MS. ROSEN: No. I'm sorry. I mean, that's just  
18 my -- I don't think that's an appropriate way to -- I don't  
19 think she, as a layperson, can be giving her opinions.  
20 MS. ROBESON: Well, she's not giving an expert  
21 opinion. She's not being asked to give an expert opinion.  
22 Let me -- Mr. Mohammadi, can you ask her to -- just, at this  
23 point, can you simply describe what you have witnessed as  
24 far as the treatments, the board's conduct regarding  
25 Mr. Ball's house without characterizing it? Mr. Mohammadi,

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1 do you want to say anything about Ms. Rosen's objection?  
2 MR. MOHAMMADI: I mean, here's -- I think she can  
3 testify about what she has observed and how it has affected  
4 in comparison to her other observations with other  
5 neighbors, if she thinks it's the same or he's being treated  
6 differently. She can say that. I think that's the only way  
7 you're going to get that testimony in --  
8 MS. ROBESON: Yes. Right.  
9 MR. MOHAMMADI: -- is through somebody who also  
10 deals with the board and sees it and has seen how --  
11 MS. ROBESON: Okay. Well, why don't you then ask  
12 her what she's observed and how it compares to treatment of  
13 other individuals.  
14 MR. MOHAMMADI: Okay.  
15 BY MR. MOHAMMADI:  
16 Q You heard the Hearing Examiner. So I'll say it  
17 the same way. Could you describe how what you observed  
18 between Mr. Ball and the board's interaction, how it differs  
19 from the interaction of the board with other HOA members --  
20 MS. ROBESON: If it does.  
21 BY MR. MOHAMMADI:  
22 Q -- if it does?  
23 A Okay.  
24 MS. ROBESON: We gave you a lot of legalese. All  
25 you need to do is describe the interactions you've observed

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1 between the, regarding Mr. Ball's house and compare that to  
2 interactions you've seen with other houses.  
3 THE WITNESS: There has been no other discussion  
4 at board meetings, for many, many board meetings, other than  
5 Mr. Ball's house, and it seems -- did you get that? --  
6 there's a little hostility toward him.  
7 MS. ROSEN: Well, I'm going to object. That's a  
8 characterization. I think that it's one thing --  
9 MS. ROBESON: She --  
10 MS. ROSEN: -- for her to testify as to what, if  
11 she's observing something at a specific meeting --  
12 MS. ROBESON: Yes --  
13 MS. ROSEN: -- but she's characterizing.  
14 MS. ROBESON: -- but she's a layperson. She's not  
15 testifying as an expert. So I'm going to let it in and give  
16 it the weight it deserves, but can -- but I am going to ask  
17 you, what's your basis?  
18 MS. ROSEN: Correct.  
19 MS. ROBESON: I'm not going to let you just say  
20 there's hostility. I need to know what makes you think  
21 there's hostility. I need, you know, examples or factual  
22 instances. Can you do that?  
23 THE WITNESS: The fact that this has been going on  
24 since 2009 indicates to me that there's some continuing  
25 problem. As I stated, no other issues are discussed at the

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1 board meetings.  
2 MS. ROBESON: Well -- go ahead.  
3 BY MR. MOHAMMADI:  
4 Q Are there other homes in the neighborhood that are  
5 having work done on them -- additions, renovations,  
6 et cetera -- in these last few years?  
7 A I can't say for sure because I have not been daily  
8 in the community.  
9 Q Okay. Let me take a step back. Compare your  
10 interactions with the board, and compare that to what you  
11 have seen the board's interaction is with Mr. Ball.  
12 A I had no problems getting my plans approved.  
13 Mr. Ball's been trying for many, many years. I do think my  
14 circumstances was different because my house burnt down. So  
15 I think there was a level of compassion for me.  
16 Q And, again, but when there was --  
17 MS. ROBESON: But is there anything other than the  
18 length of time? Do you hear comments from the board  
19 members? What forms your basis? Is there anything other  
20 than the length of time that makes you feel they're treating  
21 Mr. Ball differently than you?  
22 THE WITNESS: Just no progress has been made on  
23 his attempt to build. The neighborhood is upset that he  
24 hasn't finished the home. They aren't -- most of the people  
25 in the neighborhood that I've talked to are unaware that

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1 he's been told not to finish the house.  
2 BY MR. MOHAMMADI:  
3 Q Do you recall, when Mr. Ball submitted his  
4 application initially, did the architectural committee  
5 approach you about your opinion with respect to that --  
6 A No.  
7 Q -- addition? So nobody ever came to ask you,  
8 okay, do you have a problem with this?  
9 A No.  
10 Q Is it your understanding that the architectural  
11 committee is supposed to do that with neighbors?  
12 A Yes.  
13 Q When you attended board meetings with respect to  
14 Mr. Ball's house, did you ever talk to or did any of the  
15 board members talk to you about that house directly?  
16 A No.  
17 Q Have you had any conversations with Dr. Barr about  
18 the house?  
19 A No.  
20 Q Have you had any conversation with Ms. Gowan about  
21 the house?  
22 A No.  
23 Q Have you had any conversation with Mr. Gibson  
24 about this house?  
25 A No.

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1 MS. ROBESON: Did they ever solicit any comments  
2 from you?  
3 THE WITNESS: No.  
4 BY MR. MOHAMMADI:  
5 Q When was the first time you became aware that the  
6 HOA had a problem with Mr. Ball's roof height?  
7 A Mr. Ball came and talked to me about it.  
8 Q Do you recall approximately when that was?  
9 A Honestly, no.  
10 Q Okay. Was it before or after this case was  
11 initiated?  
12 A When was this case initiated?  
13 MS. ROSEN: Can't answer that question, I guess.  
14 BY MR. MOHAMMADI:  
15 Q Yes, I can't answer those questions.  
16 A I --  
17 Q I can't answer questions, just say it that way.  
18 A All right. Well, can you --  
19 MS. ROBESON: This case -- hold on. Just, just  
20 hold on a moment. Let me see if I see the -- this  
21 particular case --  
22 MR. MOHAMMADI: It says it at the top of the  
23 exhibit list, Your Honor.  
24 MS. ROBESON: Oh.  
25 MR. MOHAMMADI: If that helps.

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1 MS. ROBESON: Thank you.  
2 MR. MOHAMMADI: You're welcome.  
3 MS. ROBESON: November 15th, 2013.  
4 THE WITNESS: Okay. What was your question again?  
5 BY MR. MOHAMMADI:  
6 Q The question was, when you became aware of an  
7 issue with the roof height, was that before or after this  
8 case was filed with the CCOC on November 15, 2013?  
9 A Before.  
10 Q Okay. When did you become aware that there was an  
11 issue with Mr. Ball's shed?  
12 A Before.  
13 MS. ROBESON: Which shed? Which shed?  
14 BY MR. MOHAMMADI:  
15 Q Any shed.  
16 A Before.  
17 Q Okay. All right.  
18 MS. ROBESON: Before November 2013?  
19 THE WITNESS: Yes.  
20 MS. ROBESON: Okay.  
21 BY MR. MOHAMMADI:  
22 Q And how did you become aware of that?  
23 A Because we're neighbors and we talk.  
24 Q Okay.  
25 MS. ROBESON: I'm sorry. I cut you off,

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1 Ms. Rosen.  
2 MS. ROSEN: No. I'm sorry. I didn't say  
3 anything. I was just thinking.  
4 MS. ROBESON: Oh.  
5 MR. MOHAMMADI: She was saying the same thing, I  
6 think, with the shed.  
7 MS. ROBESON: Oh.  
8 BY MR. MOHAMMADI:  
9 Q Okay. So at no point did the HOA inform you,  
10 except for during the meetings, that there were issues?  
11 A HOA never contacted me about any additions,  
12 building on Peter's property.  
13 MR. MOHAMMADI: Nothing further.  
14 MS. ROBESON: Cross-examination.  
15 MS. ROSEN: Okay.  
16 CROSS-EXAMINATION  
17 BY MS. ROSEN:  
18 Q Okay. Now, you've basically testified that you  
19 feel that Mr. Ball is being treated differently than other  
20 members with regard to his application?  
21 A Yes.  
22 Q Okay. Do you have any knowledge as to whether  
23 Mr. Ball, whether the -- for example, you testified, I  
24 believe, that one of the things you felt was -- that the  
25 length of time that it was taking for his application to go

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1 through was something that you feel is different than  
2 others, is that correct?  
3 A Yes.  
4 Q Okay. Do you have any knowledge as to whether or  
5 not the reasons that Mr. Ball's application may be taking  
6 longer are attributable to Mr. Ball as opposed to the board?  
7 Do you have any knowledge?  
8 A No.  
9 Q Okay. So it would be fair to say then that it's  
10 very possible that the reason why his application and issues  
11 involving his construction take longer may actually be  
12 attributable to Mr. Ball himself and not to the board  
13 directors --  
14 MR. MOHAMMADI: Objection.  
15 BY MS. ROSEN:  
16 Q -- isn't that fair to say?  
17 MS. ROBESON: Basis?  
18 MR. MOHAMMADI: It's just asking her to speculate.  
19 MS. ROSEN: Well, she's --  
20 MS. ROBESON: Well, she -- I'm going to allow the  
21 question.  
22 MS. ROSEN: Can't have it both ways.  
23 THE WITNESS: There's something in -- when you  
24 apply for changes and modifications or whatever to your  
25 home, there's a 45-day, supposedly, window that they have to

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1 make a decision. Well, that went by a long time ago for  
2 Mr. Ball.  
3 BY MS. ROSEN:  
4 Q Are you aware that, for example, whether or not  
5 there was, there were changes made to the proposed  
6 construction that Mr. Ball wanted to do over that period of  
7 time that his application was being reviewed?  
8 A Only from sitting in the hearing.  
9 Q Okay. Well, do you know, for example, whether or  
10 not his application, when he originally supplied it, was a  
11 complete application or not?  
12 A I am not aware of that.  
13 Q Okay. So, basically, you don't really have any  
14 real knowledge as to why Mr. Ball's application, his, the  
15 project he wanted to do, was going to, maybe took longer to  
16 be approved than other projects of other homeowners, do you?  
17 A No.  
18 Q Okay. Now, with regard to, let me just get a  
19 handle on, when your house burned down, you said, I believe  
20 it was in --  
21 A 2012.  
22 Q -- 2012. And when did you move back into your  
23 home?  
24 A April 1st.  
25 Q April 1st of which year?

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1 A This year --  
2 Q 2014. Okay.  
3 A -- 2014.  
4 Q And you've testified that you are, that you have  
5 been aware of when board meetings are because you -- I  
6 assume you go on the blog; is that how you find out?  
7 A Yes.  
8 Q Okay. Do you also, do you receive by e-mail any  
9 meeting notices?  
10 A No.  
11 Q Okay. Have you ever indicated to the HOA that  
12 you'd like to receive meeting notice by e-mail?  
13 A No. It was on the blog --  
14 Q Okay.  
15 A -- but I will state that --  
16 Q Well, but you were aware -- how long have you been  
17 aware of this blog?  
18 A I don't know exactly but before I moved back into  
19 the house.  
20 Q Okay. And --  
21 A So somewhere within the last year I was made aware  
22 of it.  
23 Q Okay. During the time that you were out of the  
24 house, did you ever attend any board meetings between that  
25 period of time, from, I guess, January of 2012 --

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1 A Yes.  
2 Q -- until you moved back in the house? Okay. And  
3 how did you become aware of those board meetings?  
4 A Either the blog or Mr. Ball.  
5 Q Okay. Did you ever contact the board to say that  
6 you had not received a notice of a meeting?  
7 A No.  
8 Q Okay. So like, when you would go to the meetings,  
9 did you ever say to the board of directors, by the way, you  
10 know, I'm not receiving notices of meetings?  
11 MR. MOHAMMADI: Objection. I don't know what the  
12 relevance of that is. Her complaints?  
13 MS. ROBESON: I think --  
14 MR. MOHAMMADI: It's not about her case.  
15 MS. ROBESON: I think it's fair --  
16 MR. MOHAMMADI: Okay.  
17 MS. ROBESON: -- for cross-examination. Go ahead.  
18 You can answer. Do you remember the question?  
19 THE WITNESS: Did I complain that I wasn't  
20 receiving e-mails?  
21 MS. ROBESON: Yes.  
22 BY MS. ROSEN:  
23 Q Or any kind of -- did you ever, because you've  
24 indicated that you've gone to the board meetings, did you  
25 ever, when you were present at a board meeting, inform the

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1 board that you were not receiving notices of meetings?  
2 A But I was.  
3 Q Okay. So you were receiving notice of the  
4 meeting.  
5 MS. ROBESON: Through -- wait.  
6 THE WITNESS: Through the blog.  
7 MS. ROBESON: Through the blog.  
8 BY MS. ROSEN:  
9 Q Okay. So then, then you're not claiming that you  
10 had no knowledge of when meetings were; you were aware of  
11 them?  
12 A But they didn't send an e-mail to me. The board  
13 had my e-mail because Lee Alford would e-mail me through,  
14 when I was applying for, to build my house.  
15 Q Okay. But did you ever ask or inform the board  
16 that, hey, can you please send me a meeting notice by  
17 e-mail --  
18 MS. ROBESON: I think she already answered that,  
19 Ms. Rosen.  
20 BY MS. ROSEN:  
21 Q Okay. And do you have any knowledge of whether or  
22 not, during the time you were out of the house, for example,  
23 do you know whether or not meeting notices were delivered to  
24 your house?  
25 A They weren't in my mailbox.

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1 Q The complete house burnt down; so it was just  
2 nothing there at the time or --  
3 A No, it was brick; so brick was left.  
4 Q And where were you living at that time?  
5 A In Bethesda, Maryland.  
6 Q Okay. Did you ever provide the homeowner  
7 association with an address for them to mail a letter or a  
8 notice to you?  
9 A Yes. They had my e-mail address, and they had my  
10 phone number.  
11 Q No, I said -- I meant the physical address.  
12 A Yes.  
13 Q Okay. Well, you said you provided an e-mail  
14 address and a phone number.  
15 A Yes.  
16 Q Okay. Okay. Were there any complaints about your  
17 construction from any of your neighbors during --  
18 A Not that I'm aware of.  
19 Q Okay. And are you aware that the board of  
20 directors only gets involved in somebody's construction  
21 after approval if there are complaints?  
22 A No.  
23 Q And would you consider that during your  
24 construction, that you had a competent builder?  
25 A Yes.

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1 Q Okay. And did he complete your house as approved?  
2 A Yes.  
3 Q Okay.  
4 MS. ROBESON: Ms. Bentolila, did -- you said the  
5 board approved --  
6 THE WITNESS: I presented my plans to the board.  
7 MS. ROBESON: Are you aware of whether there were  
8 any complaints --  
9 THE WITNESS: No.  
10 MS. ROBESON: -- about your plans?  
11 THE WITNESS: I was not aware of it. I don't know  
12 if it was requested, because they just wanted --  
13 MS. ROBESON: No, don't, you don't have to  
14 speculate. That --  
15 THE WITNESS: Okay.  
16 MS. ROBESON: -- would be speculation. I just  
17 wanted to know whether --  
18 THE WITNESS: No, I was not aware.  
19 MS. ROBESON: -- you were aware of any complaints.  
20 THE WITNESS: No.  
21 BY MS. ROSEN:  
22 Q And you've indicated that you've attended board  
23 meetings. Do you recall whether other homeowners at these  
24 board meetings had any complaints about Mr. Ball's  
25 construction?

Page 78

1 A No.

2 Q No, there were no complaints, or no, you don't

3 recall?

4 A No complaints.

5 MS. ROBESON: Other than the board members, you

6 mean?

7 THE WITNESS: Other than the board members.

8 MS. ROSEN: Court's indulgence. I just want to

9 look at some minutes of meetings, but it'll take me a second

10 to find it.

11 BY MS. ROSEN:

12 Q Okay. I think you testified that you were not

13 present at the board meeting of October 28th, 2013, is that

14 correct?

15 A I said I don't remember.

16 Q Okay. You don't recall. Okay.

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

18 MS. ROBESON: Redirect, Mr. Mohammadi?

19 MR. MOHAMMADI: Yes.

20 REDIRECT EXAMINATION

21 BY MR. MOHAMMADI:

22 Q In order to receive electronic notices, you need

23 to opt in to receive those, is that correct?

24 A The blog?

25 Q Electronic notices, generally.

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1 A Yes.

2 Q Okay. And you said you started using the blog

3 approximately a year ago?

4 A Yes.

5 Q Okay. Prior to that, were you using some other

6 method to receive notices?

7 A No.

8 Q Okay. So how were you receiving notices prior to

9 that?

10 A I wasn't.

11 Q All right. With respect to, I'm going to call it

12 the new address while the house was being rebuilt, did you

13 ever officially change your address to your new location?

14 A No.

15 Q Did you ever change your driver's license to

16 reflect that new address?

17 A No.

18 Q Did you change it with the postal service to

19 reflect that?

20 A No.

21 Q Okay. So all of your mail was still going to your

22 Vantage Court house address?

23 A It was being held, but yes.

24 Q Okay. And how regularly would you check your

25 mail?

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1 A About every two weeks or so.

2 Q I think Ms. Rosen asked you whether a competent

3 builder built your house.

4 A Yes.

5 Q And who was that?

6 A Mike Hancock.

7 Q Okay. He did the house from start to finish?

8 A Yes.

9 Q All right. I think you were asked whether the

10 house was completed as approved, and I think your answer was

11 yes. I want to clarify, you did state that there were

12 changes made from the approved plans throughout the

13 construction, right?

14 A Not throughout, but yes.

15 Q But some changes were made?

16 A Some changes were made.

17 Q Okay. I'm showing you what's been marked as

18 Exhibit No. 91. Those are the October 7, 2013, board

19 meetings notes. At the top, do you see your name appearing

20 anywhere? Look close to the top.

21 A Yes.

22 Q Okay. So it's fair to say that on October 7,

23 2013, you were present for that meeting?

24 A Yes.

25 Q All right. I'm showing you what's been marked as

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1 Exhibit No. 93, and that's the minutes for the October 28th,

2 2013, meeting. Do you see your name anywhere on there?

3 A No.

4 Q All right. I want to direct your attention to the

5 second paragraph from the top. It says: Board members in

6 attendance.

7 A Yes.

8 Q Could you read which board members were in

9 attendance at that meeting?

10 MS. ROSEN: At which meeting? I'm sorry.

11 MR. MOHAMMADI: October 28th, 2013.

12 MS. ROBESON: And what's the exhibit number?

13 MS. ROSEN: I thought she wasn't there then.

14 MR. MOHAMMADI: 93.

15 THE WITNESS: 93.

16 MS. ROSEN: Why are we asking -- I'm sorry, but I

17 guess I want a foundation why he's asking about a meeting

18 that she said she wasn't there.

19 MR. MOHAMMADI: Give me two questions. I'll get

20 to it.--

21 MS. ROBESON: Well, I'm going to, yes, I'm going

22 to let you develop it.

23 THE WITNESS: Board members in attendance: Lee

24 Alford, Ben Nawl (phonetic sp.), Lynn Gowan, Ling Zhu, Peter

25 Gibson, and Raj Barr.

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1 BY MR. MOHAMMADI:  
2 Q Okay. Are any of those members that are listed  
3 there just regular community members and not, don't play an  
4 active role either in the architectural committee or in the  
5 board?  
6 A No.  
7 Q They're all board members?  
8 A Yes.  
9 MR. MOHAMMADI: Nothing further.  
10 MS. ROBESON: Recross, Ms. Rosen.  
11 MS. ROSEN: Okay.  
12 RECCROSS EXAMINATION  
13 BY MS. ROSEN:  
14 Q With respect to your builder having completed  
15 your, completed your house, would you say that the, any  
16 changes that might have been made were minor? Would you  
17 categorize those, any changes --  
18 A Define minor.  
19 Q Minor being small changes, not being, nothing that  
20 was too -- nothing too much different than the plan, maybe  
21 something slight.  
22 MR. MOHAMMADI: Objection.  
23 MS. ROSEN: Yes, I'm trying to define minor.  
24 MS. ROBESON: Yes. Do you know --  
25 MS. ROSEN: Non-substantial?

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1 MS. ROBESON: -- the changes that were made?  
2 MS. ROSEN: That might be better. Okay.  
3 MS. ROBESON: Can you describe the changes that  
4 were made?  
5 THE WITNESS: I had an egress stairwell, which is  
6 -- and I flipped it from one side of the house to the other.  
7 MS. ROBESON: And that was on the exterior --  
8 THE WITNESS: Exterior.  
9 MS. ROBESON: -- because it was egress. Okay.  
10 Anything else that you know of?  
11 THE WITNESS: No.  
12 MS. ROBESON: Okay.  
13 BY MS. ROSEN:  
14 Q Did you ever go to the board and say, hey, I want  
15 to flip this from one side to the other, or you just went  
16 ahead and did the work?  
17 A Went ahead and did the work.  
18 Q So it would be fair to say that they might not  
19 have even known that you had done that?  
20 A Probably didn't.  
21 Q Okay. Thank you. Okay. And you also just  
22 testified that you need to opt in, you have to opt in to  
23 receive electronic notices, but you never -- but you've  
24 never decided to opt in, isn't that correct? To this date,  
25 have you ever, have you asked the association that -- have

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1 you opted in to receive electronic notice of meeting?  
2 A Yes. The new format, a website, whatever, I opted  
3 in.  
4 Q Okay. So you opted in. Thank you.  
5 MS. ROBESON: Anything else?  
6 MS. ROSEN: Nope, no further.  
7 MS. ROBESON: All right. We're going to take a  
8 five-minute break, and then we're going to come back with  
9 your next witness, Mr. Mohammadi.  
10 MS. ROSEN: And who will that be?  
11 MR. MOHAMMADI: Mr. Bruno.  
12 MS. ROSEN: Okay.  
13 MS. ROBESON: All right. We'll be back at 11:15.  
14 (Whereupon, at 11:09 a.m., a brief recess was  
15 taken.)  
16 MS. ROBESON: Okay. We're back on the record.  
17 All right. Please raise your right hand.  
18 (Witness sworn.)  
19 MS. ROBESON: Mr. Mohammadi.  
20 MR. MOHAMMADI: Thank you.  
21 DIRECT EXAMINATION  
22 BY MR. MOHAMMADI:  
23 Q Good morning. Could you state your name for the  
24 record, please?  
25 A Lance Pelter.

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1 Q Could you spell your last name?  
2 A P-E-L-T-E-R.  
3 Q All right. And what is your address, sir?  
4 A 8608 Hidden Hill Lane, Potomac, Maryland.  
5 Q Is that within the Potowmack Preserve homeowners  
6 association community?  
7 A Yes.  
8 Q Okay. And how long have you been living there?  
9 MS. ROBESON: Just one second. Mr. Barr --  
10 MR. BARR: Yeah.  
11 MS. ROBESON: -- can you not do that?  
12 MR. BARR: Okay.  
13 MS. ROBESON: I can actually hear the keys --  
14 MR. BARR: Okay, sorry.  
15 MS. ROBESON: -- but the recording mics are very  
16 sensitive.  
17 MR. BARR: Okay, sorry.  
18 MS. ROBESON: Okay. Go ahead. I apologize.  
19 MR. MOHAMMADI: Okay. No problem.  
20 BY MR. MOHAMMADI:  
21 Q I'm sorry. How long have you been living in the  
22 community?  
23 A Next week it'll be 27 years.  
24 Q Okay. And have you always resided in the same  
25 house?

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1 A Yes.  
2 Q Okay. Have you ever had any involvement with the  
3 HOA or the HOA board?  
4 A Yes.  
5 Q All right. What was your involvement?  
6 A I was a member --  
7 MS. ROBESON: Okay. Mr. Barr --  
8 MR. BARR: I'm turning it off, ma'am.  
9 MS. ROBESON: Oh, okay. I just --  
10 MR. BARR: I didn't want --  
11 MS. ROBESON: -- I still heard noises coming.  
12 MR. BARR: No, I turned it off. That's what I was  
13 doing.  
14 MS. ROBESON: Okay. We're going to start over  
15 with Mr. Pelter.  
16 THE WITNESS: Pelter.  
17 MS. ROBESON: Okay. Can you begin from the  
18 beginning again?  
19 MR. MOHAMMADI: I'll ask the questions again.  
20 MS. ROBESON: Okay. Thanks.  
21 BY MR. MOHAMMADI:  
22 Q Could you state your name for the record, please?  
23 A Lance Pelter.  
24 Q Spell your last name again.  
25 A P-E-L-T-E-R.

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1 Q All right. And what is your address?  
2 A 8608 Hidden Hill Lane, Potomac, Maryland 20854.  
3 Q Okay. And that's within this HOA community?  
4 A Yes.  
5 Q All right. And how long have you been living at  
6 that address?  
7 A It'll be 27 years next week.  
8 Q Have you ever been involved with the HOA or the  
9 HOA's board in any way?  
10 A Yes.  
11 Q Describe that involvement, please.  
12 A I became a member of the board about three months  
13 after we moved into the community. After two years on the  
14 board, I became the president. I served as president for,  
15 it was about seven years, and then I retired from the board.  
16 Q Okay. And when did you retire?  
17 A It was '97 or '98 -- '96 or '97.  
18 Q Okay. And since that time have you had any active  
19 involvement with the board again?  
20 A I've attended meetings, annual meetings primarily;  
21 I've attended a couple of individual meetings; and I've had  
22 interface previously with prior board members who are still  
23 on the board and/or officers who consult when there are  
24 questions about board procedures and things like that.  
25 Q Okay. All right. Now, I want to talk about the

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1 specifics here, the issues involved in this case. Let's  
2 talk about the notices. Do you ever receive notices for  
3 board meetings?  
4 A I have received notices for the annual meetings  
5 and dues notices.  
6 Q What about for special meetings or, which you  
7 called, I guess, individual meetings?  
8 A I have never received a specific separate notice  
9 for a meeting.  
10 MS. ROBESON: When you say you receive notice of  
11 annual meetings, is that -- how did you receive it?  
12 THE WITNESS: Put in my mailbox.  
13 MS. ROBESON: Put in your mailbox?  
14 THE WITNESS: Yeah. It wasn't stamped. It was  
15 just left in, left in our mailbox, and it had the meeting  
16 agenda and usually the budget and some other materials.  
17 BY MR. MOHAMMADI:  
18 Q Okay. And you stated that that notice would be  
19 just put in your mailbox?  
20 A Yes.  
21 Q Do you receive any kind of electronic notice?  
22 A No.  
23 Q Have you opted in to receive any electronic  
24 notice?  
25 A No.

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1 Q All right. Now, specifically now, do you recall  
2 ever receiving a notice for a meeting that occurred on July  
3 17, 2013?  
4 A I didn't get a formal notice. I was advised by  
5 Mr. Ball of the meeting, and he asked me to attend.  
6 Q Okay. So you never actually got an official  
7 notice from the board regarding that meeting?  
8 A No.  
9 Q And did you in fact attend that July 17, 2013,  
10 meeting?  
11 A Yes.  
12 Q Okay. Do you recall what was discussed at that  
13 meeting that specifically related to Mr. Ball's house?  
14 A It was the general issue of it wasn't finished,  
15 there were complaints. At the meeting I basically offered a  
16 suggestion that I try to mediate the thing, to get  
17 resolution, and I asked specifically, you know, what are the  
18 real issues you want to get to, and the answer mainly was to  
19 get the place finished. And I suggested, well, we could do,  
20 find a way to do it and what we needed to do was to put  
21 everything in the past behind us and alter the plan to get  
22 it completed. And if I can add, Rande Joiner was there, and  
23 I -- I don't know if she was a board member at the time or  
24 she was just consulting, but she joined in, and we sort of  
25 talked. We felt there was a way of getting resolution --

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1 Q Okay.

2 A -- but there was a lot of -- at least one

3 individual was hostile to trying to do that.

4 Q And who was that individual?

5 A Lynn Gowan.

6 Q Okay. And in your recollection, when you describe

7 -- when you say she was hostile, what do you mean with that?

8 What did she say or do?

9 A She jumped up and said, we can't forget all this

10 other stuff that went on; we, you know, he can't, just can't

11 do this. At one point, Raj actually had to go over and

12 physically tell her to sit down and be quiet --

13 Q Okay. And --

14 A -- she was that upset or emotionally upset about

15 it.

16 Q Okay. And to your knowledge, is she a member of

17 the board?

18 A Yes.

19 Q All right. Well, you're referring to, we got to

20 leave the past behind, and when you say that, what do you

21 mean with that?

22 A Well, the board has been working on this with

23 Peter for several years, looking for resolution. It has

24 been something that's been disruptive to him. It's been

25 disruptive to the people. I know people who have told me

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1 they, you know, they wouldn't have any interest on serving

2 on the board, seeing what the hostility is. And I said, why

3 don't we, like, find a solution to this and just move

4 forward, and I said, you know, the board has gone through a

5 lot of stuff and they've done an awful lot of -- and they

6 did -- they did a lot of work and they did a lot of

7 dedication to it and it's just tying up so much of their

8 time and everybody else's time that could be spent on other

9 things.

10 Q Do you know, do you recall what the board decided

11 to do at that point?

12 A It was left loose. At the, at the end of the --

13 towards the end of the meeting it got down to, yes,

14 something could be worked out, we should do it. There was a

15 question of whether there should be a performance bond or

16 Peter should agree to a certain time to have everything

17 done. There was talk about dropping litigation and getting

18 stuff done, and I offered to continue to sort of do it, and

19 I felt that if I acted on Peter's behalf or represented him,

20 it -- chemistry was easier than Peter negotiating with them.

21 Q And is that because of your history with the

22 board?

23 A History with the board and history dealing with

24 Peter.

25 Q Okay. Now, you've heard about another meeting

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1 that occurred on October 7, 2013. Do you recall that

2 meeting?

3 A I wasn't at that meeting, and I've heard about it

4 in the hearing and I've heard it discussed, but I was not at

5 that meeting.

6 Q Okay. Do you recall receiving notice regarding

7 that meeting?

8 A No.

9 Q Okay. Be it electronic or delivery or --

10 A No, notice at all.

11 Q All right. Do you recall a meeting that occurred

12 on October 23rd or 28th, 2013?

13 A No.

14 Q And do you ever recall receiving a notice?

15 A No, I did not receive a notice.

16 Q When was the first time you found out about this

17 October 28th, 2013, meeting?

18 A I think it was when we were -- I think it was when

19 we were in your office about a month before this started, a

20 couple of weeks before this started, and Peter was going

21 through a series of meetings and you were in it. That's the

22 first I heard of it.

23 Q Okay. So you never became aware of it until

24 basically this litigation had started?

25 A Right.

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1 Q Right. Are you aware of any meetings in which the

2 board took a vote on whether to bring a CCOC action against

3 Peter Ball and Michael Ball?

4 A Only having heard after the fact, never before.

5 Q Okay. In any of the notices that you did receive,

6 did any of them specifically state that issues with respect

7 to Peter Ball's house would be discussed?

8 A No.

9 Q Have you ever, have you ever made any complaints

10 about not receiving notices?

11 A Yes.

12 Q When was that?

13 A In, I believe it was March to Mike Dan (phonetic

14 sp.), who was our board member for our block, and I think I

15 talked to him previously about that also.

16 MS. ROBESON: March of which year?

17 THE WITNESS: Of this year.

18 MS. ROBESON: This year.

19 BY MR. MOHAMMADI:

20 Q Since then, are you receiving notices?

21 A No.

22 Q Okay. So you still have not received notices?

23 A That's correct.

24 Q I'm going to try to pose the question the same way

25 I did to Ms. Bentolila. Hopefully I get it. In your

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1 observations, with respect to the board's interaction with  
2 Mr. Ball, have you observed any difference between their  
3 interaction and the board's interaction with other members?  
4 A Yes.  
5 Q Okay. And when you say yes, could you describe  
6 what you mean without characterizing that interaction?  
7 A Well, first of all, there was more personal  
8 involvement of board members in his case and more meetings  
9 at his house and more visits --  
10 MS. ROBESON: At whose house?  
11 THE WITNESS: At Peter's house -- and more  
12 visualizations and going back and looking at work that was  
13 done. The whole time I was on the board we had very, very  
14 few issues that ever even required something like this to  
15 even come to the board; two, there was absolute apparent  
16 hostility in the meetings. I think someone should have been  
17 recused.  
18 MS. ROSEN: I'm going to object to the  
19 characterization.  
20 MS. ROBESON: He's a laywitness. I think he can  
21 characterize it. I'm going to ask him to give me specifics  
22 about --  
23 MS. ROSEN: Okay. Fact.  
24 MS. ROBESON: -- what caused him to think it was  
25 hostile, tone of voice, whatever it is. Okay? So Mr. -- so

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1 go ahead.  
2 THE WITNESS: Well, tone of voice, facial  
3 expressions, body language, choice of words was --  
4 MS. ROBESON: Can you give me an example of  
5 comments or --  
6 THE WITNESS: Well, he was accused of lying --  
7 Peter was accused of lying, being dishonest, not telling the  
8 truth, doing things intentionally to harm another, another  
9 board member and antagonize them.  
10 MS. ROBESON: Who would be?  
11 THE WITNESS: Her.  
12 MS. ROBESON: Who would be the other board member?  
13 THE WITNESS: Ms. Gowan is primarily the person,  
14 and I just felt that she should have been recused from those  
15 meetings, and she wasn't. There was the way things were  
16 presented at board meetings, including an annual meeting  
17 that I attended the year before that Peter was not at where  
18 his situation came up and the comments made by Raj, the  
19 president, were in a negative light towards Peter in getting  
20 it resolved and at no point did he mention that construction  
21 had not been completed because the board was still in  
22 negotiation. It was presented as if Peter was totally at  
23 fault.  
24 BY MR. MOHAMMADI:  
25 Q Anything else?

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1 A It's just the sense that there's nothing here that  
2 shouldn't have been able to be resolved and that it was  
3 being dragged on unintentionally or intentionally longer  
4 than it should have.  
5 MS. ROBESON: Have you seen or observed this in  
6 relation to other --  
7 THE WITNESS: Yes. I'll give you --  
8 MS. ROBESON: Well, no, let me finish --  
9 THE WITNESS: Right.  
10 MS. ROBESON: -- my question -- other people's  
11 architectural changes?  
12 THE WITNESS: Yes.  
13 MS. ROBESON: What? Hostility or -- I mean, what  
14 I'm asking you --  
15 THE WITNESS: No, no, the lack of hostility.  
16 MS. ROBESON: -- I'm asking you to compare the two  
17 processes.  
18 THE WITNESS: Well, let me give -- if I may give  
19 an example. My neighbors put up a fence, and they had told  
20 us they're going to put a fence up, but we never received a  
21 notice from the architectural committee that a fence was  
22 going to be put up. It was just put up. It was put up  
23 incorrectly, with the stuff that's usually shown on the  
24 inside of a picket-type fence on the outside, and that  
25 certainly couldn't have conformed to any submission they

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1 made. No one ever asked us about it. It was not a big  
2 enough deal for us to create a problem with the neighbor.  
3 Then the neighbor was in the process of putting a  
4 pool in. He came and told us he was planning on doing it,  
5 and then he went ahead and he actually started construction  
6 about two weeks or three weeks before Lee Alford came around  
7 with -- she actually had the forms and said, here's what  
8 he's planning on doing, and she said, oh, it looks like he  
9 started. And I said, yes, it's been going on for quite a  
10 while, and she said, well, I advised him not to start until  
11 this thing was approved. Now, at no point did the board, as  
12 far as I know, do anything to tell him to cease, stop,  
13 restore it to what it was before. It just continued.  
14 So, I mean, I've seen things like that where just  
15 it appears that the rules were being applied differently  
16 than they were to Peter.  
17 BY MR. MOHAMMADI:  
18 Q And just to be clear, you never received any kind  
19 of notice from the HOA when the work of your neighbor was  
20 being done, correct --  
21 A Not on --  
22 Q -- that there's going to be work?  
23 A Not on the fence and received a notice on the  
24 pool, say, a couple weeks after the work was already  
25 started.

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1 MR. MOHAMMADI: Nothing further.  
2 MS. ROBESON: Cross-examination.  
3 MS. ROSEN: Okay.  
4 CROSS-EXAMINATION  
5 BY MS. ROSEN:  
6 Q Okay. Mr. Pelter, with regards to notices of  
7 meetings, have you ever contacted the board of directors to  
8 say that you have not been receiving notices?  
9 A I contacted my area director.  
10 Q Okay. And when was that?  
11 A The last time was in March after I, just after I  
12 received the notice for the annual meeting.  
13 Q March of 2014?  
14 A '14.  
15 Q Okay. Now, prior to that, did you ever contact  
16 the board to say that you were not receiving notices for  
17 meetings?  
18 A I spoke with Mr. Dan.  
19 Q Okay. I said prior to Mr. --  
20 A No, I spoke to him previously to that too. I had  
21 mentioned that what's going on, this -- he's on the board  
22 and he lives about eight houses, 10 houses down, down from  
23 me.  
24 Q Okay. But you have attended some board meetings,  
25 isn't that correct?

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1 A Yes.  
2 Q Okay. And at those board meetings, have you ever  
3 raised the issue that you were not receiving notices?  
4 A I did actually at the annual meeting, not this  
5 year, but the previous year when we were going through the  
6 revised, the revised bylaws, and part of that was a  
7 tremendous amount of gobbledygook about notices and meetings  
8 and replications, over and over again. At that point, I  
9 mentioned that I, you know, I and other people -- I said  
10 that I hadn't been receiving notices, and other people at  
11 the meeting chimed in on the same thing.  
12 So we thought that was a good section where it  
13 required that we -- required us to be notified by either  
14 mail or electronically. I don't know if it was in person,  
15 but it had to be at least those things. So we felt that was  
16 a good sign, but I and several people spoke up at that  
17 meeting and mentioned that we hadn't been receiving them.  
18 Q Okay. Now, are you familiar with this blog that  
19 Ms. Bentolila testified about?  
20 A I know there's a website. I haven't gotten on it.  
21 I don't use it, and it's been used -- well, we've heard;  
22 again, it's hearsay -- that there's a lot of hostility and a  
23 lot of personal things going back and forth. So I have no  
24 interest in doing it; plus I like getting a hard copy of  
25 something rather than an e-mail that I might miss, telling

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1 me about something.  
2 Q Okay. With regard to Peter Ball's application at  
3 issue in this case, are you aware that, just in general, are  
4 you aware that Peter Ball has had numerous applications for  
5 architectural changes since he's lived in this community?  
6 MR. MOHAMMADI: Objection.  
7 MS. ROBESON: Basis?  
8 MR. MOHAMMADI: It's not within the scope of  
9 direct.  
10 MS. ROBESON: Where are you going with this?  
11 MS. ROSEN: Well, I mean, Mr. Pelter is basically  
12 testifying that he feels that Peter Ball was treated  
13 differently from other homeowners. So I think there, it is  
14 perfectly appropriate for me to flesh out what his knowledge  
15 is as to what Peter Ball's --  
16 MS. ROBESON: Well, I don't know what you mean by  
17 numerous.  
18 MS. ROSEN: I'm sorry?  
19 MS. ROBESON: I don't know what you mean by  
20 numerous.  
21 MS. ROSEN: Okay. I'll rephrase the question.  
22 BY MS. ROSEN:  
23 Q Other than the construction application at issue  
24 in this case, are you aware of any other construction  
25 applications that Peter Ball has ever submitted to the

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1 association?  
2 A Yes. The first, the first application or  
3 applications he submitted were while I was president of the  
4 board, and we worked through all of them.  
5 Q Okay. And are you familiar with an application  
6 that was submitted in or somewhere in about, maybe the year  
7 2003?  
8 A I was off the board at that point.  
9 Q But you were aware of it because, I mean, I  
10 believe there were -- are you aware that there were two  
11 other cases brought by the association against Mr. Ball --  
12 A Yes.  
13 Q -- in the CCOC? Okay. And I believe that you  
14 were actually present at the hearings in those cases, if I'm  
15 recalling correctly?  
16 A Yes.  
17 Q Okay. I believe that you were actually listed as  
18 a witness for Peter Ball in those cases, is that correct?  
19 A Right.  
20 Q Okay. And do you know what the outcome of those  
21 cases were?  
22 A The outcome of the cases were that Peter lost the  
23 case, although in the one case I was only testifying as to a  
24 counterclaim he made related to the board's actions on dues  
25 and I did not have anything to do at all or any testimony

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1 related to his architectural issues.  
2 Q Okay. But are you aware that in both of these  
3 cases that involved his architectural issues, that the CCOC  
4 ruled in favor of the association?  
5 A I am aware of that. I'm also aware that he had  
6 inadequate defense --  
7 Q Well, that's --  
8 A -- at those meetings.  
9 Q That's your opinion.  
10 MS. ROSEN: I move to strike that.  
11 MS. ROBESON: No. I'll let it in. Go ahead.  
12 BY MS. ROSEN:  
13 Q Then is it your position, is it your feeling, do  
14 you believe that Peter Ball was treated differently from  
15 other homeowners in terms of construction applications?  
16 A My observation is that he has been treated  
17 differently.  
18 Q Okay. And would it be fair to say that if he is  
19 being treated differently, that perhaps it is because of his  
20 own behavior as opposed to the board?  
21 MR. MOHAMMADI: Objection. That's just  
22 speculating what the board's reason is, not even his reason.  
23 MS. ROBESON: Well, she asked for his observation.  
24 Do you think Mr. Ball's actions contributed to some of the  
25 hostility you observed?

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1 THE WITNESS: The answer is yes, just because of  
2 Peter's nature and he gets defensive, but I spent years on  
3 the board, went through several of his applications, went  
4 through some of the same things, and we ended up getting  
5 them resolved peaceably between his neighbors and the board  
6 and everybody else. So it is doable.  
7 BY MS. ROSEN:  
8 Q Okay. When you just referred to Peter's nature,  
9 could you please give me some factual observations as to  
10 what you're referring to as nature? For example, did you  
11 observe Peter being contentious towards board members?  
12 MR. MOHAMMADI: Objection.  
13 MS. ROBESON: Well --  
14 MR. MOHAMMADI: I mean --  
15 MS. ROBESON: No. I --  
16 MS. ROSEN: Well --  
17 MS. ROBESON: Define, I mean --  
18 MS. ROSEN: All right. Well -- all right.  
19 MS. ROBESON: -- you objected to their  
20 characterization of --  
21 MS. ROSEN: I understand, and he was -- all right.  
22 MS. ROBESON: I think you may be better off --  
23 MS. ROSEN: Okay.  
24 MS. ROBESON: -- off, you've already got him  
25 saying that, you may be better off just -- I --

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1 MS. ROSEN: Okay.  
2 MS. ROBESON: -- I don't know how to phrase where  
3 you want to go.  
4 MS. ROSEN: Okay.  
5 BY MS. ROSEN:  
6 Q Tell us what you've observed in terms of Peter  
7 Ball's demeanor towards board members. For example, what is  
8 his demeanor towards Ms. Lynn Gowan based on your  
9 observations?  
10 A Oh, there's a good deal of what appears to be  
11 mutual dislike between them, and I wouldn't want to  
12 necessarily lock them in the same room together, but to go a  
13 little further --  
14 Q Now, have you observed, for example, what has  
15 Peter -- what have you observed, if at all, Peter's demeanor  
16 towards the board, in general, with regards to his  
17 construction applications?  
18 A Okay. At every meeting that I've attended that  
19 Peter's been at and it's come up, Peter has objected to  
20 things that were said and done, but Peter did it in a  
21 professional manner. He maintained his cool. He didn't  
22 jump up. He didn't get red in the face. He didn't shout.  
23 So there's a definite difference in the way he did it.  
24 I mean, he -- Peter is one of those people who  
25 believes, when he's right, you fight for it, and I'm a

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1 compromise person, get it done. So sometimes I'm willing to  
2 concede on things just to get things done. Peter feels if  
3 he's right, he's right and deserves to be treated that way.  
4 Q So it would be fair to say that Peter, that if  
5 Peter wants to just fight about various things, if he wants  
6 them, he just wants to keep fighting?  
7 MR. MOHAMMADI: Objection --  
8 THE WITNESS: No.  
9 MR. MOHAMMADI: -- that's a mischaracterization.  
10 THE WITNESS: That's not what I said.  
11 MS. ROBESON: Yes, that is putting words in his  
12 mouth.  
13 THE WITNESS: What I said is that when he believes  
14 he's right --  
15 MS. ROBESON: No. Just --  
16 THE WITNESS: Okay.  
17 MS. ROBESON: -- there's no question on the table.  
18 THE WITNESS: Okay. Oh, I'm sorry.  
19 BY MS. ROSEN:  
20 Q So is it fair to say that it could be that Peter  
21 is at least causing, Peter Ball is at least causing some of  
22 the problems that are existing between himself and the board  
23 and it's not just the board?  
24 A He may be doing things on a personal level, but  
25 it's nothing to do with the board's role and obligation to

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1 perform their duties responsibly. I mean, whether you like  
2 the person or you don't, you still treat them fairly.  
3 Q Well, based on facts, you know, give me some facts  
4 that are indicating that in your view that Peter Ball is not  
5 being treated fairly in terms of his construction  
6 application, which has been approved, isn't that correct?  
7 A I believe it's been approved.  
8 Q Okay. So is there anything unfair about the fact  
9 that the board of directors has approved his construction  
10 application?  
11 A Yeah, the nitpicking, people continually going on  
12 and checking on his construction without checking other  
13 people's construction; the fact that, as I understand it, if  
14 they've made minor things that even comply with county code,  
15 people have objected to it and they wanted him to submit new  
16 things.  
17 Q You feel that checking on his construction is not  
18 appropriate?  
19 A I didn't say appropriate. I said, as compared to  
20 the way other people are treated.  
21 Q Okay. But you are aware that there have been two  
22 prior cases in the CCOC where Peter Ball's deviated from  
23 approved applications, is that correct?  
24 A Yes.  
25 Q Okay. And you are aware that the CCOC in both of

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1 those cases found those deviations to be substantial and  
2 made a finding that Peter Ball had to remove or remediate  
3 the construction, isn't that correct?  
4 A That is correct, but I --  
5 Q Okay. So don't you think it's reasonable for the  
6 board of directors to want to check on ongoing construction  
7 at his property given the history of Peter Ball's  
8 construction projects?  
9 MR. MOHAMMADI: Objection.  
10 MS. ROBESON: Sustained.  
11 BY MS. ROSEN:  
12 Q Now, are you aware that homeowners have complained  
13 about Peter Ball's construction?  
14 A I am aware that people have complained. Most of  
15 the people that I've talked to when I, as someone else said  
16 previously, I had dogs and had a dog and walked through the  
17 community, and people asked me about it, and the big  
18 complaint is that it's not finished.  
19 Q Okay. But you don't know, you have no knowledge  
20 as to the reason, whether it's not finished -- for example,  
21 is it necessarily the board's fault that it's not finished,  
22 or could it be that Peter Ball has not done certain things  
23 properly which is making it take longer?  
24 MR. MOHAMMADI: Well, object, the same --  
25 speculation at this point. He can, I guess, guess at,

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1 but --  
2 MS. ROBESON: Well --  
3 BY MS. ROSEN:  
4 Q If you know.  
5 MS. ROBESON: -- if you know from personal  
6 knowledge.  
7 THE WITNESS: All I can say is, when people have  
8 talked to me about it, it has been issues of why isn't it  
9 finished and it looks terrible unfinished, and that's been  
10 the extent of -- and I've said, it's, I'm sorry, it's things  
11 related to the board and Peter.  
12 MS. ROBESON: So it didn't have anything to do  
13 with scale or --  
14 THE WITNESS: No, scale was never discussed or  
15 size or whatever.  
16 MS. ROBESON: All right.  
17 BY MS. ROSEN:  
18 Q Do you know whether the board wanted Mr. Ball to  
19 correct and finish his construction?  
20 A The board has used the words, meaning that they  
21 wanted that done, but every time it got down to what it  
22 would take to get it done and the timing, it would fall  
23 apart because a new requirement would come up.  
24 Q Give me an example of a new requirement that would  
25 come up.

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1 A One was that it was said, you can, you know, go  
2 ahead and complete it; we were talking about getting it done  
3 -- and this is the July 17th meeting, I think it was -- and  
4 then it was a thing of, well, we agreed before but, you  
5 know, then Peter didn't drop his case in circuit court, so  
6 we're not going to go ahead with it. And then I understand  
7 -- and I didn't see it -- that a letter went out to him,  
8 asking for other changes.  
9 But the board has never been able to pull the  
10 trigger on just coming to an agreement. And I came to that  
11 meeting, authorized by Peter, to come up with a solution for  
12 him, and nothing, nothing was done. There was no follow-up  
13 after that meeting. So --  
14 Q Okay. So you just testified you were aware that  
15 Peter himself filed the case in the circuit court against  
16 the homeowners association, is that correct?  
17 A That's what I was told, yes.  
18 Q Okay. Do you know what happened to that case?  
19 A No. I haven't testified, don't know anything  
20 about that case.  
21 Q Do you know whether that case was filed before or  
22 after the CCOC case was filed?  
23 A Don't know the timing of the cases.  
24 Q And do you think that the filing of that case  
25 was --

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1 MR. MOHAMMADI: Objection.  
2 MS. ROBESON: Well, I'm going to let her finish  
3 the question.  
4 MR. MOHAMMADI: I don't even know what the  
5 question is, but --  
6 MS. ROSEN: Yes, I haven't even, I haven't thought  
7 of my question yet. Okay.  
8 BY MS. ROSEN:  
9 Q You don't really know whether or not Mr. Ball's  
10 construction was compliant with the approved plans, do you?  
11 MR. MOHAMMADI: Objection.  
12 MS. ROBESON: Well, I think he can, as a  
13 layperson, he can, he can answer about his knowledge, not a  
14 a -- what's your basis?  
15 MR. MOHAMMADI: Well, two bases: one, I think  
16 that's a question that should be posed to an expert, not a,  
17 not a layperson. I don't think a layperson can say or  
18 should be able to say, yes, I think it's nonconforming to  
19 construction plans that were approved. That's the first  
20 thing.  
21 MS. ROBESON: Well, actually, Ms. Rosen, he didn't  
22 testify about compliance.  
23 MR. MOHAMMADI: That's the second part, second  
24 part of my objection: it's not within the scope.  
25 MS. ROSEN: All right. Let me think.

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1 BY MS. ROSEN:  
2 Q Do you know whether the board's position was that  
3 Mr. Ball's construction, it was noncompliant with the  
4 approved plans?  
5 MS. ROBESON: I don't see where you're going with  
6 this. You have to proffer some kind of relevance for me.  
7 MS. ROSEN: Let me think of how I want to do this.  
8 Okay. I'm just trying to think of how I want to word it.  
9 MS. ROBESON: I understand.  
10 BY MS. ROSEN:  
11 Q Based on your knowledge, have any other homeowners  
12 -- wait. That's not how I want to do that one either.  
13 At the board meetings that you attended, was there  
14 discussion or statements made by the board members that,  
15 that the construction being undertaken by Mr. Ball was not  
16 complying with the approved plans?  
17 A That was discussed.  
18 Q At the board meetings that you attended, did the,  
19 if you recall, did the board tell Mr. Ball that he needed to  
20 bring his construction into compliance?  
21 A At no meeting that I attended did they ever take a  
22 formal action of any kind, giving him any instruction. It  
23 was strictly discussion back and forth -- some that I just  
24 observed; others I spoke, tried to get in to mediate -- but  
25 at no point did the board ever vote on anything or take a

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1 position that said, Peter, you must do this or you should do  
2 this or whatever. It was always just left going, left  
3 going.  
4 MS. ROSEN: I have no further questions of this  
5 witness.  
6 MS. ROBESON: Okay. Redirect?  
7 MR. MOHAMMADI: Yes, Your Honor.  
8 REDIRECT EXAMINATION  
9 BY MR. MOHAMMADI:  
10 Q You made a statement I want to get some more  
11 clarification on. You said -- and I'm hoping I'm quoting  
12 this correctly -- board's role and -- the board is not  
13 performing its role and obligations to perform their duties,  
14 I think is something -- you said something like that. What  
15 do you mean when you say that?  
16 A Well, the board needs to look at issues, make  
17 decisions. They can't go on the basis of personality,  
18 hostility to liking people or not liking people. There are  
19 basic rules, and I've just seen the board act multiple times  
20 inconsistently. I know that people --  
21 MS. ROBESON: In relation to Mr. Ball or in  
22 relation to everyone?  
23 THE WITNESS: Well, in one case specifically to  
24 Mr. Ball is, I know that he tried several times to get  
25 approval to use a man-made material for siding, and I'm not

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1 a contractor, engineer or architect, but it was a man-made  
2 material as opposed to some natural material, and he was  
3 told he couldn't.  
4 At other times, I heard that other people were  
5 approved to use some forms of man-made or vinyl siding on  
6 their houses; yet he wanted to and was told he couldn't do  
7 it. And at one point, we had a restriction against using  
8 those kind of things when I was on the board, and we changed  
9 it to, if on the street it looked natural, it was okay.  
10 So I don't understand why he wasn't allowed to use  
11 those kind of materials, and I didn't go into it with the  
12 board or anything else, but I've seen things like that  
13 happen that are sort of inconsistent findings.  
14 MS. ROBESON: And then the negative comments?  
15 THE WITNESS: Yeah, I mean, I never heard negative  
16 comments about anybody else applying for any kind of  
17 architectural approvals before.  
18 BY MR. MOHAMMADI:  
19 Q You served on the board for several years, right?  
20 A Yes.  
21 Q And what makes up the members of the board?  
22 MS. ROSEN: Objection.  
23 BY MR. MOHAMMADI:  
24 Q I mean, where do the members of the board come  
25 from?

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1 A From the community.  
2 Q Okay. Within the same community?  
3 A Yes.  
4 Q All right. And what is the purpose of the board?  
5 A The purpose of the board is to -- a couple of  
6 things. I mean, one is to manage the environmental things.  
7 We have certain community property surrounding the  
8 subdivision, and so it's maintenance of that, taking care of  
9 that; architectural control and maintaining certain  
10 standards; maintaining insurance and protection for things;  
11 but the official duties, that's pretty much it.  
12 Q I guess what I'm trying to get at is, when they're  
13 performing their duties, is their approach supposed to be a  
14 neutral one or is it a subjective versus objective approach?  
15 How are the boards supposed to approach and resolve  
16 problems, essentially, or issues that come up?  
17 MS. ROSEN: Objection. I mean, I think he's kind  
18 of getting almost into something more legal in nature.  
19 MS. ROBESON: Well, I think he already  
20 testified --  
21 MR. MOHAMMADI: Okay.  
22 MS. ROBESON: -- there. So I don't think he needs  
23 to go there again.  
24 MR. MOHAMMADI: All right. Nothing further then.  
25 MS. ROBESON: All right. Any recross?

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1 RECCROSS EXAMINATION  
2 BY MS. ROSEN:  
3 Q You've testified that Mr. Ball tried to get  
4 approval with regard to siding and was not able to get that  
5 approval. Isn't it fair to say that as a, you know, as you  
6 served as a board member, that when a board or an  
7 architectural committee looks at an application, they look  
8 at it holistically as opposed to just one element of a  
9 house?  
10 A I think that's somewhat fair. I mean, we, we  
11 looked at it also from the standard of if things had been  
12 used before or done previously, and we went on precedent  
13 and --  
14 Q It would be fair to say that each application is  
15 unique in a certain sense if you're doing a -- especially if  
16 you're doing a construction application, such as what  
17 Mr. Ball was doing, which encompassed many, various elements  
18 to it, isn't that fair to say?  
19 A We certainly would look at the whole thing, but --  
20 Q Right. Okay. So -- and the board did, you know,  
21 the board approved Mr. Ball's entire construction  
22 application except for the siding, isn't that correct?  
23 A I believe that's true.  
24 Q Okay. Do you know how many times after that  
25 Mr. Ball continued to ask for the same siding again?

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1 MR. MOHAMMADI: Objection.  
2 THE WITNESS: No, I don't. Oh, I'm sorry.  
3 MR. MOHAMMADI: Withdrawn.  
4 MS. ROSEN: All right. I think that's --  
5 BY MS. ROSEN:  
6 Q Okay. And do you know, did you know that when he  
7 first submitted -- are you aware, when he first submitted  
8 his application, which was back in 2008, do you know what  
9 type of siding he asked for?  
10 A No. I just know that he had asked for a man-made  
11 material rather than, rather than wood or some natural  
12 substance.  
13 Q Are you aware that the siding he originally  
14 applied for is different than the siding he later tried to  
15 apply for?  
16 A I don't know that, but if you turned down one, I  
17 could see why he would try something else.  
18 Q Well, were you aware that the one he --  
19 MS. ROBESON: Well, he already said he was, he's  
20 not aware of the siding.  
21 MS. ROSEN: Okay. All right. No further  
22 questions.  
23 MS. ROBESON: All right. With that, how many more  
24 witnesses do you have, Mr. Mohammadi?  
25 MR. MOHAMMADI: Well, I have Charles Bruno. I

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1 expect to call Dr. Barr. If Ms. Gowan is here, I'd expect  
2 to call Ms. Gowan as well, and then I also have my client.  
3 MS. ROBESON: Okay.  
4 MR. MOHAMMADI: But I want to call everybody else  
5 before I call my client.  
6 MS. ROBESON: The order that you do your own case  
7 is up to you.  
8 MR. MOHAMMADI: And I do have one other witness  
9 who is not here, and I have not been able to contact him.  
10 Mr. Gibson, who was, was subpoenaed to be present --  
11 MS. ROBESON: Yes, he was subpoenaed.  
12 MR. MOHAMMADI: -- he's not here. It's partially  
13 my fault. I did not tell him I would like him to be here  
14 today, but --  
15 MS. ROBESON: Well, let's see how far we get.  
16 MR. MOHAMMADI: Right.  
17 MS. ROBESON: All right. We're going to take 45  
18 minutes for lunch. So please be back timely at 12:45, and  
19 we'll continue with the respondent's case.  
20 MR. MOHAMMADI: Thank you.  
21 (Whereupon, at 11:59 a.m., a luncheon recess was  
22 taken.)  
23 MS. ROBESON: All right. We're back.  
24 MS. ROSEN: Moving along.  
25 MS. ROBESON: Just moving along, yes.

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1 MR. MOHAMMADI: Your Honor, just a very quick  
2 preliminary matter. You had asked somewhere in between that  
3 Mr. Michael Ball was not present today. I just wanted to  
4 remind you, we did clear that last week that he was not  
5 going to be available this week. Just because of his work  
6 schedule, he's just out of town. So he's not even  
7 available.  
8 MS. ROBESON: Okay. I haven't read -- I read some  
9 of the July 10th transcripts. So I'll take --  
10 MR. MOHAMMADI: I don't even know if it was on the  
11 record or not. We discussed it when we were trying to pick  
12 a date, and the one we picked --  
13 MS. ROBESON: Oh, okay.  
14 MR. MOHAMMADI: -- we said he's not going to be  
15 present for this --  
16 MS. ROBESON: Okay.  
17 MR. MOHAMMADI: -- this hearing because of his  
18 work schedule.  
19 MS. ROBESON: All right. I just need him, when he  
20 does return, to waive his right to cross-examination during  
21 the time he hasn't been there, for the record.  
22 MR. MOHAMMADI: If I can't do that for him, I'll  
23 have him do it. I mean, I have waived it, but --  
24 MS. ROBESON: Well, I'd prefer to have him do it,  
25 but --

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1 MR. MOHAMMADI: Okay. All right.  
2 MS. ROBESON: All right. Mr. Bruno, I believe,  
3 please raise your right hand.  
4 (Witness sworn.)  
5 MS. ROBESON: All right. Mr. Mohammadi.  
6 MR. MOHAMMADI: Thank you.  
7 DIRECT EXAMINATION  
8 BY MR. MOHAMMADI:  
9 Q Could you state your full name for the record?  
10 A Charles Bruno.  
11 Q And spell your last name, please.  
12 A B-R-U-N-O.  
13 Q What's your address?  
14 A 8808 Quiet Stream Court, Potomac, Maryland.  
15 Q Is that within this HOA community?  
16 A Yes.  
17 Q How long have you lived there?  
18 A Seven years.  
19 Q Seven years? All right. Prior to that, were you  
20 any way involved in this HOA or in this community?  
21 A No.  
22 Q All right. Where is your house in relation to  
23 Mr. Ball's house?  
24 A It across from the development. I'm not a direct  
25 neighbor.

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1 Q Okay. So there's no way for you to see the house  
2 out of your house or --  
3 A Only in the winter.  
4 Q Only in the winter? Okay.  
5 A Yeah, that I could see, yeah. Yeah.  
6 Q Got you. Okay. Now, have you ever been involved  
7 yourself with the HOA?  
8 A In what capacity?  
9 Q In any capacity. Have you been a member of the  
10 board --  
11 A No. No.  
12 Q -- or any involvement with management of the HOA  
13 or anything like that?  
14 A No.  
15 Q Have you ever had any cases or claims against the  
16 HOA?  
17 A Yes.  
18 Q Would that be Case No., CCOC Case No. 30-12?  
19 A Yes.  
20 Q All right. Could you briefly just state what that  
21 was all about?  
22 A Basically, the complaint was for a few things the  
23 board wasn't doing. One was notifying the board meetings --  
24 that was, that was a big one -- the way they did  
25 assessments, but most of it stemmed from a mediation

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1 agreement in 2008 that was never completed, especially with  
2 the board meetings not being announced.  
3 Q Okay. When was that CCOC case heard?  
4 A A couple years ago.  
5 Q Okay. Do you know when, when the decision was  
6 made?  
7 A It was made about a year after it was heard.  
8 Q And do you recall what the outcome of that case  
9 was?  
10 A I mean, the panel was in agreement that the HOA  
11 wasn't giving proper notice. There's other issues. Without  
12 it in front of me, I can't recall, but --  
13 Q The big one was the notices?  
14 A Yeah. Yeah, that would pertain to this case,  
15 yeah.  
16 Q Okay. And then with respect to the notices, what,  
17 if anything, did the CCOC say should or needs to occur?  
18 A They, they ordered that they be mailed, because  
19 that was in the covenants that they be, notices were to be  
20 U.S. mailed. In fact, the chairperson told Mr. Gibson, you  
21 better put some money in your postage budget. I recall  
22 that.  
23 MS. ROSEN: I believe you've taken judicial notice  
24 of that. So --  
25 MS. ROBESON: I have.

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1 MS. ROSEN: Okay.  
2 MS. ROBESON: I'm going to let him testify.  
3 Official notice --  
4 MS. ROSEN: Okay.  
5 MS. ROBESON: -- but not judicial notice. Go  
6 ahead.  
7 BY MR. MOHAMMADI:  
8 Q Okay. So the CCOC did order the HOA to sort of  
9 change the way they do things?  
10 A Yes.  
11 Q All right. Since that time, have you noticed the  
12 HOA making those changes?  
13 A Sometimes. It's not -- I've received a couple  
14 notices, one in my mailbox and one by U.S. mail, but not all  
15 the board meetings that have happened I've received notice  
16 of that way.  
17 Q Okay. Well, we'll talk a little bit more about  
18 the specifics, but are you aware of this -- and you heard  
19 testimony -- about this blog that's up?  
20 A Yes.  
21 Q Are you opted in in that blog?  
22 A I used to, I used to look at it, yeah. It's a  
23 Yahoo board. It's a Yahoo board.  
24 Q Okay. Are you part of that? Are you a member of  
25 that board?

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1 A Not any longer.  
2 Q Okay. Did you opt in for any other kind of  
3 electronic notices to be sent to you --  
4 A No, sir.  
5 Q -- e-mail or --  
6 A No, sir.  
7 Q -- otherwise?  
8 A No.  
9 Q Okay. And is it your testimony today that you're  
10 currently still not receiving all the notices of all the  
11 meetings by mail?  
12 A Yes.  
13 Q Well, I'm going to ask you about some of the  
14 specific meetings. Do you recall a meeting that occurred on  
15 July 17, 2013?  
16 A Yes.  
17 Q How did you hear about that meeting?  
18 A I can't recall.  
19 Q Did you attend that meeting?  
20 A Yes.  
21 Q What was the substance of the discussions at that  
22 meeting that specifically pertained to Mr. Ball's property?  
23 A There was a lot of discussion on him completing  
24 the construction. It was basically completing the  
25 construction. They wanted it done by December.

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1 Q Okay. Did --  
2 MS. ROBESON: Who is they?  
3 THE WITNESS: The board, the -- I mean, the two  
4 vocal people were Peter Gibson and Raj Barr.  
5 MS. ROBESON: Okay.  
6 BY MR. MOHAMMADI:  
7 Q Okay. And besides getting it done, were there  
8 other issues discussed at this board meeting?  
9 A Well, Lynn had brought up some other issues and --  
10 MS. ROBESON: Is that Lynn Gowan?  
11 THE WITNESS: Lynn Gowan, yeah.  
12 MS. ROBESON: Okay.  
13 THE WITNESS: And --  
14 BY MR. MOHAMMADI:  
15 Q Please, if you can, just use the full name.  
16 A Yes, sir. They basically just kept on Peter to  
17 finish the project and wanted some kind of guarantee he'd  
18 finish the project, and then later on Lynn mentioned  
19 something about windows had to be fixed, and Dr. Barr  
20 basically just looked over and said, we're past that, it's  
21 okay, and Peter -- and then at the end of the meeting, both  
22 Dr. Barr and Peter Gibson just kept telling Peter, just  
23 finish it, go, go, go.  
24 Q Okay. Could you describe, at that particular  
25 meeting, could you describe Ms. Gowan's interaction with

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1 Mr. Ball?  
2 A She got up and yelled something at him. I didn't  
3 hear what she yelled, but I don't think it was nice, and he  
4 just kind of sat there and just looked at me. He kind of  
5 looked at me and goes like this, gives me like a hand  
6 motion.  
7 MS. ROBESON: Okay. The record doesn't --  
8 THE WITNESS: I understand.  
9 MS. ROBESON: -- know what this means, but --  
10 THE WITNESS: Okay. I understand. Peter just,  
11 like, looked at me and, like, raised his, pointed his thumb  
12 toward me like as if to say, see, see, this is what she  
13 does. So that was, you know, it was -- she blurted out.  
14 BY MR. MOHAMMADI:  
15 Q Have you ever seen that kind of interaction  
16 between Mr. Ball and Ms. Gowan before or after this meeting  
17 that you recall?  
18 A Just, just that one. I saw it at that one.  
19 Q Okay. At that July 17th meeting, were any votes  
20 taken by the board?  
21 A Not that I recall, no.  
22 Q Do you specifically recall whether the roof height  
23 was discussed?  
24 A No.  
25 Q You don't recall or it was not discussed?

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1 A It wasn't discussed.  
2 Q Now, are you aware of a subsequent meeting that  
3 occurred on October 7th, 2013?  
4 A Yes.  
5 Q How did you get notice of that meeting?  
6 A That one I got notice delivered to me.  
7 Q Okay. Was it addressed --  
8 MS. ROBESON: When you -- oh, go ahead.  
9 BY MR. MOHAMMADI:  
10 Q Was it addressed to you?  
11 A Well, it wasn't addressed. It was just a general  
12 notice that was stuck in my mailbox.  
13 Q Okay. Did you attend that meeting?  
14 A Yes.  
15 Q All right. Again, specifically relating to the  
16 subject of this, this case, what was the focus or  
17 discussions at that October 7th board meeting?  
18 A Peter Gibson ran the meeting and brought up the  
19 subject of -- there was an addendum to a previous hearing  
20 that the CCOC wouldn't take, and they basically were voting  
21 whether they should file that as a separate action, because  
22 that's what the CCOC said: you have to file this as a  
23 separate action.  
24 MS. ROBESON: And what was the addendum? Was  
25 it --

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1 THE WITNESS: What's in front of us now.  
2 MS. ROBESON: Are you referring to the  
3 supplemental complaint? Is that what you're referring to?  
4 BY MR. MOHAMMADI:  
5 Q Or are you talking about the roof height?  
6 A Well, it was the roof height at that time.  
7 MS. ROBESON: Oh, okay.  
8 THE WITNESS: Yeah, and --  
9 MS. ROBESON: I don't understand what you meant by  
10 addendum.  
11 THE WITNESS: Well, I think, I think they brought  
12 a case; they had tried to add some --  
13 MS. ROBESON: Oh, I see.  
14 THE WITNESS: -- some things in a previous case --  
15 MS. ROBESON: I understand.  
16 THE WITNESS: -- that the CCOC wouldn't take.  
17 MS. ROBESON: I understand. Okay. Thank you.  
18 THE WITNESS: And the vote was not, not to file  
19 the case.  
20 BY MR. MOHAMMADI:  
21 Q And, again, was the roof discussed at that  
22 meeting?  
23 A I can't recall.  
24 Q Okay. If you recall the notice you received, did  
25 that notice say anything about Peter Ball's property being

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1 discussed at the meeting?  
2 A No, it didn't.  
3 Q Are you aware of a meeting that occurred on  
4 October 28th, 2013?  
5 A Yes.  
6 Q And how did you become aware of that meeting?  
7 A I became aware of it because they, they voted to  
8 take this to the hearing --  
9 MS. ROBESON: The board?  
10 THE WITNESS: The board voted to take this to, you  
11 know, to hearing today, and Peter Ball had sent me an e-mail  
12 -- you know, this was after the 28th -- saying, these guys  
13 are taking me to the CCOC. That's how I found out about it.  
14 BY MR. MOHAMMADI:  
15 Q Okay. So you didn't, prior to the meeting, you  
16 didn't know that there was going to be a meeting on the  
17 28th?  
18 A No.  
19 Q And then it's fair to say that you never received  
20 any kind of notice, electronic or otherwise --  
21 A No.  
22 Q -- regarding this meeting?  
23 A No.  
24 Q Now, have you had a chance to discuss this case  
25 with Dr. Barr at any time?

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1 A Not really.  
2 Q Okay. What about with Ms. Gowan -- have you had a  
3 chance to discuss the case with Ms. Gowan at any time?  
4 A No.  
5 Q All right. Finally, with respect to Peter Gibson,  
6 have you had a chance to discuss the case with Peter Gibson?  
7 A We've had e-mails back and forth.  
8 Q Okay. And what was the substance of those  
9 discussions, or e-mails, I should say?  
10 A Basically, he agreed that they'd be off the  
11 record. Should I keep going?  
12 Q Yes, please.  
13 A Oh, okay. Well, he agreed they'd be off the  
14 record, but some of it was -- I mean, one e-mail he wrote  
15 that he thought Lynn joined the board specifically so he  
16 could, she could get Peter Ball, because she came in on the  
17 board, like, only a couple years ago. That was one comment.  
18 And then another comment was that -- I asked him  
19 in the e-mail, because I sent him an e-mail, I said, when we  
20 were at the meeting on the 7th, you-all voted not to take  
21 this case. I said, I thought you guys were stand-up guys,  
22 and now you vote to take him, and he wrote me back. He  
23 says, well, we want to add some pressure and leverage to him  
24 to negotiate. That was the answer.  
25 Q Have you had a chance to talk to anybody else from

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1 the board about this case, basically in the -- at this point  
2 in time?  
3 A I just mostly talked to Peter, Peter Gibson --  
4 Q Okay.  
5 A -- by e-mail and some verbal.  
6 Q Very briefly, who is your wife?  
7 A Tania Bruno.  
8 Q And does Tania Bruno have anything to do with this  
9 case?  
10 A She drew up the preliminary set.  
11 Q Set of drawings?  
12 A Drawings, yeah.  
13 Q Okay. She's an architect?  
14 A Yes.  
15 Q And she is Peter, Peter Ball's architect for this  
16 case, or was?  
17 A She drew a preliminary set for him --  
18 Q Okay.  
19 A -- from the design that he offered.  
20 Q All right. Again, I'm going to try to ask this  
21 without characterizing anything. In your -- have you  
22 observed any difference between how the board interacts with  
23 Peter Ball and how the board interacts with other members of  
24 the community, specifically naming facts versus  
25 characterizations?

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1 A Yes.  
2 Q Okay. Could you describe that and what the basis  
3 for that is, observation is?  
4 A Well, at the July 17th meeting, Peter brought in  
5 some vertical board-and-batten siding, vinyl, vinyl vertical  
6 board-and-batten, and right away they said no. He held it  
7 up, and they said no, and this was siding that I've --  
8 MS. ROBESON: You mean before Mr. Ball had said  
9 anything?  
10 THE WITNESS: Yeah. They just said, no, you know,  
11 we're not, we're not accepting any changes. They wouldn't  
12 let him use vinyl, but my wife and I applied with the same  
13 siding; we were approved -- so, I mean, that type of thing.  
14 BY MR. MOHAMMADI:  
15 Q Okay. Have you observed any particular board  
16 member's interaction with Peter Ball that's different than  
17 that board member's interaction with other members?  
18 A You could just sense a confrontation. I mean --  
19 Q Between which member and Peter Ball?  
20 A Well, Lynn Gowan, definitely, and that's about it,  
21 yeah.  
22 Q When was the last time you received a written  
23 notice regarding a board meeting?  
24 A I -- a board meeting? I can't recall.  
25 Q After the October 7th meeting, which you, I think,

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1 testified you did receive the notice for that --  
2 A Yes.  
3 Q -- have you received any notices since then for  
4 any board meetings?  
5 A No.  
6 Q And all of these board meetings since October 7th  
7 happened after the conclusion of the CCOC case that you  
8 brought, is that correct?  
9 A Yes. Yeah.  
10 MR. MOHAMMADI: Nothing further.  
11 MS. ROBESON: How did you receive the one notice  
12 you did receive? I don't remember if -- I think it was for  
13 the October 7th.  
14 THE WITNESS: Uh-huh.  
15 MS. ROBESON: Was that stamped, through the  
16 mail --  
17 THE WITNESS: No.  
18 MS. ROBESON: -- or was that put in your --  
19 THE WITNESS: It was put in my mailbox, yeah, and  
20 it was a special meeting. It wasn't even really a board  
21 meeting. It was like a special meeting, I believe.  
22 MS. ROBESON: Like an annual meeting?  
23 THE WITNESS: Well, it was in relation to my case.  
24 They had to, they had to affirm things from past board  
25 meetings.

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1 MS. ROBESON: Oh, this was where they ratified --  
2 THE WITNESS: Yes.  
3 MS. ROBESON: -- the past --  
4 THE WITNESS: Yes.  
5 MS. ROBESON: -- actions --  
6 THE WITNESS: Yes.  
7 MS. ROBESON: -- because of the lack of notice?  
8 THE WITNESS: Right.  
9 MS. ROBESON: I understand. All right.  
10 BY MR. MOHAMMADI:  
11 Q And they also -- I'm sorry.  
12 MS. ROBESON: Go ahead.  
13 BY MR. MOHAMMADI:  
14 Q And at that meeting they also happened to talk  
15 about Peter Ball's --  
16 A Yes. Yes.  
17 Q -- property? Okay.  
18 MS. ROBESON: All right. Any other questions?  
19 MR. MOHAMMADI: Nothing, nothing from me.  
20 MS. ROBESON: Ms. Rosen, cross-examination.  
21 MS. ROSEN: Okay.  
22 CROSS-EXAMINATION  
23 BY MS. ROSEN:  
24 Q All right. You've testified that you are married  
25 to Tania Bruno, is that correct?

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1 A Uh-huh.  
2 Q And that Tania Bruno was the architect, Peter  
3 Ball's architect in this case?  
4 A Draftsperson, I'd say.  
5 Q Okay. Well, she drew up --  
6 A She's an architect, but she drew up, she drew a  
7 preliminary set, yes.  
8 Q Didn't she in fact do the drawings that are the --  
9 were admitted into evidence here as the approved plan? And  
10 I can show that to you.  
11 MR. MOHAMMADI: Objection.  
12 MS. ROBESON: Basis?  
13 MR. MOHAMMADI: First of all, again, he would be  
14 speculating. Second of all, it's not really within the  
15 scope of direct. I just asked him the relationship  
16 that's --  
17 MS. ROBESON: It goes to -- what does it go to,  
18 Ms. Rosen?  
19 MS. ROSEN: Well, I think it goes to various  
20 things. I think it goes to, you know, the scope of  
21 cross-examination is wide. It also goes to his bias and his  
22 general knowledge about --  
23 MS. ROBESON: It does go to his bias; so I'm going  
24 to let him answer. Now, you're showing him what exhibit?  
25 MS. ROSEN: I'm showing him 126.

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1 BY MS. ROSEN:  
2 Q Mr. Bruno, have you seen, ever seen this document  
3 before? Maybe I can ask you to identify it first. What is  
4 Quiet Stream Architecture, LLC? Is that Tania Bruno's  
5 company?  
6 A Yes.  
7 Q Okay. So each page on this document has the Quiet  
8 Stream Architecture, LLC, logo, I guess you can say, on it:  
9 Renovation for Mr. Peter Ball. Have you ever seen these  
10 plans before?  
11 A I've seen many plans.  
12 Q Okay. But --  
13 MS. ROBESON: If you know. Do you -- can you tell  
14 from looking at it that you've seen them? If you don't  
15 know, just say you don't know.  
16 THE WITNESS: I mean, that particular set, no.  
17 BY MS. ROSEN:  
18 Q Okay. What was Tania Bruno's relationship with  
19 Peter Ball concerning the construction project at issue  
20 here?  
21 A A neighbor.  
22 Q Oh, she was more than a neighbor. She worked for  
23 him on this project, isn't that correct?  
24 A She, she got involved because the board rejected a  
25 set of plans that was hand-drawn and the board kind of

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1 wanted a more professional set drawn --  
2 Q Okay. So --  
3 A -- so she got -- so she basically took his plans  
4 and did them in AutoCAD.  
5 Q Now, was she paid to draw these plans up?  
6 MR. MOHAMMADI: Objection.  
7 MS. ROBESON: That's fair.  
8 THE WITNESS: Nominal. Nominal, yes, yes.  
9 MS. ROBESON: But you do need to get to the bias  
10 part.  
11 MS. ROSEN: Okay. Well, I have to get --  
12 THE WITNESS: Yeah, she was paid but way under her  
13 rate, let's put it that way, way under. She --  
14 BY MS. ROSEN:  
15 Q And --  
16 A -- she was doing it to try to help the community.  
17 Q Do you know about when she drew these plans up?  
18 A It's had to be three years, two to three years.  
19 Q Two or three years ago, you mean?  
20 A Yeah. Yeah.  
21 Q Okay. And do you know whether the plans that she  
22 drew up were ultimately approved by the HOA?  
23 A I --  
24 MS. ROBESON: If you know.  
25 BY MS. ROSEN:

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1 Q If you know.  
2 A I knew -- I know she drew a set for submission. I  
3 do know that.  
4 MS. ROBESON: Okay.  
5 BY MS. ROSEN:  
6 Q Okay. All right. You've testified that you had  
7 e-mail communications with Peter Gibson, is that correct?  
8 A Yes.  
9 MS. ROSEN: Okay. I'm going to mark this document  
10 as 1 --  
11 MS. ROBESON: 140 I think we're on.  
12 MS. ROSEN: 140.  
13 (Exhibit No. 140 was marked  
14 for identification.)  
15 MS. ROBESON: Let me just check.  
16 MS. ROSEN: It's this e-mail.  
17 MR. MOHAMMADI: Yes, it's 140.  
18 MS. ROBESON: Okay.  
19 MS. ROSEN: I've given that to you before. I only  
20 got two copies of it.  
21 MR. MOHAMMADI: Yes, I remember.  
22 MS. ROBESON: Okay. I'll just describe this as  
23 e-mail from Charles Bruno to Peter Gibson, October 10th,  
24 2013.  
25 BY MS. ROSEN:

1 Q Okay. Mr. Bruno, I'd like you to take a look at  
 2 this e-mail and identify what the document is.  
 3 A It's an e-mail from me to Peter Gibson --  
 4 Q Okay. I'm going to ask you a few questions about  
 5 it.  
 6 A -- out of context.  
 7 Q Okay. And what's the date on that?  
 8 A October 10th, 2013.  
 9 Q Okay. Now, according to that e-mail, I'm going to  
 10 ask you some questions about that. Did there come a time in  
 11 or around October 2013 when your wife, Tania, had a  
 12 discussion with Peter Ball about whether his construction  
 13 complied with the plans?  
 14 A Probably before.  
 15 Q You state in this e-mail that Tania gave Ball a  
 16 lashing, seriously. He made excuses, and she shot everyone  
 17 down. She can't be fooled over construction techniques.  
 18 Tell me about, I mean, how did you come to learn about this  
 19 conversation between --  
 20 A She, she told me.  
 21 Q Okay. What did she tell you? What did she give  
 22 Mr. Ball a tongue-lashing about?  
 23 A Well, I mean, as an architect, she draws plans  
 24 that can be built, so basically, any kind of excuse that  
 25 something couldn't be built. I know the issue, one of the

1 issues was the deck was designed without stairs, and I  
 2 believe Peter said something like, you forgot to put the  
 3 stairs in, you know, and basically said they were required  
 4 by code, and those stairs weren't required by code. So just  
 5 little disagreements like that between him and her.  
 6 Q Okay. Well, the way you've written this e-mail,  
 7 you basically say, she can't be fooled over construction  
 8 techniques. Did she indicate to you that Mr. Ball was  
 9 trying to fool her about construction techniques?  
 10 A More about code.  
 11 Q Okay. But you state in this e-mail that she can't  
 12 be fooled over construction techniques. What were you  
 13 talking about to Peter Gibson?  
 14 A Mainly about code, like I said, the stairs, the  
 15 stairs on the deck. This was, this was the e-mail of the  
 16 day of the trial of your deck case. So we were basically  
 17 talking about that. Even, even --  
 18 Q Okay. Now, in this e-mail, you state, I was  
 19 really impressed how Tania answered all Ball's excuses firm  
 20 and factual and left him stunned, rare to see. Could you  
 21 elaborate on what's that -- what that's about?  
 22 A Well, I mean, when it comes to construction, my  
 23 wife knows construction. So if there was something that had  
 24 been moved or whatever and an excuse was it couldn't be  
 25 done, she could say, well, no, it could be done.

1 Q Okay. Now, in this e-mail, you state, also, that  
 2 many times Ball wanted Tania to post her sign on his lawn;  
 3 she has them on her big jobs, and she'd always say, this is  
 4 your plan, not mine. Did Tania ever have a discussion with  
 5 you about why she didn't want her sign on Mr. Ball's lawn?  
 6 MR. MOHAMMADI: Objection. That's privileged.  
 7 MS. ROBESON: Ask the question again.  
 8 BY MS. ROSEN:  
 9 Q I asked if she ever had, with reference to this  
 10 e-mail -- many times Ball wanted Tania to post her sign on  
 11 his lawn; she has them on her big jobs, and she'd always  
 12 say, this is your plan and not mine -- was there any  
 13 discussion, did Tania tell you why she didn't want to post  
 14 the sign on Mr. Ball's lawn?  
 15 MR. MOHAMMADI: It's all privileged. There's a  
 16 marital privilege. Any discussions --  
 17 MS. ROBESON: Well, he has to assert it.  
 18 MR. MOHAMMADI: Well, I'm objecting. He can  
 19 assert it, but I'm objecting.  
 20 MS. ROBESON: Are you asserting your, a privilege  
 21 about discussions with your wife?  
 22 THE WITNESS: Sure. Yeah. Yes.  
 23 MS. ROBESON: Okay. Let me, let me put it this  
 24 way -- well, I'd have to look if marital privilege covers  
 25 non-criminal acts --

1 MS. ROSEN: Yes.  
 2 MS. ROBESON: -- and I --  
 3 MS. ROSEN: Can we take a break on that, because I  
 4 was thinking the same thing?  
 5 MS. ROBESON: Your question is, what does she  
 6 mean, by what?  
 7 MS. ROSEN: Well, basically, it is very clear from  
 8 this e-mail that Mr. and Mrs. Bruno had some discussions,  
 9 because otherwise how could Mr. Bruno be telling Peter  
 10 Gibson about this, these discussions? So either, either  
 11 Mr. Bruno was there during the discussion or Tania told him  
 12 about it. So --  
 13 MS. ROBESON: So what does it matter? I mean,  
 14 what are you trying to get at? She, to me, she's clearly  
 15 saying this design is not my, of my, is not my creation. So  
 16 what are -- what, in addition --  
 17 MR. MOHAMMADI: Which is what he testified to as  
 18 well.  
 19 THE WITNESS: Yeah.  
 20 MS. ROBESON: -- so what, in addition, are you  
 21 trying to get at?  
 22 MS. ROSEN: Well, I don't know, for example, if  
 23 she's indicated why she didn't want her sign on the lawn;  
 24 i.e., this e-mail is basically stating that she had issues  
 25 with his construction. He basically is saying that he made

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1 excuses, she shot everyone down, things of that nature.  
 2 MS. ROBESON: Well, she is under, she is under  
 3 subpoena, correct?  
 4 MR. MOHAMMADI: She is.  
 5 MS. ROBESON: Do you plan to, for her to testify  
 6 as part of your case?  
 7 MR. MOHAMMADI: Maybe.  
 8 MS. ROBESON: Well --  
 9 MR. MOHAMMADI: I mean, I don't know what the  
 10 testimony is going to be so far from everybody. So, no, I  
 11 don't know yet. I have her subpoenaed in case I need her  
 12 to. I haven't decided whether I need her to. I don't think  
 13 I need to disclose that or to make that decision at this  
 14 point.  
 15 MS. ROBESON: Well, to be honest, I'd prefer to  
 16 get her intent not through hearsay. So I can ask her to  
 17 testify during anybody's cases, but I would prefer to  
 18 understand this sentence from her rather than her husband's,  
 19 who is not an architect.  
 20 MR. MOHAMMADI: I made the objection. If he wants  
 21 to answer, that's his choice. I made the objection. As you  
 22 pointed out, the marital privilege is his, not mine. So if  
 23 he wants to answer it, he can answer it.  
 24 MS. ROSEN: Well, I'm not, like I said, I am not a  
 25 hundred percent sure whether marital privilege would apply

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1 in a proceeding of this nature. I know, obviously, it does  
 2 in a criminal one. So perhaps maybe we should take a short  
 3 break and quickly look that one up, because I don't really  
 4 know off the top of my head.  
 5 MS. ROBESON: You can quickly look it up.  
 6 MR. MOHAMMADI: I'm not sure --  
 7 MS. ROSEN: I don't have any means right now to --  
 8 MR. MOHAMMADI: I'm not sure if the privileges are  
 9 distinguished in that way. Privileges, the marital  
 10 privilege would apply in a civil case, most certainly. I  
 11 don't know what distinguishes a marital privilege from a,  
 12 whether it would apply in an administrative hearing or not.  
 13 It's still a privilege that's been recognized --  
 14 MS. ROBESON: Well, all the privileges apply. My  
 15 question is, what is the scope of the privilege? Okay. All  
 16 the privileges apply in an administrative case. We have to  
 17 recognize them.  
 18 MR. MOHAMMADI: Right.  
 19 MS. ROBESON: I can try to look for a few minutes.  
 20 MR. MOHAMMADI: Do you want to ask him again  
 21 whether he wants to answer this question?  
 22 MS. ROBESON: Are you okay with answering?  
 23 THE WITNESS: I'll answer it, sure.  
 24 MS. ROBESON: All right. Go ahead, Mr. -- wait.  
 25 Why don't -- can you answer, ask your question, not answer

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1 your question, can you ask your question again?  
 2 BY MS. ROSEN:  
 3 Q Did Tania Bruno tell you why she did not want to  
 4 post a sign on Mr. Ball's lawn?  
 5 A Yes.  
 6 Q Okay. And what was her reason?  
 7 A It wasn't her design.  
 8 Q Did she indicate that, also, she didn't want to  
 9 post it on there because there were, it didn't -- the  
 10 construction that was done was not what she had drawn for  
 11 him?  
 12 A No.  
 13 Q Okay. Now, you indicate in this e-mail, you state  
 14 that he did not follow many aspects, as Lynn pointed, which,  
 15 in the aggregate, ruined the entire intent. That's  
 16 something, I assume, that you, that that was something that  
 17 -- you learned that from Tania, isn't that correct?  
 18 MR. MOHAMMADI: Is there, can you --  
 19 BY MS. ROSEN:  
 20 Q Oh, I'm sorry. I'm holding it. Yes, I didn't --  
 21 I forgot you didn't have the e-mail.  
 22 MS. ROBESON: Maybe a better way to put it, not to  
 23 criticize -- well, go with your, go with your question.  
 24 THE WITNESS: Okay. Yes. And the question is?  
 25 BY MS. ROSEN:

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1 Q It says in this e-mail, that being said, he did  
 2 not follow many aspects, as Lynn pointed out, which, in the  
 3 aggregate, ruined the entire intent. Is that basically --  
 4 did Tania indicate to you that he had not followed many  
 5 aspects?  
 6 A Well, in other words, in the preliminary the  
 7 windows didn't match exactly, things like that. It's just  
 8 that an architect can get really critical, I mean, as you  
 9 can see.  
 10 Q Okay. Now --  
 11 A It's more subjective than objective.  
 12 Q In this e-mail, towards the end, you say, facts  
 13 are hard to buck --  
 14 A Uh-huh.  
 15 Q -- the problem is that he, being in construction,  
 16 can talk away any defect to one who is not knowledgeable.  
 17 A Right.  
 18 Q Okay. So is it fair to say that you believe that  
 19 Peter Ball was trying to talk away defects in this  
 20 construction?  
 21 A Well, I mean, I can't -- as far as construction, I  
 22 don't know construction. So things that he would say to me  
 23 I couldn't count on, let's put it that way.  
 24 Q Now, you state in this e-mail, I consider Peter a  
 25 friend but do buck him when he gets mad.

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1 A Yeah --

2 Q Okay.

3 A -- of course.

4 Q So when he doesn't, basically, when he doesn't

5 like -- if someone tells him something he doesn't want to

6 hear, he just basically gets angry and digs his heels in?

7 MR. MOHAMMADI: Objection.

8 MS. ROBESON: That's argumentative.

9 BY MS. ROSEN:

10 Q Have you had any discussion with Tania as to

11 whether she's going to be testifying in this case?

12 A I don't know if she is or not.

13 MR. MOHAMMADI: Objection.

14 MS. ROBESON: Yes, I don't, I don't see the

15 relevance of that. He mentioned one thing about his

16 relationship on direct with Tania, and I didn't mean to

17 start a whole line of things about Tania. I'll give you

18 some leeway, but --

19 MS. ROSEN: Okay. I'm just going to move to

20 introduce No. 140 into evidence.

21 MS. ROBESON: Any objections, Mr. Mohammadi?

22 MR. MOHAMMADI: No.

23 MS. ROBESON: All right. It's admitted.

24 (Exhibit No. 140 was received

25 in evidence.)

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1 BY MS. ROSEN:

2 Q I have one question. Were you present during any

3 of those discussions between Tania and Peter Ball?

4 A No.

5 Q All right. Now, you testified that you were

6 present at the July 17th, 2013, meeting?

7 A Yes.

8 Q Okay. Do you recall whether, whether -- was it

9 you or was it Peter Ball who held up the vinyl siding?

10 A I think both of us did.

11 Q Both of you held up what? The same piece of vinyl

12 siding?

13 A Yeah. He did first, and then later in the meeting

14 I did.

15 Q Was it the same piece of vinyl siding or --

16 A Yes.

17 Q Okay. So it was the vinyl siding that you were

18 trying to get approved for yourself?

19 A It was approved.

20 Q Okay. But it was your vinyl siding that was being

21 held up, isn't that correct?

22 A No. Actually, it was his sample. It was his

23 sample.

24 Q Are you aware that, that he had previously applied

25 with this application that he -- when his application was

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1 approved, that his initial application that he had applied

2 for, he didn't apply for vinyl siding?

3 A I wasn't aware of that.

4 MS. ROBESON: Ms. Rosen, I guess I'll let it in on

5 cross-exam, but I really don't see the relevance that he

6 applied and then changed his mind --

7 MS. ROSEN: Okay.

8 MS. ROBESON: -- unless you can point it out to

9 me.

10 BY MS. ROSEN:

11 Q Okay. And you testified you were present at the

12 October 7th, 2013, meeting?

13 A Yes. I was there.

14 Q And what was that? Was that a regular board

15 meeting, or was that a special meeting of some type?

16 A I believe it was a special meeting.

17 Q Okay. And do you recall, what was the, what was

18 the purpose of that meeting?

19 A Again, to, to -- they had to go over past board

20 meetings that were closed and affirm decisions.

21 Q Okay. Okay. And some part of that meeting had to

22 do with basically the compliance with the CCOC order in your

23 case, correct?

24 A Yes.

25 Q Okay. And as, if you recall, as part of that

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1 compliance, they had to affirm actions that were taken

2 outside of meetings, I think it was, other than the January

3 2012 meeting, is that correct?

4 A Yes.

5 Q Okay. And part of those actions that were

6 affirmed were the conditional approval of the additions to

7 Mr. Ball's construction, correct?

8 A The question again?

9 Q Part of that approval concerned actions taken with

10 regard to Mr. Ball's construction applications, correct?

11 A I don't know. To be honest, they really didn't

12 clarify what they were going over.

13 Q Yes. Did you not receive the notice, a notice in

14 the, in the mail concerning that meeting or notice

15 concerning --

16 A October 7th?

17 Q Yes.

18 A Yeah, I did receive it, yeah.

19 Q Yes. And did that notice not contain what was

20 going to happen at that meeting?

21 A Yes, it did.

22 Q Okay. So -- and there was also, there was also

23 a --

24 MS. ROBESON: What do you mean by, what did that

25 -- let me do this: What did the notice -- that was the

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1 notice that was delivered to your mailbox, correct?  
2 THE WITNESS: Uh-huh, yes.  
3 MS. ROBESON: And what did that notice contain?  
4 What --  
5 THE WITNESS: It basically said it was a special  
6 meeting to -- because of my case. It mentioned, you know,  
7 in, in reaction to my case. It was a special meeting to do  
8 things that the CCOC ordered it to do, basically. That's  
9 what I recall.  
10 BY MS. ROSEN:  
11 Q I'm going to show you a document which was  
12 previously marked as Exhibit 95. Can you take a look at  
13 that? I think it's this. Take a look at the group of  
14 documents.  
15 A Okay.  
16 Q You see that? That's an agenda, the second page.  
17 So I think, wouldn't it be fair to say that that agenda does  
18 refer to the various actions that were going to be affirmed  
19 by the board in -- by the board at this meeting, correct?  
20 A Yes.  
21 Q And part of that is the approval of the additions  
22 to Mr. Ball's property, correct?  
23 A Yes.  
24 Q Okay. Okay. I believe you also had testified  
25 that there was some discussion at that meeting of the

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1 architect of the construction at Mr. Ball's property?  
2 A The October 7th?  
3 Q Yes.  
4 A Yes.  
5 Q Okay. But there was no votes taken at that  
6 meeting; it was just a discussion, right?  
7 A No, there was a vote taken.  
8 Q What vote was taken?  
9 A Whether or not to bring this case to the CCOC.  
10 Q At the October 7th meeting, or was that in a  
11 different meeting?  
12 A October 7th.  
13 Q Were you at the October 28th, 2013, meeting?  
14 A No.  
15 Q Okay. Would you be surprised if I told you that  
16 the minutes of that meeting reflect that a motion was made  
17 to file a complaint in the CCOC at the October 28th regular  
18 board meeting as opposed to the special meeting?  
19 A No.  
20 MS. ROSEN: Okay. I have no further questions.  
21 MS. ROBESON: All right. Redirect.  
22 MR. MOHAMMADI: Court's indulgence.  
23 MS. ROBESON: I have one. Did you get notice of  
24 the October 28th meeting?  
25 THE WITNESS: No.

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1 MS. ROBESON: Have you ever had notice mailed to  
2 you?  
3 THE WITNESS: The annual -- the annual meeting, I  
4 believe, came with postage, was actually mailed, for annual  
5 membership meetings.  
6 MS. ROBESON: Okay, but none of the other  
7 meetings?  
8 THE WITNESS: No.  
9 REDIRECT EXAMINATION  
10 BY MR. MOHAMMADI:  
11 Q I'm going to ask the question Ms. Rosen asked.  
12 She asked, would you be surprised to find out that there was  
13 a vote taken on October 28th. Would you be surprised that  
14 there was a vote taken?  
15 A No.  
16 Q And why are you not surprised?  
17 A Because that's the way they do things.  
18 Q But did you know that they were going to take a  
19 vote?  
20 A No.  
21 Q Was that a surprise that they actually did, ended  
22 up taking a vote?  
23 A I was --  
24 Q Meaning, did you have prior knowledge that a vote  
25 would be taken?

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1 A No, I did not. Again, I saw a vote -- I saw a  
2 vote three weeks prior, the other direction, and that was,  
3 Mr. Gibson was the head of that meeting and he, he took the  
4 vote.  
5 MS. ROBESON: And that vote was whether to file a  
6 CCOC complaint?  
7 THE WITNESS: Yes. Might want to note, Mr. Gibson  
8 voted against the previous case too.  
9 MS. ROBESON: Against filing it?  
10 THE WITNESS: Yeah.  
11 MR. MOHAMMADI: Do you have that e-mail that he  
12 was looking at?  
13 MS. ROSEN: I try to keep them all together.  
14 MR. MOHAMMADI: Yes, I'm doing the same.  
15 MS. ROSEN: Yes, I know.  
16 MR. MOHAMMADI: Thank you.  
17 BY MR. MOHAMMADI:  
18 Q All right. I'm showing you again what's been  
19 marked as Exhibit 140.  
20 A Uh-huh.  
21 Q You made a comment that the e-mail is out of  
22 context. Would you describe what you mean with that, out of  
23 context?  
24 A This, this was like a third, maybe, in a series of  
25 back-and-forth discussions. Again, Peter Gibson and I

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1 always had an understanding that everything we said was off  
2 the record because we were just trying to, you know --  
3 MS. ROBESON: Facilitate, I think --  
4 THE WITNESS: Yeah, and I mean --  
5 MS. ROBESON: -- was Mr. Gibson's part.  
6 THE WITNESS: -- and I mean, as you've heard,  
7 Peter Gibson, you know, you never know when he's acting  
8 officially or unofficially, and he has always told me  
9 unofficially. In fact, the e-mail before this, which isn't  
10 here, basically asked Tania to unofficially help him do  
11 something. So, I mean, again --  
12 MS. ROBESON: Oh, I see.  
13 THE WITNESS: Yeah. But, again, there was an  
14 e-mail after this and before it, and if you note, it says,  
15 this stays between us, please. His reply was, yes, this  
16 stays between us. That was his reply to me.  
17 BY MR. MOHAMMADI:  
18 Q Well, but can you give the context of those  
19 e-mails? I mean, what was the -- what is the context?  
20 A He -- I think he at first brought up getting Tania  
21 to help talk to Peter because he thought she could help,  
22 that type of thing.  
23 Q Okay.  
24 A I don't have it in front of me, but --  
25 Q Okay. I think you stated that this e-mail was on

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1 the same day that the other CCOC case --  
2 A Yes.  
3 Q -- was going on. Was the subject of the  
4 discussions here and also with Peter Gibson, was that about  
5 that case or about something different?  
6 A It was about the case that day. I mean, the  
7 conversation might have started, like, two days before,  
8 maybe October 8th, yeah, because Peter Gibson didn't want,  
9 didn't want this case to go -- this deck case to go.  
10 MS. ROSEN: I'm going to object to him testifying  
11 as to what Peter Gibson --  
12 THE WITNESS: He voted against it.  
13 MS. ROSEN: -- wanted or didn't want. Peter  
14 Gibson can --  
15 MS. ROBESON: We have hearsay from both sides, and  
16 it's admissible as long as it's --  
17 THE WITNESS: He was opposed. He voted against  
18 it.  
19 MS. ROBESON: -- reasonably reliable. Don't talk  
20 while I'm talking.  
21 THE WITNESS: Sorry.  
22 MS. ROBESON: So I'm going to let it in. I mean,  
23 you were asking him about what Tania told him. So I'm going  
24 to let it in.  
25 BY MR. MOHAMMADI:

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1 Q With respect to this Exhibit No. 95, which is an  
2 agenda for the October 7th, 2013, meeting, I just want to be  
3 clear on this. Yes, it says that the, that Peter Ball's  
4 property would be discussed, but it's in respect to  
5 complying with the CCOC, the previous CCOC case, in that all  
6 actions taken had to be voted on again and approved,  
7 correct?  
8 A I can't really tell by that.  
9 Q Well, if I could point you to the first X that's  
10 drawn here --  
11 A Okay.  
12 Q -- could you read that?  
13 A Okay. Affirm all actions taken by the board in  
14 2012 outside of meetings or at any board meetings, including  
15 but not limited to, okay, conditional approval, okay.  
16 Q The agenda did talk about that property, but it  
17 was with respect to the approval of the construction that  
18 happened back in 2011 --  
19 A Right.  
20 Q -- right?  
21 A Correct.  
22 Q It had nothing to do with the current issues that  
23 are existing, the roof or anything else?  
24 A Yeah, that's how I'd read it, yes.  
25 Q Okay.

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1 MR. MOHAMMADI: Nothing further.  
2 MS. ROBESON: Recross, Ms. Rosen?  
3 MS. ROSEN: No further, no further questions.  
4 MS. ROBESON: All right. You may be excused,  
5 Mr. Bruno.  
6 THE WITNESS: Okay.  
7 MS. ROBESON: That was for Mr. Schwartz.  
8 MR. MOHAMMADI: Would you like it back?  
9 MS. ROBESON: We'll get it back after. You can  
10 just leave it there.  
11 MR. MOHAMMADI: Okay. At this point, I'd like to  
12 call Dr. Barr, please.  
13 (Witness previously sworn.)  
14 MS. ROBESON: Dr. Barr, okay. Mr. Barr, you're  
15 still under oath.  
16 THE WITNESS: Yes.  
17 DIRECT EXAMINATION  
18 BY MR. MOHAMMADI:  
19 Q Okay. Dr. Barr, I want to be sure I understand  
20 this. In your previous -- when you previously testified,  
21 you had stated that you'd only seen one set of plans,  
22 correct?  
23 A Yes.  
24 Q And that one set of plans, as you pointed out, was  
25 Exhibit No. 77, correct?

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1 A Yes.  
2 Q Now, since your testimony then, you've seen some  
3 other -- at least one additional set of plans, correct?  
4 A Let me correct myself.  
5 Q Well, let me -- why don't you answer my questions.  
6 A Okay.  
7 MS. ROBESON: No, Mr. Barr, you have to answer  
8 his --  
9 THE WITNESS: Okay. Yes.  
10 BY MR. MOHAMMADI:  
11 Q Okay. And that additional set of plans would be  
12 Exhibit No. 126, is that correct?  
13 A Correct.  
14 Q Okay. Now, are you sure you've never seen this  
15 set of plans before?  
16 A What is that? 126?  
17 Q 126.  
18 A If I have, I don't recall because, when we were  
19 going to board, this is what came around in the plan and I  
20 had also seen the drawing done in July 2010, which was a  
21 precursor to this design, which I had seen and which I  
22 believe is in Exhibit 1 in 73-12.  
23 Q Had you ever seen any drawings showing a gable  
24 roof over the, over the garage?  
25 A Yes. That is in 73-12 --

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1 Q Okay. So there was --  
2 A -- Exhibit 1 in 73-12.  
3 Q All right. So you've seen at least that, where  
4 there was a previous, earlier drawing, right?  
5 A Yes. That's why I was trying to correct myself.  
6 Q Okay. But you don't recall ever seeing this  
7 particular plan?  
8 A I may have seen it, but I really didn't pay any  
9 attention because, when we were getting to the vote, we were  
10 looking at this and I had, also had seen the as-builts from  
11 the 23 -- Exhibit 1 in 73-12. So I wasn't reading this set  
12 of plans, is what I should say. I was going by what was  
13 here, which was the proposed. And the fact that it came out  
14 in an e-mail to all the board members, that became the basis  
15 by which we looked at it --  
16 Q Okay.  
17 A -- and now that I've managed to compare it, I say  
18 it's the same. It's a copy of what was in here proposed.  
19 What is missing --  
20 Q It's a larger scale -- larger version?  
21 A She had to scale it down to e-mail it -- and what  
22 is missing is the as-built portion, which we had seen before  
23 and we knew what it was for.  
24 Q Okay. So it is your testimony that at the time  
25 you voted to approve the plans, you had, at least, had also

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1 seen the as-builts?  
2 A Yes. Yes.  
3 Q Okay. And you had them in front of you to look at  
4 if you needed to?  
5 A I had looked at them in great detail in July 2010  
6 when the president, Jeff Williams, unable -- gave it to me  
7 and said: I can't make head or tail out of this; neither  
8 can the board. Can you help us? So what I did was I took  
9 that drawing, and I might even have it here --  
10 MS. ROBESON: Which drawing?  
11 THE WITNESS: Exhibit 73 --  
12 MS. ROBESON: 77?  
13 THE WITNESS: No. Exhibit 1 in 73-12.  
14 MS. ROBESON: Ah.  
15 THE WITNESS: And the original that was given he  
16 gave me a copy, and this is the original copy that he gave  
17 me and said, try to make head or tail, because there was no  
18 indication as to what was being added in the proposed.  
19 There is the as-built drawing and there is the proposed, but  
20 there was no indication of anything. So what I did was, to  
21 understand it for myself, I looked at it and started  
22 coloring it, and this is the hatch work I did on it.  
23 MS. ROBESON: Well, wait. Is that in evidence?  
24 MR. MOHAMMADI: It is not.  
25 MS. ROSEN: No. No.

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1 THE WITNESS: No, no. I'm just answering the  
2 question. The way I knew about the as-built portion was  
3 because I had to study this quite intensely to understand  
4 what was being proposed.  
5 BY MR. MOHAMMADI:  
6 Q I'm going to ask you again. All right? You had  
7 seen the as-built versions before --  
8 A Yes, correct.  
9 Q -- and they were available to you had you needed  
10 them, correct?  
11 A Yes.  
12 Q And as-built version, it wouldn't change from  
13 submission to submission --  
14 A Exactly.  
15 Q -- that's the as-built, right?  
16 A Right.  
17 Q Okay. Wasn't one of the problems that you pointed  
18 out with one or multiple submissions was that there was no  
19 dimensions?  
20 A Yes.  
21 Q Okay. And the plans we currently have in the  
22 exhibit --  
23 A 126?  
24 Q -- 126 specifically, is missing a fair amount of  
25 dimensions. Would you agree with that?

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1 A Yes.  
2 Q It has some dimensions --  
3 A Yeah. Yeah.  
4 Q -- but it's missing the dimensions?  
5 A Right.  
6 Q Why would the board vote, when they insist on  
7 dimensions, vote on a plan that apparently does not have  
8 dimensions?  
9 A Because, if I might expand the answer, the -- when  
10 we looked at Exhibit 1, which was supplied in 2010 July,  
11 which is Exhibit 1 in 73-12, there was, on the back, over  
12 the flat roof, an entire level, a third level that had been  
13 added on, and that board rejected that application.  
14 MS. ROBESON: Not in the as-builts, but in the  
15 proposed.  
16 THE WITNESS: In the proposed, I'm sorry, in the  
17 proposed.  
18 MS. ROBESON: In 2010?  
19 THE WITNESS: In 2010 --  
20 MS. ROBESON: Okay.  
21 THE WITNESS: -- which is your Exhibit 1 in 73-12.  
22 MS. ROBESON: And you rejected it?  
23 THE WITNESS: Not me. The board --  
24 MS. ROBESON: The board.  
25 THE WITNESS: -- rejected it.

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1 MS. ROBESON: Right. I didn't --  
2 THE WITNESS: Jeff Williams, who was the  
3 president, wrote the letter, saying that this is  
4 specifically taken out. Tania Bruno wrote an e-mail to the  
5 board, saying that Mr. Ball is prepared to forgo the third  
6 level in the back on top of the flat roof but he would like  
7 to have a walk-in closet off the master bedroom. And what  
8 -- then she went on to say, all we are asking for is to  
9 start -- to take the flat roof, which Mr. Ball had  
10 previously discussed as being a leaky thing, a mistake he  
11 made, and put a 3-12 pitch starting at the edge of the flat  
12 roof and reaching back at 3-12.  
13 Then the discussion went to how it would rise to  
14 68 inches when it hit some point, some wall or something  
15 that was there, but that was only five foot eight and that  
16 wall was eight feet tall, and she said, because that would  
17 not look harmonious, we're going to run a roof from the top  
18 of this flat roof to the top of the existing ridge. So that  
19 was the only discussion that we've had following the  
20 rejection of the raising of the roof in the back.  
21 At that --  
22 MS. ROBESON: You mean the third level?  
23 THE WITNESS: The third level. And so the closer  
24 one, which the third level caused the raising of the roof,  
25 if you look at the rear elevation, it also has clerestory

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1 windows on that exhibit that you have, showing a line of  
2 clerestory windows coming from, from the street side,  
3 overlooking the existing ridge. So that got rejected as  
4 well. In other words, we said, you're not raising the roof,  
5 and they came back, saying, we are going to just come up and  
6 meet the existing ridge.  
7 In that submission, they have -- on top of the  
8 garage was an addition which showed a double gable this way  
9 and it was well short of the existing roof, and the notation  
10 he had made previously --  
11 MS. ROBESON: Well, I guess the key --  
12 THE WITNESS: No. Yes.  
13 MS. ROBESON: Go ahead.  
14 THE WITNESS: Yes, because he asked the question  
15 about the gable.  
16 MR. MOHAMMADI: I'm sorry. I'm going to object at  
17 this point. This is very -- it's not responsive at all.  
18 MS. ROBESON: Well, you asked him --  
19 THE WITNESS: You asked me about the gable.  
20 MS. ROBESON: What was your question? What plans  
21 he looked at.  
22 MR. MOHAMMADI: No. I asked him why they approved  
23 plans that don't have dimensions.  
24 MS. ROBESON: Well, I think he's trying to  
25 explain.

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1 MS. ROSEN: He's trying to explain it.  
2 THE WITNESS: Yeah. So --  
3 BY MR. MOHAMMADI:  
4 Q Go ahead.  
5 A -- what happened there was that the previous  
6 drawing that, in July --  
7 MS. ROBESON: Well, let me --  
8 THE WITNESS: Yes.  
9 MS. ROBESON: -- let me ask --  
10 THE WITNESS: I'll cut to the chase.  
11 MS. ROBESON: Cut to the chase.  
12 THE WITNESS: Okay.  
13 MS. ROBESON: Why did you approve plans without  
14 dimensions?  
15 THE WITNESS: Because, when we asked for the  
16 revised one, asking for a shading of what was proposed so  
17 that there would be -- and there was an e-mail going out --  
18 MS. ROBESON: When was -- okay.  
19 THE WITNESS: -- it came back with the shading and  
20 the dimensions in plan.  
21 MS. ROBESON: When? What --  
22 THE WITNESS: In the submission that came with an  
23 application, which is this application, which is now 126,  
24 and it was March, it's dated March 2011.  
25 MS. ROBESON: Okay.

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1 THE WITNESS: That was the response to what they  
2 were proposing, and it came back. I looked through the  
3 as-builts I had seen before, because as I, as I told you, I  
4 had studied this as-built before and what had been proposed.  
5 What was now being proposed was very clearly marked with the  
6 shading, it had dimensions in plan, and in my sketching of  
7 this, I had also shaded the vertical portion, just to say  
8 what was -- just for me to understand as to what was being  
9 added, which is why the board voted, saying, we don't want  
10 any additions in the back with the new roof or the front  
11 going over the top of the existing ridge.  
12 So when the drawings came back and the shaded  
13 portion was in plan and dimensions are shown for it -- and  
14 there is no shading or any indication in the elevations  
15 showing any change of --  
16 MS. ROBESON: But, okay, that --  
17 THE WITNESS: -- scope --  
18 MS. ROBESON: -- that, okay, but --  
19 THE WITNESS: -- so that's why we --  
20 MS. ROBESON: -- the question is, why did you  
21 approve a plan --  
22 THE WITNESS: We approved it because, when we  
23 looked at it, there was no indication that there was any  
24 change being proposed in the, in the vertical face. The  
25 only thing we could see was that the gable roof was now

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1 sloping back to meet the ridge, and the only discussion we  
2 had, at the same time as this, as this one that came around,  
3 was a letter from Peter Ball -- and I think, I forget now,  
4 sometime in April, just around the same time -- written to  
5 the board, in which he describes -- I don't think I can find  
6 it so fast, but that is --  
7 MS. ROBESON: Let me make sure that I understand.  
8 What's a gable roof? That's the roof -- well, you tell me.  
9 THE WITNESS: The triangular-looking thing. I can  
10 just show it to you again. It's in your Exhibit --  
11 MS. ROBESON: 126?  
12 THE WITNESS: No. It's in Exhibit 1 of 73-12.  
13 MS. ROBESON: Okay.  
14 MS. ROSEN: Which is actually --  
15 THE WITNESS: And it's here again. This is what,  
16 if I may just hold it up, this is --  
17 MR. MOHAMMADI: Objection. I don't know what  
18 he's --  
19 THE WITNESS: No, no. This is it. This is it.  
20 MS. ROBESON: Okay. No, it's all --  
21 THE WITNESS: This is the gable.  
22 MS. ROBESON: Okay. I took official notice of --  
23 THE WITNESS: Okay.  
24 MS. ROBESON: -- the actual exhibit. So --  
25 THE WITNESS: No, you're asking what the gable

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1 looked like. I was just showing the gables.  
2 MS. ROBESON: Let's do this: So your testimony,  
3 what you're saying is you didn't think you needed a scaled  
4 drawing or you didn't think you needed dimensions? Is that  
5 what you're telling me.  
6 THE WITNESS: We needed dimensions. If you look  
7 in the, in the folder, in 2008 there was application made  
8 which was rejected --  
9 MS. ROBESON: Right.  
10 THE WITNESS: -- it had no sections, blah, blah,  
11 blah.  
12 MS. ROBESON: That was with three stories, yes.  
13 THE WITNESS: Yeah, and that had -- in 2008 now.  
14 MS. ROBESON: Yes, I know.  
15 THE WITNESS: And repeatedly there had been  
16 requests for dimensions. So when this one turned up with  
17 the --  
18 MS. ROBESON: This one is?  
19 THE WITNESS: This one, 126 --  
20 MS. ROBESON: Okay.  
21 THE WITNESS: -- or 77, the proposal for 77, which  
22 you saw, showed the additions being hatched --  
23 MS. ROBESON: Yes.  
24 THE WITNESS: -- toned in, and then dimensioned.  
25 We said, okay, they're telling us exactly what they're

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1 doing. They did not show any change by the height, which we  
2 had kept asking for, and there was nothing to indicate that  
3 any change was being made vertically. In addition --  
4 MS. ROBESON: Okay.  
5 THE WITNESS: No, because you asked me the  
6 question about why we voted and I'm the one who switched my  
7 vote. My vote was switched, not because of anything to do  
8 with the height --  
9 MS. ROBESON: No.  
10 THE WITNESS: Oh, okay. All right.  
11 MS. ROBESON: We already did that --  
12 THE WITNESS: Okay. Right. Okay.  
13 MS. ROBESON: -- and that has nothing to do with  
14 how you approved it without a scale.  
15 BY MR. MOHAMMADI:  
16 Q So let me ask you this, okay?  
17 A Yes.  
18 Q You decide to approve plans that didn't have  
19 dimensions because you thought certain things were  
20 happening, right? For example, the roof wasn't being  
21 raised, right? Right?  
22 A Yes, because there was no indication --  
23 Q Just answer yes or no.  
24 A Yes.  
25 MS. ROBESON: No, you -- yes.

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1 THE WITNESS: Yes.  
2 MS. ROBESON: Just answer his -- you need to ask  
3 me for permission to treat him as a hostile witness.  
4 MR. MOHAMMADI: Well, at this point, I'm going to  
5 ask that. I was trying not to, but --  
6 MS. ROBESON: Yes, and it's granted. Go ahead.  
7 MR. MOHAMMADI: All right. Thank you.  
8 THE WITNESS: I'm not trying to be hostile. I'm  
9 just trying to explain.  
10 MS. ROBESON: I know you aren't.  
11 BY MR. MOHAMMADI:  
12 Q It's not -- okay. All right. And the plans that  
13 you approved had some shadings that showed what was being  
14 added in, correct?  
15 A Right.  
16 Q Those shadings only existed on the floor plans but  
17 not on the side elevation plans, correct?  
18 A Correct.  
19 Q Okay. I'm going to show you the shadings we're  
20 talking about, all right, and I want you to tell me -- I'm  
21 showing you Exhibit 126. Okay?  
22 A Uh-huh.  
23 Q And I'm showing you A1.  
24 A Right.  
25 Q I'm sorry, A3.

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1 A A3.  
2 Q And it shows the upper floor, correct?  
3 A Correct.  
4 Q And it shows that, the shading shows that there's  
5 a new office/bonus room/bedroom over the garage, is that  
6 correct?  
7 A Yes.  
8 Q Okay. So does that mean to you that an addition  
9 is actually going to be built on top of the garage?  
10 A There was never a question about the addition on  
11 top of the garage.  
12 Q Okay. Well, let's go to the new storage area in  
13 the back that's also hatched. Do you see that?  
14 A Yes.  
15 Q So that also tells you there's a new storage area  
16 being added on top of the back roof, is that correct?  
17 A And what --  
18 Q Is that correct?  
19 A Yes --  
20 Q Okay.  
21 A -- that shows an addition.  
22 Q All right. And then I'm going to show you what's  
23 been marked here, again, as Exhibit 126. All right? Take a  
24 look at A5.  
25 A Uh-huh.

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1 Q Okay? Again -- and you admitted to this last  
2 time, but I just want to ask you again -- looking at the  
3 right-side elevation for the back of the house, you can tell  
4 that there has been some portion added on over the flat roof  
5 in this drawing, correct?  
6 A In this drawing it is so.  
7 Q Okay. That's all I wanted to know. Okay?  
8 A And --  
9 Q Okay?  
10 A -- part approval --  
11 MS. ROBESON: Don't -- no.  
12 THE WITNESS: No? Okay.  
13 MS. ROBESON: Your attorney --  
14 THE WITNESS: Okay.  
15 MS. ROBESON: -- can redirect.  
16 THE WITNESS: All right. Okay.  
17 BY MR. MOHAMMADI:  
18 Q I just want to make sure I'm not taking your  
19 stuff. Hold on.  
20 A No, this is mine.  
21 Q Now, I just want to be sure, are you sure you  
22 never saw any plans that had dimensions on the side, for the  
23 side elevations?  
24 A No.  
25 Q Okay. Have you ever seen any plans showing cross

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1 sections of the house?  
2 A No, except in the building permit set.  
3 Q Okay. So you've seen them in the building  
4 permit --  
5 A Yes.  
6 Q -- but they were not, you're saying they were  
7 never submitted to you?  
8 A They were not seen at the time we voted.  
9 Q Okay.  
10 MS. ROBESON: At the time you voted or --  
11 THE WITNESS: When we voted. This was the set of  
12 drawings that we were dealing with.  
13 BY MR. MOHAMMADI:  
14 Q Prior to your vote, had you ever seen cross  
15 sections?  
16 A No.  
17 Q Okay. All right. I'm going to show you what's  
18 been marked as Exhibit 141.  
19 MS. ROBESON: Okay. Let me just, I'm going to  
20 describe this as e-mail from -- just a second. Okay. 141  
21 will be e-mail from Gibson to Barr dated 9/17/2013.  
22 BY MR. MOHAMMADI:  
23 Q Okay. If you take a look at paragraph 2, it  
24 says --  
25 A Uh-huh.

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1 Q -- our problem is that we have a chain of custody  
2 issue. We don't actually know for sure which set of plans  
3 was presented at the meeting when the approval was granted.  
4 Do you see that?  
5 A Yes.  
6 Q So would you agree that at least Mr. Gibson is  
7 telling you that there seems to be a problem with HOA not  
8 knowing which set of plans was voted on?  
9 A I don't know why he's saying that because he's the  
10 one who supplied this e-mail.  
11 Q Okay. But he is the one that's saying there seems  
12 to be a chain of custody issue?  
13 A Yeah, that's his --  
14 Q Okay.  
15 A -- observation, right.  
16 Q And you were the recipient of this e-mail,  
17 correct?  
18 A Correct.  
19 MR. MOHAMMADI: All right. Move to admit  
20 Plaintiff's, oh, Plaintiff's -- Exhibit 141.  
21 MS. ROBESON: Any objections?  
22 MS. ROSEN: Well, I think that he would -- that it  
23 should be authenticated by Peter Gibson as opposed to Raj  
24 Barr, because Peter Gibson wrote it.  
25 MR. MOHAMMADI: He's on it.

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1 MS. ROBESON: Well, did Mr. Barr, did you receive  
2 it?  
3 THE WITNESS: I responded to it --  
4 MS. ROBESON: Okay.  
5 THE WITNESS: -- and that response is not here.  
6 MS. ROBESON: That's fine. So you did receive  
7 this?  
8 THE WITNESS: I received it, and my response --  
9 MS. ROBESON: Okay. I'm going to let it in then.  
10 (Exhibit No. 141 was received  
11 in evidence.)  
12 THE WITNESS: Yeah.  
13 BY MR. MOHAMMADI:  
14 Q Okay. Remind, remind everybody again, how long  
15 have you served as the president of the HOA?  
16 A I was elected in 2011, but I understood that the  
17 president had left, and I was pushed into it in fall. So I  
18 was like an interim person from fall of 2010 otherwise.  
19 Q Okay. And prior to that, you were, I think you  
20 characterized it as, basically, vice president?  
21 A Yeah, before that I was vice president.  
22 Q And how long was that again?  
23 A That could have been -- I thought it was  
24 relatively short, but I saw somewhere that it was from 2005.  
25 So it must have been about six years of that.

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1 Q Okay. In your role in, basically, sort of a  
2 leadership position in the HOA, right, since basically 2006  
3 and moving forward, could you describe what you believe the  
4 purpose of the HOA is?  
5 A The HOA is here to maintain the harmony -- I'm  
6 coming off the bylaws, is what it is --  
7 MS. ROBESON: The architectural guidelines.  
8 THE WITNESS: No, no, the bylaws of the --  
9 MS. ROBESON: Okay.  
10 THE WITNESS: -- of the, of the entire  
11 organization.  
12 MS. ROBESON: Okay.  
13 THE WITNESS: It was set up in 1970 or '71 --  
14 MS. ROBESON: Right.  
15 THE WITNESS: -- and it has articles of  
16 incorporation, bylaws, and declarations or some such thing.  
17 In the bylaws there's a description about not cutting trees  
18 that were hardwood, or some such thing, and then there's a  
19 thing about keeping the harmony of the community in terms of  
20 proportion and blah, blah, blah.  
21 In terms of officers, it describes the president  
22 as being the CEO, equivalent to a CEO of a corporation,  
23 responsible for taking actions and directing traffic. It  
24 describes the vice president as somebody who steps in when  
25 the president is not available, and so on. There are job

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1 descriptions.  
2 Generally, there is an insurance policy that  
3 covers general liability as well as officer liability. So  
4 there is, there is a fiduciary/financial aspect to it. I  
5 guess that's what I'm saying. You make sure that the place,  
6 that nobody steals from it and so on.  
7 I would say that's about the goal of it, and  
8 within it what we have tried hard to do is, without being  
9 prescriptive about what can be and cannot be done, try to  
10 balance homeowner private desires with community well-being  
11 and harmony. That's been the general goal.  
12 BY MR. MOHAMMADI:  
13 Q Is it fair to say that when you do do that, it's  
14 -- the goal is to be as neutral and objective about it as  
15 possible?  
16 A Absolutely.  
17 Q The role of the board is not to favor one side  
18 over another, correct?  
19 A Absolutely.  
20 Q And the role of the board is to approach issues  
21 that come up, be it between homeowner and homeowner or  
22 homeowner and the board, as neutrally and objectively as  
23 possible?  
24 A Correct.  
25 Q And for that purpose votes are taken --

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1 A Yes.  
2 Q -- is that, is that fair to say?  
3 A Uh-huh.  
4 Q And all, a certain number of members must vote,  
5 becomes, it becomes, before it becomes official, and that's,  
6 again, to ensure sort of neutrality --  
7 A Yeah.  
8 Q -- right? Okay. And would you agree that if a  
9 board member was acting -- not acting neutral, okay, it  
10 would be proper for that board member to recuse themselves?  
11 A If the board member -- yes.  
12 Q Okay. And that's not just with board members;  
13 that would also happen with the architectural committee,  
14 right? If they were acting sort of bias or not neutral --  
15 A Well, the architectural committee is made up of a  
16 chair, who's the board member, and two other members.  
17 Q Right.  
18 A It just --  
19 MS. ROBESON: Well, his question was --  
20 THE WITNESS: Yes.  
21 MS. ROBESON: -- that would be the same --  
22 THE WITNESS: Yes.  
23 MS. ROBESON: -- principle you would apply --  
24 THE WITNESS: Yeah, same principle to all.  
25 BY MR. MOHAMMADI:

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1 Q In fact, anybody in the board or any kind of, that  
2 has any kind of oversight in the HOA, if they were acting in  
3 any way bias or not neutral, they should recuse themselves,  
4 right?  
5 A And the president would ask them to recuse  
6 themselves. So I had, for example, when a vote was taken on  
7 the CCOC matter that was brought up by Charles, and Tania  
8 Bruno was on the board, I asked her to step away from the  
9 meeting and recuse herself because it was too obviously  
10 family and I didn't want to be spilling the names in front  
11 of everybody. So I, I just said there has been this CCOC  
12 action filed, and she did recuse herself when we came back.  
13 So that's up to the person chairing the meeting.  
14 Q Okay. And, in fact, you did the same kind of  
15 thing, or at least you suggested to Ms. Bruno to recuse  
16 herself when it came to this case, because she was the  
17 architect that kind of drew --  
18 A In terms of the vote, you mean?  
19 Q Yes.  
20 A I don't recall doing that.  
21 Q Okay. Let me show you what's 142. Showing you  
22 what's been marked as Exhibit 142, between you and Tania  
23 Bruno, is that correct?  
24 A And the board, yeah. The board is copied, yes.  
25 Q All right. I just want to direct your attention

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1 -- when was that e-mail sent, first of all?  
2 A February 22nd, 2012.  
3 Q Okay. And I want to point your attention to  
4 No. --  
5 A February 26, 2012, sorry.  
6 MS. ROBESON: Well, before you do that, do you  
7 have any objections, Ms. Rosen?  
8 MS. ROSEN: Can I just read it? I haven't  
9 finished reading the document. Okay. Sorry, can you go  
10 ahead and do the question again? I'm sorry.  
11 MR. MOHAMMADI: Well, first of all, move to  
12 admit --  
13 MS. ROBESON: Well, my question is, do you object?  
14 MS. ROSEN: No, I don't object.  
15 MS. ROBESON: Okay. So 142 will be e-mail from  
16 Tania Bruno to Mr. Barr, 2/25/2012.  
17 (Exhibit No. 142 was received  
18 in evidence.)  
19 BY MR. MOHAMMADI:  
20 Q And I want to direct your attention to Point 3. I  
21 think you wrote: Considering you drew the plans, recusing  
22 yourself would have been the right thing to do.  
23 A Right.  
24 Q Right? So you suggested to her, because, simply  
25 because she drew the plans, she should have recused herself?

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1 A Because I thought there was a financial  
2 obligation, a transaction, and therefore in the HOA bylaws  
3 it's very clear that nobody gets paid for things that -- and  
4 it seemed to me to be the thing to do because that was my  
5 take on that.  
6 Q Okay. Well --  
7 A I don't know whether I got it done or not, but  
8 that was my statement about it in here.  
9 Q Okay. Well, let me ask you this about your  
10 understanding of the history between Mr. Ball and Ms. Gowan:  
11 Are you aware that they have had some back-and-forth  
12 litigation in the past?  
13 A I've only become aware of it since we had the deck  
14 hearing. Before that I didn't have any detail. I just knew  
15 that she would, when she's -- because she's the immediate  
16 neighbor next door. As a neighbor, I think she had some  
17 question about the fence or something that she reported, but  
18 I didn't know any of that in detail.  
19 Q Were you aware that they were having some  
20 conflicts?  
21 A No, only, as I said, when I -- when the deck case  
22 came up, she produced photographs and so forth that you know  
23 about from the previous case, but I was not aware that --  
24 MS. ROBESON: From which previous case?  
25 THE WITNESS: 73-12, ma'am, the --

1 MS. ROBESON: Oh.

2 THE WITNESS: And there were some photographs with  
3 some not so polite things painted on a board pointing at her  
4 house and so forth and so on.

5 BY MR. MOHAMMADI:

6 Q Okay.

7 A So that, that became known to me in, I would say,  
8 whenever this hearing was, October 2012, I think, or '13.  
9 I'm not sure now.

10 Q Last year?

11 A Last year, 2013.

12 Q Okay.

13 A So until then I was just not aware of any details.

14 Q Okay. And since you weren't aware, I guess there  
15 was no reason for you to ask Ms. Gowan to recuse herself  
16 when it came to votes; is that --

17 A No, I had --

18 Q -- is that what you're stating?

19 A Yeah. I had no knowledge of her deep-seeded  
20 thing. I knew that she had called in the garden wall when  
21 it first started getting built because, as a neighbor, she  
22 felt that this would affect her things. So I had no sense  
23 of animosity, and I still don't.

24 Q Okay. Well, you don't think their interaction has  
25 any, there's no animosity between their interactions, either

1 at the board meetings or -- you've heard everybody's  
2 testimony, I presume, right?

3 A Yeah, I have.

4 Q You would disagree with their characterizations of  
5 their interactions?

6 A I would. At board meetings I've not seen any, but  
7 at this particular meeting, where she was, people testified  
8 and said, having jumped up and got right in the face and so  
9 forth, I don't recall that at all, but I do recall that I  
10 calmed her down or said, come to order, if it will, because  
11 you can't just jump up and start talking. She didn't jump  
12 and start speaking. She might have said something that I  
13 didn't think was relevant to the subject we were talking  
14 about.

15 Q Okay. Well, you found out about all the nice  
16 things that were, or not so nice things that were said on,  
17 on or about October 10, 2013 --

18 A Yeah, in preparation for that case.

19 Q -- at the, around the time the CCOC case was  
20 heard, right?

21 A Uh-huh.

22 Q And you took a vote to file this CCOC action 18  
23 days later, on October 28, 2013, right? And at that meeting  
24 -- is that right, that's when you took the vote?

25 A That's correct, yeah.

1 Q And at that meeting you didn't ask Ms. Gowan to  
2 recuse herself, correct?

3 A No, I did not.

4 Q Okay. Okay. Now, after hearing everything that  
5 went on so far in this case, have you changed your mind  
6 about whether Ms. Gowan should have recused herself or not?

7 A On the vote?

8 Q Yes, correct, on any votes or matters concerning  
9 this property.

10 A On that particular vote, probably so, but it was  
11 unanimous at that point.

12 Q Okay. So she probably should have?

13 A I should have been aware of it had I -- or done  
14 something about it.

15 Q And when you say recuse yourself, are you talking  
16 about just on votes or on anything related to that property?

17 A What I was talking about in Tania's case was in  
18 the vote --

19 Q Okay.

20 A -- and if it was something -- I did not, and have  
21 not so far, in my opinion, seen anything that is a  
22 deep-seeded vendetta between the two.

23 Q Okay. Well, let me, let's explore that a little  
24 bit --

25 A Uh-huh.

1 Q -- okay, if you don't mind. First of all, I'll  
2 ask the question again. If you, if you believe there's an  
3 animosity or some kind of bias, do you think that person  
4 should recuse themselves from just votes or from any actions  
5 or decisions or interactions involving the subject property?

6 A I think if it came up now, from now on I would  
7 make sure that that didn't happen. That would be my take on  
8 it.

9 MS. ROBESON: What didn't happen?

10 THE WITNESS: Not --

11 MS. ROBESON: Any interaction or just the vote?

12 THE WITNESS: Any participation in a discussion --

13 MS. ROBESON: Okay.

14 THE WITNESS: -- would be, would be my version of  
15 it, so definitely the vote.

16 BY MR. MOHAMMADI:

17 Q I think you testified last time that, when the  
18 vote was taken on the 28th of October, the issue was the  
19 roof and that was voted on and it was taken to the CCOC, is  
20 that correct?

21 A Let me -- can I explain that a little bit further?

22 MS. ROBESON: Well, can you, I --

23 THE WITNESS: Yes.

24 MS. ROBESON: No. Just stop --

25 THE WITNESS: Okay.

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1 MS. ROBESON: -- talking for a second. Can you  
2 repeat your question?  
3 MR. MOHAMMADI: Sure.  
4 MS. ROBESON: For some reason I didn't hear the  
5 whole thing.  
6 MR. MOHAMMADI: Absolutely.  
7 BY MR. MOHAMMADI:  
8 Q When you took a vote on October 28th, 2013, to  
9 file this case in the CCOC, the vote was on the roof  
10 specifically, correct?  
11 A Not really, because what we had at that point was  
12 a complaint that was filed about the roof after we had  
13 spoken to Mr. Ball on the premises, and the first e-mail,  
14 the first letter was sent to Mr. Ball, saying, please  
15 correct and proceed because you're going well. That's what  
16 the September 15th letter was.  
17 On the 16th I e-mailed Ms. Rosen and said the  
18 complaint that was previously filed under this approval,  
19 which was for a two-foot offset on the deck, has now got  
20 another noncompliant construction that doesn't meet what we  
21 had approved, and this is the roof action. So we went there  
22 to meet with Mr. Ball. There was Peter Gibson, Lee Alford,  
23 and myself and Mr. Gibson. We spoke for an hour and a half  
24 or so, and we went over all the issues about the roof. We  
25 also walked around and looked at the deck because that was

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1 still being discussed, the deck and the shed below it or  
2 whatever, and this was September, and the hearing had not  
3 happened yet.  
4 So we were trying to resolve issues and move them  
5 along. There was also some discussion that there were some  
6 windows up and some not up, but I wasn't really focused on  
7 it. When Peter Gibson went to meet him on September 14,  
8 they had a discussion primarily about window locations, and  
9 because the wind bracing, that the windows were moved.  
10 That's what Peter reported back. I was not aware at that  
11 point about anything of the roof.  
12 The very next day, I think it was September --  
13 September 10 is when, sorry, September 10 is when Peter  
14 Gibson met with Peter Ball, and they discussed everything  
15 about the roof. I wasn't aware of anything about it. Then  
16 e-mails started pouring -- they're coming to me, because  
17 they don't normally come to me; they go on the blog, and I'm  
18 not on the blog. So I was unaware of it, but suddenly I got  
19 one from Rande Joiner, and then a ton of them came in about  
20 the roof height.  
21 So I asked Peter Gibson to please set up another  
22 meeting with Peter Ball so we could meet on site and see  
23 what this whole fuss was about the roof. I had not seen it.  
24 I had not -- I don't drive by there. I don't make it a  
25 business to go look at what other people's construction is

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1 because they've got approval, they will meet it. And so  
2 when this happened on the -- we were there on the 14th. On  
3 the 15th I wrote a letter to, September now, to Mr. Ball,  
4 saying, please correct it and keep going because you're  
5 making great progress, and it's clearly in the letter there.  
6 The very next day I sent an e-mail to Ms. Rosen,  
7 saying, please add this to the complaint already filed  
8 because this is the same approval and --  
9 BY MR. MOHAMMADI:  
10 Q You're talking about the roof?  
11 A -- this is much more egregious. Yes, the -- not  
12 just the roof, the roof and the other -- the two items were  
13 put together at the same time as the list of things that  
14 came with the windows that were not in, the handrails that  
15 were not done, the knee wall, and all that, and then the  
16 filing of the roof. I don't know what took place in the  
17 process because I was not part of that, but then Ms. Rosen  
18 came back and --  
19 MS. ROBESON: What do you mean? What took place  
20 in what process?  
21 THE WITNESS: The process of trying to add this to  
22 the case that was already there, 73-12, because we saw it as  
23 the same approval.  
24 MS. ROBESON: No, I understand that.  
25 THE WITNESS: You got that. Okay.

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1 MS. ROBESON: I know, I know what happened there.  
2 THE WITNESS: So, so that was -- for whatever  
3 reason I think they told her, we are one month from the  
4 hearing, you're further along, they've been going on for a  
5 year and a half, because of other side shows -- going to  
6 circuit court and coming back and so on -- and that they  
7 would like this to be a separate filing. So what we did  
8 was, effectively, in October 7 meeting -- no, that's not the  
9 answer to your question. Your answer to the question, the  
10 question was -- I don't want to wander off --  
11 BY MR. MOHAMMADI:  
12 Q Right. Well --  
13 A -- the farm here. I'm trying to explain --  
14 Q The question, I'll repeat the question again --  
15 A Okay.  
16 Q -- all right? Try to, try to --  
17 A I'll keep it short.  
18 Q All right. My question is, when you took a vote  
19 on October 28th to file the CCOC action, the major -- the  
20 issue that was discussed was the roof? That was the issue?  
21 A No, that was the issue that was buzzing up and  
22 down in the community --  
23 Q Okay.  
24 A -- so we, what we did was say --  
25 MS. ROBESON: No. Wait. Just wait.

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1 THE WITNESS: So the answer is?  
2 MS. ROBESON: No, I'm not, I can't tell you --  
3 BY MR. MOHAMMADI:  
4 Q You're asking the Examiner what the answer is?  
5 A No, no. I'm --  
6 MS. ROBESON: -- but I'm going to ask you --  
7 THE WITNESS: Yes.  
8 MS. ROBESON: -- to say whether the supplemental  
9 complaint was -- what was discussed --  
10 THE WITNESS: It was --  
11 MS. ROBESON: -- the supplemental complaint or  
12 just --  
13 THE WITNESS: The roof --  
14 MS. ROBESON: -- or the roof?  
15 THE WITNESS: The roof was the main item, because  
16 as I said to Ms. Rosen, this is really egregious compared to  
17 the two-foot --  
18 MS. ROBESON: No. No. No. Just answer.  
19 THE WITNESS: -- but the supplement was also part  
20 of the vote.  
21 MS. ROBESON: And how do you know that?  
22 THE WITNESS: Because it was mentioned as being  
23 more than one item that was out of step.  
24 MS. ROBESON: But did anybody see the supplement?  
25 THE WITNESS: No, nobody saw the supplement. In

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1 fact, the vote was taken by the board --  
2 MS. ROBESON: Yes.  
3 THE WITNESS: -- simply to ratify their previous  
4 vote. It was not a separate vote. It did not need a  
5 discussion. There was no application. We're going with the  
6 same exact approval from before with another violation.  
7 That's what we thought we were doing, and I wanted the board  
8 to be informed --  
9 MS. ROBESON: Okay. That's, that's --  
10 THE WITNESS: Yeah.  
11 BY MR. MOHAMMADI:  
12 Q Who presented the supplement?  
13 A It's just not, neither piece of paper was --  
14 Q I'll strike that question.  
15 A Okay.  
16 Q Isn't it true that Ms. Gowan was the one that put  
17 together the supplement and presented the supplement?  
18 A Presented to whom?  
19 Q To the board.  
20 A No. No.  
21 Q Who presented it to the board?  
22 A She, she put --  
23 Q Who presented it to the board?  
24 A I don't -- this is what I was trying to say -- I  
25 don't believe it produced a document for the board to vote

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1 on --  
2 Q Okay.  
3 A -- we just said, there is a problem that you guys  
4 are asking about --  
5 Q Okay. So --  
6 A -- we are taking steps about it.  
7 Q Let me ask you then, how did you know what you  
8 were voting on to bring to the CCOC if you didn't know what  
9 the, what was, the supplements are?  
10 A Because we -- I specifically mentioned the roof,  
11 and I said there are other items such as doors and windows  
12 that don't match up.  
13 Q Right.  
14 A That was the summary of it --  
15 Q Okay. And so you presented --  
16 A -- and everybody knew --  
17 Q -- the summary to the board, and the board voted  
18 on a summary of issues?  
19 A Because they had already voted as taking this  
20 particular approval that had been violated for the deck to  
21 court --  
22 Q For the deck.  
23 A -- to the CCOC.  
24 Q Correct.  
25 A So this was supplemental to that because it was --

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1 Q You don't find that odd that the board just voted  
2 on -- well, strike that.  
3 MS. ROBESON: Strike that.  
4 MR. MOHAMMADI: Yes, I'll strike it.  
5 BY MR. MOHAMMADI:  
6 Q Again, I asked you this last time, and what you  
7 told me was one thing, and it sounds like you're changing  
8 what you said; so I'm going to ask it again. Isn't it true  
9 that Ms. Gowan was the person that put together all the  
10 supplemental issues outside of the roof?  
11 A She started the draft. I reviewed it. I polished  
12 it up or took some things out. I didn't polish it up,  
13 really. I just said, you know, some of these are not as  
14 heavy. Like, the missing window to me was a bigger thing.  
15 Q Which missing window would that be?  
16 A There was, there was a window missing on one of  
17 the side parts, separate drawing but not really --  
18 Q Well, could you be --  
19 A -- but that could have been --  
20 MS. ROBESON: The side elevations, you mean?  
21 THE WITNESS: In the side elevations. Okay? And  
22 so the discussion --  
23 BY MR. MOHAMMADI:  
24 Q Well, hold on. Let me ask you about that, that  
25 window since you're mentioning it. Which window?

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1 A The one on the side. There is --  
2 MS. ROBESON: But can you --  
3 THE WITNESS: -- a triple window on the --  
4 MS. ROBESON: Why don't you point it out on 126,  
5 sir.  
6 BY MR. MOHAMMADI:  
7 Q Do you have it? Here you go.  
8 A Yeah, I have it.  
9 MS. ROBESON: I have -- oh, no, that's AB. Hold  
10 on.  
11 MR. MOHAMMADI: A5 would be it.  
12 MS. ROBESON: Yes.  
13 THE WITNESS: I believe it's this window.  
14 MS. ROSEN: Which page are you on?  
15 THE WITNESS: A5, the right-side elevation, this  
16 triple window, and then on the left-side elevation, that  
17 there was a change in the footprint of the bump-out to  
18 Crossing Creek Road.  
19 BY MR. MOHAMMADI:  
20 Q Right. Let's talk about the window. You're  
21 saying you took out this window because you didn't think  
22 that was a big deal, right? That was your testimony?  
23 A No, no, no. I was saying the opposite to you. I  
24 was saying, in the long list that was there, the laundry  
25 list, personally I found trim sizes not of great, of great

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1 magnitude. I personally did not see knee walls as being a  
2 big magnitude. To me, the big picture was the roof being  
3 changed in height; okay, that was never discussed in three  
4 years. The bump-out on the Crossing Creek side, which Peter  
5 Gibson had reported to me was different, was an issue. So  
6 when we put it to the vote, I said, these major issues were  
7 there. I did not mention item by item the 16.  
8 Q Okay. Right. So, again, I want to understand  
9 this very clearly. Ms. Gowan started the list, you stated,  
10 right?  
11 A Uh-huh.  
12 Q You reviewed it, you said, and you started to take  
13 things out that you didn't think were major or big problems,  
14 right?  
15 A I don't recall exactly what I took out, but I do  
16 remember telling her that in my order of life, it's the big  
17 roof, the bump-out on the side, and I come down from big,  
18 going down to detail, and I personally did not need to have  
19 it in, but since there were people who were more  
20 detail-oriented, I wasn't going to get --  
21 Q Who were those individuals?  
22 A On the board, Lee Alford was one --  
23 Q Well, let me ask you this --  
24 A -- since you asked me.  
25 Q -- besides Ms. Gowan, who else said the trim is an

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1 issue?  
2 A I can tell you from when we tried to do an  
3 agreement --  
4 Q It's a simple question.  
5 A No, no, I'm trying to give you the answer.  
6 Q There's a --  
7 A There were at least five people --  
8 MS. ROBESON: No. The answer, let me --  
9 THE WITNESS: There were at least five people who  
10 did not want any changes, including the trim --  
11 BY MR. MOHAMMADI:  
12 Q Who said --  
13 A -- when the board took the vote.  
14 Q Who said the trim is a problem?  
15 A Lee Alford was one. Lynn Gowan was one. Stephen  
16 Squires was one -- and this is a confidential vote, so I  
17 guess it's okay here.  
18 Q I'm sorry. It's a confidential vote?  
19 A Yeah. I mean, it was a board vote in confidence  
20 because we were talking about a settlement proposal; they're  
21 going back and forth, as you know. So that's where the,  
22 that's where I got the impression that this was more  
23 widespread than I had thought.  
24 MS. ROBESON: Okay. Let me ask you something.  
25 THE WITNESS: Right.

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1 MS. ROBESON: The people that took the vote, did  
2 they ever see the supplemental complaint --  
3 THE WITNESS: Yes.  
4 MS. ROBESON: -- the laundry list?  
5 THE WITNESS: Yes. They were given the complaint,  
6 the supplemental complaint.  
7 MS. ROBESON: And when was this?  
8 THE WITNESS: This was fairly recently after we  
9 started the process, or just when we got there, there was  
10 settlement agreement.  
11 MS. ROBESON: Oh, before you started the process.  
12 THE WITNESS: No. When they took the first vote,  
13 it was just a description of how the building that was built  
14 with the deck two feet off now had a whole bump-out on the  
15 side --  
16 MS. ROBESON: Okay.  
17 THE WITNESS: -- which was a complete different  
18 footprint; another roof that was higher than what was done.  
19 That was it --  
20 BY MR. MOHAMMADI:  
21 Q Dr. --  
22 A -- so that's what we did.  
23 Q Dr. Barr --  
24 A Yeah.  
25 Q -- I thought when we were talking about the

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1 board's purpose, you said that it's supposed to be neutral,  
2 everybody --  
3 A Yes.  
4 Q -- votes because they're supposed to form their  
5 own opinion --  
6 A Right.  
7 Q -- about what the problem is.  
8 A Right.  
9 Q How are they supposed to vote their own, form  
10 their own opinions if they don't get to see what the actual  
11 issues are? If you're the one telling them that's the  
12 issue, how are they, how are they able to --  
13 A Because they --  
14 Q -- form their own opinion?  
15 A -- they seemed to be more aware of this than I  
16 was. Like I told you, I came late to the party about the  
17 whole roof. Until I went there on September 14th, I had not  
18 seen this.  
19 MS. ROBESON: Not the roof. Well --  
20 BY MR. MOHAMMADI:  
21 Q Yes, the question is not about the roof. The  
22 question is about all these supplemental items.  
23 A The bump-out on the side was definitely one.  
24 Q That's one. There's --  
25 A That's one big one.

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1 Q -- 16 items you listed, right?  
2 A Right.  
3 Q Right?  
4 A Right.  
5 Q Or is it 15?  
6 A Fifteen. I think 16th one was the timing.  
7 Q Was it 17?  
8 A I believe it -- listen, I'll be --  
9 Q I'm asking. You're the board.  
10 A If I can look at it, I can --  
11 Q I'm asking what you --  
12 MS. ROSEN: This is getting argumentative. Why  
13 don't you just show him the supplement --  
14 MR. MOHAMMADI: I don't --  
15 MS. ROSEN: -- if you want to know how many items  
16 there are in it.  
17 MS. ROBESON: No. I think it's, I think it's  
18 fair.  
19 THE WITNESS: Yeah, I mean, that's fair enough. I  
20 remember it being -- I thought it was 16. I thought the  
21 last item, I remember, was the period of time.  
22 BY MR. MOHAMMADI:  
23 Q If you don't know, who's supposed to know what's  
24 on the supplement?  
25 A I'm not supposed to memorize these things.

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1 Q Are you not on --  
2 A I have a general sense of what all is there on it,  
3 but I don't recall. I believe it was 16 --  
4 Q Okay. And --  
5 A -- and I remember the last item was time.  
6 Q You're sitting at this table because you represent  
7 the board, correct?  
8 A Correct.  
9 Q Right?  
10 A And the HOA, yeah.  
11 Q Okay. So if you don't know, who else is supposed  
12 to know?  
13 A I know as best as I know.  
14 Q Okay. All right. You had these votes taken  
15 without members really knowing what the exact issues are.  
16 The bump-out I get. The roof I get --  
17 MS. ROSEN: I would object to the framing of his  
18 question.  
19 MS. ROBESON: Can you rephrase that?  
20 BY MR. MOHAMMADI:  
21 Q Did the board specifically know what the issue was  
22 with respect to the knee wall? At the time they took the  
23 vote, did they know what the issue was with the knee wall?  
24 A Probably not.  
25 Q Okay. And if they didn't know, how are they

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1 supposed to vote whether it should be taken to the CCOC or  
2 not?  
3 A Because they were discussing an extension of the  
4 previous vote for taking a two-foot setback that was not  
5 made, and that went all the way and took a year and a half  
6 to resolve --  
7 Q Okay. Well, let me ask --  
8 A -- and they were saying this is much bigger as an  
9 item. That's all.  
10 Q All right. Well, would it have helped the board  
11 know what the issues were if they had been presented in some  
12 way?  
13 A It probably would have, but as I said, it was an  
14 item under old business, and what we were really doing was  
15 making sure that they understood that there was a case that  
16 was coming up that was separate from the original because  
17 CCOC did not take it on. That was the real reason that we  
18 took a vote. I didn't want to just wing it out there based  
19 on a few people who had, who had had knowledge, and because  
20 we had initially wanted it attached to 73-12 and that was  
21 rejected, that's why it was not discussed in any detail  
22 until the early part of October when we met. The October 7  
23 meeting, anyway, was a special meeting. October 28th was a  
24 board meeting to bring people up to date on what was  
25 happening.

1 Q How many non-board members were at that meeting?  
 2 A As I -- we went over this before -- as I recall,  
 3 there were none that had turned out, but it was because the  
 4 agenda just very clearly marked out all, what does it say,  
 5 officers' reports, committee reports, treasury --  
 6 Q Is it surprising to you, sitting here and  
 7 listening to the testimony from Ms. Bentolilla, from Charles  
 8 Bruno, and from Lance Pelter, all saying we never got notice  
 9 of that October 28th vote?  
 10 A I find it extremely incorrect. I'll tell you why.  
 11 Because when Peter didn't -- Peter Ball told me he had  
 12 missed one, that someone didn't deliver, and I think he  
 13 e-mailed me or somehow; e-mail it must have been. I  
 14 immediately made sure it was given the next day, okay,  
 15 and --  
 16 MS. ROBESON: Were these hand-delivered in  
 17 mailboxes?  
 18 THE WITNESS: Yeah. See, what we had done --  
 19 MS. ROBESON: No, just answer my question.  
 20 THE WITNESS: Yes. Yes. Our primary means of  
 21 delivery is hand-deliver to the mailboxes by board, by the  
 22 board members, who really don't like walking around, putting  
 23 these things in the mailboxes. Okay? And when it was the  
 24 annual meeting, we have a 30-day notice, now that we know  
 25 that we changed the bylaws to meet the Maryland law. That's

1 a big packet. It has a budget and all that stuff. So that  
 2 is organized and mailed.  
 3 So the annual meeting one is always mailed. The  
 4 board meeting ones are regular board meetings. Not a lot  
 5 whole lot of people come to it. One of the things the  
 6 president or the officer in charge of that particular  
 7 meeting does is, if there is someone who has to make a  
 8 presentation, like when Peter and Michael Ball wanted --  
 9 MS. ROBESON: Okay. Okay. I just had --  
 10 THE WITNESS: -- to bring the deck back, we make  
 11 sure they get to know it. The person who's been --  
 12 MS. ROBESON: By leaving it in their mailbox?  
 13 THE WITNESS: No, no, no. They get a separate  
 14 e-mail, saying, your matter about the drawings that you're  
 15 submitting to correct the deck is being held, and to give  
 16 the 10-day notice. Everybody gets to know about it as a  
 17 general meeting, but we don't use the individual person's  
 18 name. That person gets a letter directly or an e-mail,  
 19 saying, this is the notice.  
 20 BY MR. MOHAMMADI:  
 21 Q So your testimony today is that because Mr. Ball's  
 22 property was being discussed, he or his son would have  
 23 received a notice about the October 28th meeting --  
 24 A If it --  
 25 Q -- in some way?

1 A If it was being discussed, but it was not being  
 2 discussed. It was just being ratified and vote for the  
 3 action taken previously. That's all it was.  
 4 Q What action previously?  
 5 A To take this approval, which had been  
 6 nonconforming construction for the deck, to include the next  
 7 step, which was the roof and the side --  
 8 Q And when was that?  
 9 A That was October 28th. So that was --  
 10 Q I'm not saying the vote. You're saying you were  
 11 ratifying the decision that was previously made, right?  
 12 A No, no, ratifying, meaning -- I guess I'm using  
 13 the wrong word.  
 14 MS. ROBESON: No. I think what he's asking is,  
 15 when was the prior decision made?  
 16 THE WITNESS: Oh, that was when --  
 17 MS. ROBESON: When was the --  
 18 THE WITNESS: 73-12 file is what you're asking me?  
 19 MS. ROBESON: Well, is that --  
 20 THE WITNESS: Yeah.  
 21 MR. MOHAMMADI: I'm trying to figure out when --  
 22 THE WITNESS: Do you remember the date?  
 23 MR. MOHAMMADI: -- they're saying they just  
 24 ratified a previous decision --  
 25 MS. ROSEN: I can't answer questions right now.

1 MR. MOHAMMADI: -- about this case. When was that  
 2 previous decision made?  
 3 MS. ROBESON: Yes, I'm trying to figure this out  
 4 too.  
 5 THE WITNESS: Okay. I don't, I don't --  
 6 MS. ROBESON: What were you ratifying, and what  
 7 was the date of the original decision that you were trying  
 8 to ratify, if that makes sense?  
 9 THE WITNESS: Okay. Okay. The deck construction  
 10 and the offset on it had a field on-site meeting with Peter  
 11 Gibson, myself --  
 12 MS. ROBESON: No.  
 13 THE WITNESS: No, I'm -- and therefore, then we  
 14 gave him time to fix it --  
 15 MS. ROBESON: Yes.  
 16 THE WITNESS: -- take out the other stuff that was  
 17 the shed that didn't have a building permit, and so on --  
 18 MS. ROBESON: Yes, just tell me the decision,  
 19 please.  
 20 THE WITNESS: -- and getting to the back of it by,  
 21 I would say, September/October of 2012 we took a vote. I  
 22 don't have the exact period.  
 23 MS. ROBESON: To do what?  
 24 THE WITNESS: To take the complaint to CCOC about  
 25 noncompliance of this approval given on May 15 or May 10 of

1 2011, because the deck and shed were not part of that.  
 2 MS. ROBESON: Okay. So what you were ratifying  
 3 was the decision to take 73-12 to the CCOC?  
 4 THE WITNESS: No. 73-12 was a vote taken with  
 5 Peter Ball present, making his presentation about what was  
 6 happening with the deck and so forth, and it was based on  
 7 the approval given in 2011, in May 2011.  
 8 MS. ROBESON: Right.  
 9 THE WITNESS: That wound through the system and  
 10 finally came to a hearing in October of 2013. What we were  
 11 doing, once we discovered the September violation, roof and  
 12 the side bump and all this other stuff that we're talking  
 13 about in this case, was try to add it on, as I've said  
 14 before. That was too late, we were told. I was told by  
 15 Corinne, through CCOC, that that was too late to add on,  
 16 please file a separate thing for it --  
 17 BY MR. MOHAMMADI:  
 18 Q Well, let me ask, let me --  
 19 A -- and so what I meant by ratifying, yeah, it was  
 20 probably the wrong word, I was taking -- we went to the  
 21 October 28th meeting with old business because, by that  
 22 time, that's when I discovered that it had not been filed as  
 23 it should have been, and so I said, okay, we can't just go  
 24 away with this bigger thing without getting some -- with the  
 25 board not understanding that we're getting ourselves into

1 another financial commitment. So that's what the vote was  
 2 about.  
 3 MS. ROBESON: Whether to take -- well --  
 4 THE WITNESS: No, to --  
 5 MS. ROBESON: Well, how can it be old business if  
 6 it's a new violation? I guess that's my question.  
 7 THE WITNESS: It's old -- it was old business in  
 8 our thinking, the board's thinking, because it was under the  
 9 same approval that was given for this construction that was  
 10 a whole construction. It was --  
 11 MS. ROBESON: So you're looking at one vote as  
 12 saying, as giving permission to take every violation under  
 13 this plan to the CCOC; is that your position?  
 14 THE WITNESS: Yeah. Quite frankly, we didn't  
 15 expect any more violations because we had had --  
 16 MS. ROBESON: No, don't --  
 17 THE WITNESS: Yes, that's the position.  
 18 MS. ROBESON: I'm just trying to --  
 19 THE WITNESS: That's the position, that --  
 20 MS. ROBESON: I'm trying to understand your  
 21 position.  
 22 THE WITNESS: That was our understanding, that  
 23 this was all part of the one approval. We found one  
 24 violation; we were hoping there'd be no others; and then, lo  
 25 and behold, when everything looked like it was going well,

1 there was this major happening.  
 2 MS. ROBESON: So you brought it up on the  
 3 agenda --  
 4 THE WITNESS: As, under old item.  
 5 MS. ROBESON: -- but you listed it as old  
 6 business?  
 7 THE WITNESS: Right.  
 8 BY MR. MOHAMMADI:  
 9 Q So basically, if I get this straight, when you  
 10 voted to take the CCOC case 73-12 to court --  
 11 A Uh-huh.  
 12 Q -- or to the CCOC, that vote essentially you  
 13 treated as blank check: at any point a new violation comes  
 14 up on that approved plan, that was what was sufficient to  
 15 bring up, bring the new violation up, even if it occurred a  
 16 year after that vote? Is that your position? I just want  
 17 to make sure we understand.  
 18 A It's not a blank check. There was a violation  
 19 under that approval, which was not that major, was a  
 20 two-foot setback. So we voted on that, and they decided to  
 21 go to CCOC with that. Now was a much bigger violation that  
 22 had all kinds of e-mails coming from all around the  
 23 neighborhood, people who aren't even close-by.  
 24 Q Right, just neighbors.  
 25 A Neighbors, that I, I didn't even know about this

1 construction because I'm not in the business of running by  
 2 to see what Peter is doing with his business. I mean,  
 3 that's his business. He's a builder. He knows what he's  
 4 doing. So I'm expecting the work to go on, but this ruckus  
 5 was so big; that's why I believe on the October 7 meeting,  
 6 which Peter Gibson ran, I was not there, he made these -- it  
 7 was a special meeting for CCOC, ratification of all the  
 8 positions, just as you heard. In that, because it's also --  
 9 he decided to give a report on the architectural committee  
 10 and an update on what was going on because everybody was  
 11 talking about it. So that's what he did, and given that, he  
 12 did not take a vote because, if there was a vote taken, he  
 13 would have told me, it would be in the minutes, and so the  
 14 vote, if it was taken then, then there was no need to take a  
 15 vote on October 28th.  
 16 Q That's my question.  
 17 A Yeah.  
 18 Q Why did you have to take a vote if it's already  
 19 been ratified back in 2012?  
 20 A This, yeah, this was not a vote, this was not a  
 21 vote to take -- it was a financial commitment vote, if you  
 22 -- that's the way I understood it, because we are now  
 23 committing to another draw of money to go into a case. So  
 24 that, that was the way I was looking, and the board has that  
 25 financial piece that I was concerned about, and I wanted

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1 them to understand that what we tried to do, taking on,  
2 didn't work and now we are committing to more money. That  
3 was the nature of the vote.  
4 Q Okay. And you were willing to commit this extra  
5 money without really knowing what every single issue was  
6 going to be in front of the CCOC?  
7 A No. I had already seen that. The supplement was  
8 done way -- prepared way before that and given to --  
9 Q You just testified nobody else had seen it until  
10 after.  
11 A Peter Gibson saw it and so on, yeah, but --  
12 MS. ROBESON: Well, don't say so on.  
13 THE WITNESS: No, no.  
14 MS. ROBESON: You have to tell me --  
15 THE WITNESS: Okay.  
16 MS. ROBESON: -- to your knowledge, who saw it.  
17 THE WITNESS: To my knowledge, at least four  
18 people knew about it. That's Lee Alford, Peter Gibson,  
19 myself, Lynn Gowan. Three --  
20 BY MR. MOHAMMADI:  
21 Q Lynn Gowan --  
22 A -- of them had been on the site, right. And so,  
23 again, the vote was more about the financial commitment of  
24 going in for another hearing and the process. That's what  
25 we were really doing.

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1 MS. ROBESON: You said earlier that somebody had  
2 complained but you didn't want to give their name because it  
3 was privileged. Why would it be privileged?  
4 THE WITNESS: No, that -- what I was talking about  
5 there was, when I previously mentioned the settlement  
6 discussion, he would shush me up; so I didn't want to go  
7 there. There was a settlement discussion in this go-around  
8 where there --  
9 MS. ROBESON: But the question --  
10 THE WITNESS: Yeah.  
11 MS. ROBESON: -- the question was who complained  
12 about the height. There was --  
13 THE WITNESS: No. There were 23 names of people  
14 that -- that's in the list, in the interrogatories, and one  
15 of them testified for you here.  
16 MS. ROBESON: Oh, you thought you were answering  
17 who participated in the settlement discussions; is that --  
18 THE WITNESS: Yeah, that's what I was --  
19 MS. ROBESON: -- what you thought you were  
20 answering?  
21 THE WITNESS: No, I -- yes. When you are saying  
22 how many people on the board cared about the trim, that's  
23 what I was answering. I was surprised by the --  
24 MS. ROSEN: He thought, when he was asking that  
25 question, he thought you, someone was getting into the

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1 settlement discussion; so he didn't want to have that --  
2 THE WITNESS: But you asked me who was --  
3 MS. ROBESON: Oh, oh, oh, oh.  
4 THE WITNESS: See, I thought it was one person,  
5 maybe two, but I was shocked to see that. I was just  
6 completely bowled over.  
7 MS. ROBESON: Well, we're talking about the board  
8 meetings --  
9 THE WITNESS: Yes --  
10 MS. ROSEN: Right.  
11 THE WITNESS: -- I understand that now.  
12 MS. ROBESON: -- and who cared about the trim.  
13 THE WITNESS: That work was primarily a financial  
14 commitment.  
15 MS. ROBESON: I understand.  
16 MS. ROSEN: And you said that.  
17 THE WITNESS: Yeah.  
18 BY MR. MOHAMMADI:  
19 Q First of all, you said that the October 28, 2013,  
20 was a confidential vote?  
21 A No. No, no. I was --  
22 Q You said that. So --  
23 A Yeah, I said that because I thought it was talking  
24 about this settlement issue. That was the --  
25 MS. ROSEN: He was getting all confused when he

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1 was talking about the settlement.  
2 MS. ROBESON: No, just, just --  
3 THE WITNESS: I can explain that.  
4 MS. ROBESON: -- he can say it.  
5 MS. ROSEN: Okay.  
6 THE WITNESS: I can explain that. When you asked  
7 me about who else did not want the trim or the knee wall, I  
8 went to the place where members of the board were asked to  
9 look at a settlement offer that we prepared and went back  
10 and forth --  
11 BY MR. MOHAMMADI:  
12 Q Okay. My --  
13 A -- and that's, that's --  
14 Q Ignore that. Okay?  
15 A But that's what I was referring to when I said it  
16 was a confidential vote.  
17 MS. ROBESON: Yes, I got it. We have that now.  
18 THE WITNESS: Thank you.  
19 BY MR. MOHAMMADI:  
20 Q All right. My question is, who actually, not  
21 settlement, okay, who actually cared about the trim when the  
22 vote was taken to go to CCOC?  
23 A There were enough people concerned about the  
24 bump-out on Crossing Creek Road. Okay?  
25 Q That's not my question.

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1 MS. ROBESON: No. That's --  
2 THE WITNESS: No, I understand, but --  
3 MS. ROSEN: Do you --  
4 THE WITNESS: -- but the big-picture item, there  
5 were plenty of people.  
6 MS. ROBESON: Okay. The big picture, did -- well,  
7 okay, let me do this --  
8 THE WITNESS: You, you --  
9 MS. ROBESON: Just a second. Just a second.  
10 What's -- define what you think is the big-picture item.  
11 THE WITNESS: I guess, because I'm looking at it  
12 as drawing something, because that's what I do, and so I'm  
13 looking at first the overall shape --  
14 MS. ROBESON: No, just tell me your major  
15 problems.  
16 THE WITNESS: My major problems are anything that  
17 jars when you're driving by that is obvious from a distance,  
18 such as height, bumps on the side, missing windows, which  
19 are --  
20 MS. ROBESON: So, okay, but that's --  
21 THE WITNESS: To me, those are the big ones.  
22 MS. ROBESON: Okay.  
23 THE WITNESS: The other ones, like trim, you walk  
24 up to or have to be close enough to see; so, to me, that's  
25 minor.

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1 MS. ROBESON: Okay. So what is your understanding  
2 of what the board was taking a vote on? Was it on the  
3 big --  
4 THE WITNESS: On the, and my understanding --  
5 MS. ROBESON: -- on the big issues, as you --  
6 THE WITNESS: Correct.  
7 MS. ROBESON: -- as you have characterized it?  
8 THE WITNESS: Right.  
9 MS. ROBESON: Okay.  
10 BY MR. MOHAMMADI:  
11 Q Minor issues were not part of that?  
12 A It was part of that because that was the  
13 discussion, but it was not discussed. We were, there was --  
14 MS. ROBESON: Wait. How can it be a discussion --  
15 no. Come on.  
16 THE WITNESS: No. No, there was -- no, as I --  
17 MS. ROBESON: Let me guess.  
18 THE WITNESS: Okay.  
19 MS. ROBESON: This is, I'm trying to -- I want to  
20 understand your position.  
21 THE WITNESS: Right.  
22 MS. ROBESON: And I don't want to put words in  
23 your mouth. Did they have specifics in front of them? Did  
24 they, did they have Ms. Gowan's punch list in front of them?  
25 THE WITNESS: No, they did not --

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1 MS. ROBESON: Okay.  
2 THE WITNESS: -- because, again, what we were --  
3 to summarize this and to get this thing whole, we knew that  
4 there were major deviations compared to the two-foot setback  
5 that were now happening -- the roof height, things on the  
6 side bumping out -- and the board was sufficiently concerned  
7 just from those items, part of which are in the supplemental  
8 and part of which are in the main complaint, to say, yes, we  
9 are voting unanimously this time to take it to CCOC. If you  
10 have -- being told to file a separate one. And primarily,  
11 my discussion was about financial commitments that were  
12 involved in doing that, which is what I was really doing.  
13 It was not a --  
14 MS. ROBESON: Well, did they have the written  
15 list?  
16 THE WITNESS: They did not have the punch list  
17 written in front of them, no, because that was not the  
18 intent of the meeting.  
19 MS. ROBESON: Okay.  
20 BY MR. MOHAMMADI:  
21 Q Mr. Barr, I understand it's a financial commitment  
22 for the CCOC and that's why you have to take a vote. You do  
23 understand that by taking Mr. Ball and his son to court,  
24 it's also a financial commitment by him? You understand  
25 that, right?

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1 A Of course.  
2 Q Okay. And you're sitting here, telling us that a  
3 vote was taken on one roof issue and 16 supplemental issues,  
4 forcing Mr. Ball for almost a year now to litigate this  
5 issue, we are now in the fourth day of trial, we have gone  
6 through fairly significant discovery without the board  
7 actually knowing what the issues were?  
8 A No. They knew the issues in general, not in  
9 detail to trim, knee wall.  
10 Q You don't think that's a problem, to force him to  
11 come to court --  
12 MS. ROBESON: Okay.  
13 MS. ROSEN: Objection.  
14 MS. ROBESON: Mr. Mohammadi, that's, you've gotten  
15 your point. That's enough.  
16 MR. MOHAMMADI: Just for the record, I think  
17 that's fair game, but -- asking him if he thinks it's fair  
18 to -- okay. I mean, I'll leave it at that, but --  
19 MS. ROBESON: It matters what I think.  
20 MR. MOHAMMADI: I understand. I'm just -- and I  
21 don't disagree. It does matter what you think, obviously,  
22 but --  
23 MS. ROBESON: I understand what you're saying, but  
24 it was becoming argumentative.  
25 MR. MOHAMMADI: Okay.

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1 MS. ROBESON: There's enough hostility in this  
2 case already. And no, no shaking heads and sounds from the  
3 gallery either. Go ahead.  
4 BY MR. MOHAMMADI:  
5 Q Dr. Barr, in your mind, okay, what's the major  
6 issue with the, with the trim?  
7 A That it's not consistent across. That would be --  
8 my opinion would be, if you're designing a house or  
9 constructing one, it's not a sample plate for various types  
10 of trim --  
11 Q Okay.  
12 A -- you decide on one and put it in. What it is,  
13 is really, quite frankly -- and this is my personal opinion  
14 -- not of big consequence to me, but if it was approved a  
15 certain way, then it should be built that way.  
16 Q Right. And my question is, what was it approved  
17 as and what is actually being built?  
18 A It's approved as something that is very clearly  
19 marked here, as in A5, A4. It is a relatively slim-trim  
20 profile, which looks contemporary. When you start getting  
21 in -- and this is now an unnecessary explanation -- but when  
22 you start getting broader and broader, then normally they're  
23 more traditional when they're broader, because then they  
24 tend to have more curlicues going down to the end. So  
25 that's all it is, but again, as I say, this looks --

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1 MS. ROBESON: Is that an architectural term,  
2 curlicues?  
3 THE WITNESS: Curlicue, it is an architectural  
4 term, it is.  
5 MS. ROBESON: Is it really?  
6 THE WITNESS: It is really.  
7 MS. ROBESON: Okay.  
8 BY MR. MOHAMMADI:  
9 Q Okay. So what you're saying is the plans show  
10 slim trim?  
11 A The elevations shows slim.  
12 Q Okay. And you can tell that, even though there's  
13 no dimensions?  
14 A Even you can say, you can see it because it's --  
15 yeah. You don't need dimensions. It's a slim profile, and  
16 it has no keystone going over the top. There is -- it's a  
17 very clean line. Some people maintain that a clean line  
18 means water gets stuck in it, you know, but that's a whole  
19 nother story.  
20 Q Okay. And so in your opinion then, the trim now  
21 being used is just too thick?  
22 A Again, as I said, to me, consistency across the  
23 board is what matters --  
24 Q Okay.  
25 A -- and, again, this is my personal opinion, which

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1 I would stay by, stand by -- it doesn't have to be exactly  
2 this --  
3 Q Well, if you didn't think that was a major issue,  
4 why did you vote to take that issue to the CCOC?  
5 A Because it was inconsistent -- it's not consistent  
6 across the entire building --  
7 Q Okay. So your issue --  
8 A -- some are thin, some are fat and they were all  
9 shown as one type. That's all --  
10 Q I see. I see.  
11 A -- I'm saying. The same was true for the knee  
12 wall.  
13 Q I'm showing you what's been previously marked as  
14 Exhibit 132.  
15 A Yeah.  
16 Q If you flip to --  
17 MS. ROBESON: Go ahead. Just identify which  
18 photo.  
19 MR. MOHAMMADI: Yes.  
20 BY MR. MOHAMMADI:  
21 Q If you go to page (b) -- I think we marked them  
22 with (a), (b), (c) -- so if you go to (b), which is page  
23 2 --  
24 A Yeah.  
25 Q -- do you see trim on those windows?

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1 A Yes.  
2 Q Are you aware that these are, this is a house  
3 that's in the community?  
4 A If you say so. I'm not aware of where this is.  
5 Q Okay. Well --  
6 A Yeah.  
7 Q -- are the, is the trim used by Mr. Ball any  
8 different than the trim used here -- in terms of the width  
9 is what we're talking about right now, right? And then  
10 you're looking at (c) as well. Is that trim any different  
11 than the trim used by Mr. --  
12 A Yeah, I can tell you the big difference. It's  
13 this one, which I know is on his property.  
14 Q What are you pointing at?  
15 MS. ROSEN: You're on (d).  
16 THE WITNESS: The, I'm pointing to (d).  
17 MS. ROSEN: Photograph (d).  
18 THE WITNESS: The window type is different from  
19 what we saw on --  
20 BY MR. MOHAMMADI:  
21 Q I'm not asking you about the type. I'm asking you  
22 about the trim.  
23 A Yeah. I'm coming, I'm coming to it. There is a  
24 big trim, and then there is, like, a leftover panel at the  
25 bottom of that window opening.

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1 Q Okay. You're talking about the bottom of the  
2 page?  
3 A Yeah, the bottom of the window.  
4 Q Okay.  
5 A Below the seal, there is a much different  
6 dimension.  
7 Q Okay. And that's a problem?  
8 A It is a problem because it is not what was shown  
9 on the drawing.  
10 Q Okay. But it's not a problem because it doesn't  
11 conform to the community; it's just a problem because it's  
12 not on the approved plans. Is that what you're saying?  
13 A Yeah, but all I'm -- all I'm personally asking for  
14 is consistency throughout the building.  
15 Q Right.  
16 A Okay. That's all. That's all.  
17 Q Okay. So, again, I want to clarify, it's not a  
18 problem because that kind of trim is not conforming --  
19 A No, no.  
20 Q -- it's because it's not -- you don't believe it's  
21 on the actual plans?  
22 A And it's not uniform across the board in the  
23 house.  
24 Q Okay. Same question with, let's just, let's say  
25 with the, with the knee wall --

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1 A Uh-huh.  
2 Q -- okay? The issue that you're having is not that  
3 the knee wall is sort of nonconforming to the community but,  
4 rather, that it's not on the approved plan. Is that a fair  
5 representation?  
6 A It is on the approved plan. You can see it on the  
7 rear elevation here.  
8 Q Right, but you're -- okay. So what's the issue  
9 with the, with the knee wall that --  
10 A The built heights, the built heights are  
11 different.  
12 Q Right.  
13 A Each one, as you go around the building, is a  
14 different height of knee wall.  
15 Q Okay. So my question --  
16 A A4, A5.  
17 Q My question, again, is, the issue that you are  
18 having with the knee wall as built is that it's taller than  
19 the approved?  
20 A It's not consistent. My, my only term about this  
21 is consistency. The level from the window to the top of the  
22 knee wall should be consistent because that seems to be  
23 logical.  
24 Q Okay. And where is it inconsistent?  
25 A I'm looking at this drawing here. It shows a knee

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1 wall that's pretty much the same height on front  
2 elevation --  
3 Q You're looking at 126, right?  
4 A 126, A4.  
5 Q A5, or A4?  
6 A A4.  
7 MS. ROBESON: A4.  
8 THE WITNESS: And --  
9 MS. ROBESON: A4, correct?  
10 THE WITNESS: Yeah, A4. And, again, this is not  
11 my forte; this is not bias. Okay? So I'm just giving you  
12 my own opinion. My only issue would be, just pick a size  
13 and go with it throughout or match this.  
14 BY MR. MOHAMMADI:  
15 Q Well, I guess my question is, with the current,  
16 you're -- we're not talking about a hypothetical scenario  
17 here, right?  
18 A Yeah. It's real.  
19 Q We're talking about the current situation --  
20 A Yes.  
21 Q -- that exists at the property.  
22 A Uh-huh.  
23 Q And you would agree with me that the property is  
24 not -- the construction is not completed yet, right?  
25 A Oh, I agree with that, absolutely.

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1 Q Okay. So you're saying the issue that you're  
2 having with the knee wall is that it's not uniform, right?  
3 A Not consistent.  
4 Q Okay. Not consistent.  
5 A And not in compliance with what was shown.  
6 Q Okay. So now it's also not in compliance, but  
7 it's also not --  
8 A That's why it came up.  
9 Q Okay. When you say it's not consistent, what part  
10 of it is not consistent?  
11 A Well, if I looked at the photograph of this  
12 particular one -- and this is the rear elevation, so I don't  
13 believe anything much has been done there -- in the front  
14 section, it's clearer on Front Elevation, and I need the  
15 photograph to compare it to, but I've noticed that it's not  
16 the same as what was --  
17 Q And, again, what are you pointing --  
18 A -- what is built is not what was drawn --  
19 Q Yes.  
20 A -- and not -- sorry. What was drawn is not what  
21 was built.  
22 Q Okay.  
23 MS. ROBESON: In what way?  
24 THE WITNESS: In Front Elevation, ma'am, the  
25 window size. The --

1 MS. ROBESON: No. I thought we were talking --  
 2 THE WITNESS: Yeah, and because of --  
 3 MS. ROBESON: -- about the knee wall.  
 4 THE WITNESS: And because of that, the distance  
 5 from the knee wall from the bottom, the underside of the  
 6 window.  
 7 BY MR. MOHAMMADI:  
 8 Q Is that even considered a knee wall, that portion?  
 9 A Yeah. A knee wall is anything -- its primary  
 10 purpose is to keep water from splashing up onto siding.  
 11 Q Wasn't Ms. Gowan's testimony about the knee wall  
 12 by the garage? Isn't that what she complained about?  
 13 A No. The knee wall -- the knee wall wraps all the  
 14 way around the house. You can see it going all the way  
 15 around.  
 16 Q Okay. But wasn't the complaint specifically  
 17 talking about the knee wall around the garage?  
 18 A I, I don't recall that. I didn't -- like I  
 19 said --  
 20 Q You don't know?  
 21 A -- I'm not a detail person, but I can tell you,  
 22 for example, in the front elevation, at the lobby entrance,  
 23 the entryway is drawn very clearly as having two sets of  
 24 stacked windows, on Front Elevation on A4. The proposal is  
 25 for a double-height set of glass that has an operational

1 double door and what looks like a fixed pane of glass around  
 2 it. What was built doesn't look anything like that.  
 3 MS. ROBESON: Is there a photo of what was built?  
 4 THE WITNESS: Yeah, we had a photo. That's how I  
 5 noticed.  
 6 MS. ROBESON: I don't -- you know what? I can't  
 7 -- some of these are of other properties. So I'm trying to  
 8 -- is 130, it looks like (g), I can't read my own marking,  
 9 is that a photo of the foyer as now constructed? Do you see  
 10 130(g)?  
 11 MR. MOHAMMADI: I don't think he has it in front  
 12 of him.  
 13 MS. ROBESON: Well --  
 14 MS. ROSEN: 130, or 132 you mean?  
 15 MR. MOHAMMADI: 130(g) is not this property.  
 16 MS. ROBESON: Oh, okay. Well, continue your  
 17 questioning.  
 18 MR. MOHAMMADI: I need Court's indulgence on this  
 19 for a moment.  
 20 MS. ROBESON: Yes. I'm, what do you, I have --  
 21 hold on one second because I don't have photographs as 132  
 22 in this file.  
 23 MS. ROSEN: That might just be my error in terms  
 24 of how I --  
 25 MR. MOHAMMADI: I have 130 and 132 as photographs.

1 MS. ROSEN: Okay. That's what I have.  
 2 MS. ROBESON: Okay. Hold on one -- while you  
 3 look, I'm going to double-check something. Well, I don't  
 4 have a 132 in here. That's not good. So I will have to --  
 5 MR. MOHAMMADI: I think the exhibit list does list  
 6 it as pictures.  
 7 MS. ROBESON: Yes, I know. That's why I am --  
 8 MS. ROSEN: Well, actually, the one I have --  
 9 THE WITNESS: No, I'm looking at the wrong one  
 10 now.  
 11 MS. ROSEN: Is that the one we're --  
 12 MS. ROBESON: Once in a while we have people  
 13 inadvertently walk away with exhibits. Ah, here, she didn't  
 14 -- okay. I've got them. My --  
 15 MS. ROSEN: Okay. (R) --  
 16 MS. ROBESON: -- my heart has now returned to  
 17 normal.  
 18 MS. ROSEN: (R), I think, might be what we would  
 19 look at.  
 20 MS. ROBESON: I have them.  
 21 MR. MOHAMMADI: Your Honor, I don't think I have  
 22 any more questions.  
 23 MS. ROBESON: Okay. Redirect. No. This is odd.  
 24 MS. ROSEN: Can we take 10 minutes?  
 25 MS. ROBESON: Yes.

1 MS. ROSEN: I really need to breathe. I can't  
 2 breathe.  
 3 MS. ROBESON: Yes. Yes. Yes.  
 4 MS. ROSEN: Thank you.  
 5 (Whereupon, at 2:50 p.m., a brief recess was  
 6 taken.)  
 7 MS. ROBESON: Ms. Rosen, I believe it's your  
 8 opportunity to question Mr. Barr.  
 9 CROSS-EXAMINATION  
 10 BY MS. ROSEN:  
 11 Q Okay. Dr. Barr, I'm going to have you look at  
 12 what was previously marked as Exhibit 141, which was an  
 13 e-mail. Okay. Now, I believe that you've testified that  
 14 there were other, there were other responsive e-mails which  
 15 were part of this e-mail that are not shown here. Can you  
 16 please explain what those e-mails were --  
 17 A Right.  
 18 Q -- what they referenced?  
 19 A Peter Gibson sent me this, and my response to him  
 20 was, I'm sorry I couldn't see it on my phone, the  
 21 attachments of the plans and sections. He would send -- he  
 22 sent me sections, I think it was. And I said, these  
 23 drawings are orphans because they're drawn in a style that  
 24 is not consistent with the plan that was approved, the  
 25 approved plan, the ones that came around one, this ones,

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1 which had dimensions on them.  
2 MS. ROBESON: Wait. Wait.  
3 THE WITNESS: I was --  
4 MS. ROBESON: What do you mean -- okay. Which  
5 plans are you talking about?  
6 THE WITNESS: This refers to some drawings that  
7 were sent, the first thing he sent me on this.  
8 MS. ROBESON: Oh, attachments?  
9 THE WITNESS: Attachments --  
10 MS. ROBESON: I see. Oh --  
11 THE WITNESS: -- which I couldn't see.  
12 MS. ROBESON: Oh, I see. I see.  
13 THE WITNESS: And when I finally saw them, I said  
14 this doesn't look like -- they were two drawings of  
15 sections, saying, Section 2, Section 3, and I remember  
16 asking, where is Section 1, because these two are on one  
17 sheet and they seem to have a lot more detail in section and  
18 I've never seen anything like this, so I know that is not  
19 part of what we received.  
20 So that's all I'm saying. This is just an  
21 isolated e-mail by itself. So there was more of a  
22 conversation in which I said, that's not what we saw --  
23 MS. ROBESON: I see.  
24 THE WITNESS: -- so there is no custody problem  
25 that Peter thought there was.

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1 BY MS. ROSEN:  
2 Q Okay. All right. Now I'm going to take you back  
3 to looking at the exhibit. I think it's 126. Okay. You  
4 were asked some questions about the, I believe it was A5.  
5 It had the left-side elevation.  
6 A Yes.  
7 Q Were there any issues at that left-side elevation  
8 concerning the roof addition?  
9 A Not at the time we were voting, because what we  
10 were told, when we were voting, was the e-mail that came  
11 around with these in the reduced state that you saw -- that  
12 was 77 -- and the letter -- I don't know what it's number is  
13 in the file -- that came from Peter Ball to the entire  
14 board, discussing in two pages, I think it was two pages,  
15 the paragraph that we've gone over about what it means, and  
16 so in the absence of --  
17 MS. ROBESON: The paragraph mentioning the  
18 existing roofline --  
19 THE WITNESS: Right, and the --  
20 MS. ROBESON: -- ridgeline?  
21 THE WITNESS: -- slope that was going to meet the  
22 ridge. So in the absence of no discussion about raising the  
23 roof, except what took place in July that was rejected, and  
24 in the absence of no dimensions on this, in an effort to  
25 move this along, because it, it had been dragging for

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1 various reasons of insufficient information in the various  
2 applications, 2008, 2010, 2011 twice, so my goal, once I --  
3 remember, I was the freshly minted president, just coming  
4 in --  
5 MS. ROBESON: Yes.  
6 THE WITNESS: -- and so I said, my God, I need to  
7 move this to where Peter can get what he's doing, because my  
8 role, interestingly, always had been, from the very outset,  
9 when I first met him, facilitating, making it possible for  
10 him to go. So it's very interesting to be now cast in the  
11 role of the villain. So what I --  
12 MS. ROBESON: Well, I don't think anybody is  
13 casting you --  
14 THE WITNESS: Okay.  
15 MS. ROBESON: -- in that role. I'm not.  
16 THE WITNESS: Okay. You're not the villain. I'm  
17 not saying that.  
18 MS. ROBESON: No. I'm saying, I don't cast you in  
19 that role.  
20 THE WITNESS: All right. So what happened with  
21 this vote, which has no dimensions on it, was, if we had  
22 sent it back, saying, give us the dimensions -- because  
23 that's been asked since 2008; we finally got it in plan, so  
24 we now understood what was going on, what was being added,  
25 what the dimension of it was, and so forth -- absent any

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1 other markings, firstly, dimensions, saying this is the  
2 existing and this is the other, there was no reason to  
3 suspect that anything was being changed. So the vote was  
4 cast based on this and Peter Ball's letter.  
5 MS. ROBESON: Wait. Based on 126?  
6 THE WITNESS: Based on 77.  
7 MS. ROBESON: Based on 77.  
8 THE WITNESS: 77, which is the same as 126 except  
9 smaller, and what is good about 77 is it has a date stamp by  
10 the secretary, sent to all the board, saying this is when it  
11 was discussed. This has an application date, but it doesn't  
12 necessarily -- but they are the same. They are one in the  
13 same application.  
14 The more important thing that went with this was  
15 that -- oh, here is. It is --  
16 BY MS. ROSEN:  
17 Q Okay. I'm going to show you a document which has  
18 been marked as Exhibit 76.  
19 A 76.  
20 MS. ROBESON: Okay.  
21 THE WITNESS: In 76, which is what we are  
22 referring to, I, in the absence of this, went back and read  
23 this whole thing and very clearly underlined. Under  
24 paragraph 2 on page 2 is the description we have been  
25 through 50 times now.

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1 MS. ROBESON: Yes.  
2 THE WITNESS: So that was the basis of  
3 understanding, that the only discussion about any change in  
4 height was to bring the flat roof to meet the existing  
5 ridge. There was obviously a change in the bump-up over the  
6 garage, but -- it had changed from a gable to the sloping  
7 roof that is now going back -- we said, okay, this is good  
8 enough; we have enough information. If we prolonged it, we  
9 could go for another three years, and I wasn't going there.  
10 I was wanting this thing to get done. As I've told you at  
11 the outset, it had been open --  
12 MS. ROBESON: Yes. You don't, you don't have to  
13 repeat it.  
14 THE WITNESS: Okay. All right. Okay. So that's,  
15 that's the basis of the vote, was no dimension; we said,  
16 okay, but we understand everything that's being asked for  
17 and that's what we're voting on.  
18 MS. ROBESON: Okay.  
19 BY MS. ROSEN:  
20 Q Okay. All right. I'm going to show you a  
21 photograph which is part of Exhibit 132, and that would be  
22 photograph (r).  
23 A Yes.  
24 Q Okay. Now, you were asked several questions by  
25 Mr. Mohammadi about the knee wall.

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1 A Yes.  
2 Q Okay. Can you look at this photograph and tell us  
3 if the knee wall --  
4 A Yeah. I see, I see an open garage on the center  
5 with a car, a blue car in it, and the knee wall seems to be  
6 relatively much higher than the knee wall that is shown on  
7 the garage, which is, if there at all, just a minuscule  
8 rough, rough drawing. It's on A4, the top drawing, Front  
9 Elevation. You can compare the photograph of the garage  
10 knee wall to what's been shown. So it's about, I would say,  
11 approximately three to four times its height, as shown.  
12 MS. ROBESON: Okay.  
13 BY MS. ROSEN:  
14 Q So is that basically what you meant when you're  
15 referring to -- for example, are there other parts, are  
16 there other knee walls in other parts of the house that are  
17 a different height than this or --  
18 A Yes. I can see --  
19 Q -- how it's estimated to be?  
20 A -- you know, it seems to me that this is free of  
21 any windows above it, the knee wall at the garage, and  
22 therefore it has gone too high, which, if there was a  
23 window, would probably have to be lower. So I'm not betting  
24 on it, but the inconsistency between the approved drawing  
25 and what's being built going around the building is what's,

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1 all that is being discussed.  
2 MS. ROSEN: I don't have any further questions.  
3 MS. ROBESON: Mr. Mohammadi, any questions based  
4 on Ms. Rosen's questions?  
5 MR. MOHAMMADI: Just a few.  
6 REDIRECT EXAMINATION  
7 BY MR. MOHAMMADI:  
8 Q You testified, I think you just, when discussing  
9 that Exhibit 141, the e-mail between you and Mr. Gibson --  
10 A Yes. Uh-huh.  
11 Q -- you said, when you opened up the attachments,  
12 you saw Sections 2 and 3 but not 1? I think that was your  
13 testimony.  
14 A Yeah, because this is part of a series of e-mails  
15 between us. It's not a freestanding --  
16 Q I'm just trying to understand, what do you mean  
17 when you saw, you -- that there was, you saw sections. What  
18 are sections?  
19 A They are -- sections are when you cut through  
20 anything, like --  
21 Q Like cross sections?  
22 A Like a cross section.  
23 Q So those pictures, those, that e-mail --  
24 A No. I'm --  
25 Q -- contain cross sections?

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1 A All I was saying was, this is not the first piece  
2 of that conversation. The very first one came in with two  
3 drawings of sections on one sheet, saying, 2, 3, and it had  
4 a lot of dimensions, and I said, these drawings are orphans  
5 and, anyway, where is Section 1, asked for the whole set,  
6 effectively. And I also went on to say that the drawings  
7 look more like construction drawings, construction document  
8 drawings meant for building permit types rather than in the  
9 family of drawings that we received here, which are  
10 conceptual. Okay?  
11 Q Right.  
12 A So I said these sections I have never seen before,  
13 because, effectively, this e-mail is telling me, and as I  
14 think is -- the main message here, he says, our problem, he  
15 says there, that we have a chain of custody issue.  
16 Q Dr. Barr, I'm going to ask you real quick again.  
17 Okay?  
18 MS. ROBESON: Yes.  
19 BY MR. MOHAMMADI:  
20 Q I'm asking you, when you opened up those  
21 attachments, okay, or from the previous e-mail and you said  
22 they're orphans, there were sections, right --  
23 A Uh-huh. Uh-huh.  
24 Q -- cross sections of the house? Remember when I  
25 asked you in direct examination earlier, had you ever seen

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1 sections, and you said, no, I've never seen sections?  
2 A I said I saw them on the construction document, on  
3 the permit set --  
4 Q Okay. All right. So --  
5 A -- and what I was identifying is what I saw. What  
6 Peter Gibson was sending me was what he thought was  
7 something that was sent to us for HOA approval, and I said,  
8 these drawings are not relative to the quality of finish of  
9 these, of what's in 126 or 77.  
10 MS. ROBESON: Oh, okay.  
11 THE WITNESS: That's all I was saying there, and  
12 so I was saying --  
13 MS. ROBESON: No, no. Wait.  
14 THE WITNESS: -- there's no problem.  
15 MS. ROBESON: Continue.  
16 MR. MOHAMMADI: Okay.  
17 BY MR. MOHAMMADI:  
18 Q Looking again at Exhibit 132 and specifically  
19 picture (r) --  
20 A Yes.  
21 Q -- you said what's nonconforming is that the knee  
22 wall around the garage is higher than what's on the approved  
23 plans, correct?  
24 A Correct.  
25 Q What's wrong with the knee wall as it is, though?

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1 Meaning, if it was submitted as such, would the board have a  
2 problem at that point?  
3 A I don't know because, just for myself, I know that  
4 what was submitted was nothing that looks like this --  
5 Q Right.  
6 A -- so all I'm talking about is noncompliance --  
7 MS. ROBESON: Yes.  
8 THE WITNESS: -- with the approved HOA set.  
9 MS. ROBESON: Yes, understand.  
10 BY MR. MOHAMMADI:  
11 Q I understand. My question is, from an approval  
12 standpoint, okay, if this was what was submitted, what's the  
13 issue with it?  
14 A If it was submitted and if the board approved  
15 it --  
16 MS. ROSEN: Well, I'm going to object because it's  
17 a speculative question. He's asking what the board would  
18 have done if it had been submitted like this. Well, he  
19 can't really answer that question.  
20 MS. ROBESON: Well, Mr. Barr can testify whether  
21 he would have a problem with it.  
22 MS. ROSEN: Okay. He could testify to himself but  
23 not to the board.  
24 THE WITNESS: If it was consistent across the  
25 board and the -- across the board. It if was consistent all

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1 the way around the house and was at this height, I would  
2 have had no objection, personally, but I can't speak for the  
3 board.  
4 BY MR. MOHAMMADI:  
5 Q Right, and I guess what I want to find out is,  
6 that height of the knee wall doesn't make it, doesn't take  
7 the house out of conformity with the rest of the  
8 neighborhood, in essence, right? It being taller by itself  
9 doesn't make it nonconforming to the rest of the  
10 neighborhood?  
11 A Not to the scale of the roof being taller, yes.  
12 Q Okay. Not to the scale of that roof?  
13 A Not in the hierarchy of the roof being taller.  
14 This is a, again, my minor/major thing here.  
15 Q Okay. Well, you heard Ms. Bentolila testify that  
16 her roof was raised after the house was burnt down? You  
17 were here. You heard that, right?  
18 A Yeah.  
19 Q Any issues with that?  
20 A No. The issue with that is that when I was  
21 testifying in the interrogatories or in the deposition that  
22 there are no houses that I'm aware of in the neighborhood  
23 which have roofs that are higher than what was the original,  
24 I was talking about additions, and that's what this is.  
25 In Ms. Bentolila's case, the advice that she was

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1 given, when her house burnt down, was to find one of our  
2 five models, modify it as she needed it to be, and to get it  
3 built, and -- yeah. So that's it.  
4 Q Okay. I understand that.  
5 A So if she says it's taller, then it's taller. I  
6 don't know.  
7 Q Right, but let's take her for her word for a  
8 second.  
9 A Yeah.  
10 Q She says it's almost 35 feet --  
11 A Uh-huh.  
12 Q -- okay? Is there an issue with that for the HOA  
13 or for you?  
14 A See, the only issue that comes to the board is  
15 when the neighborhood sends complaints. That's the only  
16 time we get involved. We got other lives and other things  
17 to do. Okay?  
18 MS. ROBESON: Okay. But you need to --  
19 THE WITNESS: Yeah. So -- yeah.  
20 MS. ROBESON: I understand your position. I  
21 understand you're trying to communicate it, but you need to  
22 focus on exactly what he's asked. So --  
23 THE WITNESS: So you're saying, if she says  
24 several feet higher, is that a problem? Because it's  
25 consistent within its overall harmony with what we have in

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1 the neighborhood. It doesn't stand out like a sore thumb.  
2 BY MR. MOHAMMADI:  
3 Q Okay.  
4 A Okay? So that is not a problem for me.  
5 Q So even though it's 35 feet tall, it, that house  
6 does not stand out as a sore thumb?  
7 A To begin with, it sits on a hill; so it's all -- a  
8 higher hill than what he's on. It's up the hill from there.  
9 And so what I'm seeing is, overall, the proportion is  
10 harmonious to all the elements are there. It's not like the  
11 roof part, one portion just stuck out beyond the others.  
12 Okay? So, overall, the impression is that it belongs in the  
13 neighborhood; it looks like one of the other places.  
14 Q Okay. Looking at, not any pictures, okay, looking  
15 at the plans that were approved, right, that doesn't look --  
16 that looks harmonious to you as well, right? I mean, it was  
17 approved.  
18 A The part that was approved that looks harmonious  
19 is the fact that --  
20 Q I mean --  
21 A Yes, I agree.  
22 Q -- specifically with the roof.  
23 A I agree, yes.  
24 Q Okay.  
25 A When you look at this drawing with no markings on

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1 it, yeah, it looks harmonious.  
2 Q Okay.  
3 MR. MOHAMMADI: Nothing further.  
4 MS. ROBESON: Ms. Rosen, any questions based on  
5 his questions?  
6 MS. ROSEN: No.  
7 MS. ROBESON: Okay. You may be excused, Mr. Barr.  
8 Do you have another witness?  
9 MR. MOHAMMADI: I have several other witnesses.  
10 Here's, here's what I wanted to ask, if we could continue it  
11 for the next hearing? Here's my issue: I need Mr. Gibson  
12 to testify first. He's obviously not here. I was going to  
13 call Ms. Gowan, but I don't think I need to call Ms. Gowan  
14 anymore; so I'm not going to call Ms. Gowan. I need  
15 Mr. Gibson to testify, and then afterwards I'd like to call  
16 Mr. Ball, but I don't want to call him before Mr. Gibson  
17 testifies. And so I'm asking if we can continue it and have  
18 the hearing next time. The other thing is, if I start  
19 Mr. Ball's testimony right now, I don't want to get to a  
20 point where I'm in the middle of his testimony and end --  
21 MS. ROBESON: I can see that his would be quite,  
22 probably long.  
23 MR. MOHAMMADI: Right, and so --  
24 MS. ROBESON: Ms. Rosen, do you have any  
25 objections?

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1 MS. ROSEN: I don't have any objection. I mean --  
2 MS. ROBESON: If we need a new date, the only  
3 issue is that I'll be out for surgery, and -- between August  
4 8th and August 18th -- and hopefully we'll be back --  
5 MR. MOHAMMADI: Hope everything goes well.  
6 MS. ROSEN: Well, the date selection is going to  
7 have to end up being in September because I'm going to be  
8 gone at the end of August.  
9 MR. MOHAMMADI: We have a date, I thought, August  
10 4th. No?  
11 MS. ROSEN: Yes, August 4th.  
12 MS. ROBESON: You're smart. You mean, you  
13 actually take vacations and --  
14 MS. ROSEN: Yes, I'm taking one. I mean, I have  
15 blocked my, the only way -- I find that if I don't block the  
16 calendar and just say absolutely not, I'll never get one.  
17 MS. ROBESON: Well, that's wise. All right.  
18 Well --  
19 MS. ROSEN: We have August 4th, yes.  
20 MS. ROBESON: -- you've heard Ms. Rosen and my  
21 constraints, and I can't guarantee you I'll be back on the  
22 18th --  
23 MR. MOHAMMADI: Okay.  
24 MS. ROBESON: -- right now. So the next hearing,  
25 if we don't make it through on the 4th, the next hearing

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1 would be in September.  
2 MR. MOHAMMADI: I don't anticipate Mr. Gibson's  
3 testimony to take, on my end, more than 15, 20 minutes,  
4 but --  
5 MS. ROBESON: Well, she's got -- she, I'm sorry.  
6 Ms. --  
7 MS. ROSEN: Yes, I don't anticipate that  
8 Mr. Gibson would take a long time on my end.  
9 MS. ROBESON: No, I don't know about Mr. Gibson,  
10 but you may call some experts, correct?  
11 MS. ROSEN: Right. Yes. After, I guess, after --  
12 I'm assuming that Mr. Ball is going to be your last witness?  
13 MR. MOHAMMADI: He would be my last witness.  
14 MS. ROBESON: Okay.  
15 MS. ROSEN: Yes, and then we will have  
16 Ms. Washburn (phonetic sp.) here. Probably, I guess, for  
17 the afternoon of August 4th we'll make sure she's here.  
18 MS. ROBESON: Okay. Well, we'll try to get it  
19 done on the 4th and hope for the best.  
20 MR. MOHAMMADI: Your Honor --  
21 MS. ROBESON: Just a second. Before you leave --  
22 MR. MOHAMMADI: I have another matter I would like  
23 to raise, but --  
24 MS. ROBESON: Yes. Yes.  
25 MR. MOHAMMADI: I have come into possession today

1 -- and I'm going to share this with Ms. Rosen -- this was  
 2 sent out literally by the association a couple of days ago.  
 3 So this is why we only have it now. It's a letter from the  
 4 association to -- specifically from the architect committee.  
 5 I'm going to share it with Ms. Rosen now. I want to use it  
 6 next time, and the only reason we didn't have it, obviously,  
 7 is just, it was just sent out. It goes to some of the  
 8 issues that were discussed today, and I think it's important  
 9 that it comes in.

10 The other thing that I have received from  
 11 Ms. Bruno, recently, again, is the actual drawings that she  
 12 submitted to Mr. Ball.

13 MS. ROBESON: Well, you're going to have to bring  
 14 her here for that.

15 MR. MOHAMMADI: Right. So -- but, again, I'm  
 16 going to share that e-mail that I received with Ms. Rosen.  
 17 It wasn't previously provided --

18 MS. ROBESON: What e-mail?

19 MR. MOHAMMADI: Ms. Bruno provided, sent me an  
 20 e-mail, showing me all the --

21 MS. ROBESON: Oh, I see. I'm sorry.

22 MR. MOHAMMADI: -- with attachments, a PDF of all  
 23 the drawings.

24 MS. ROBESON: So you did not have those during  
 25 discovery; that's what you're saying?

1 MR. MOHAMMADI: Correct. I received it about  
 2 three weeks ago. I didn't think I needed to use them; so I  
 3 didn't do anything with it, but after today's testimonies, I  
 4 think it's important to establish this chain of custody  
 5 issue. And therefore I can show -- I'm going to share it  
 6 with Ms. Rosen. Whatever objection she has I obviously  
 7 understand, it's being provided late, and then from there,  
 8 you know --

9 MS. ROSEN: Can you just --

10 MR. MOHAMMADI: -- I plan on using it.

11 MS. ROSEN: Can you scan that to me?

12 MR. MOHAMMADI: I'll scan this to you, and I'll  
 13 send the other one to you as well.

14 MS. ROBESON: All right. So when are you going to  
 15 provide those to Ms. Rosen?

16 MR. MOHAMMADI: When I get back to the office,  
 17 I'll scan it and send it over. That's going to happen in  
 18 the next hour or so.

19 MS. ROBESON: Okay. All right. All right. With  
 20 that, we are going to adjourn this hearing until 9:30 on  
 21 August 4th, 2014, at the same location. Thank you.

22 MS. ROSEN: Thank you.

23 MR. MOHAMMADI: Thank you, Your Honor.

24 (Whereupon, at 3:22 p.m., the hearing was  
 25 adjourned.)

## 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

<p style="text-align: center;"><b>A</b></p>	<p>46:11 <b>accurate (1)</b> 37:25</p>	<p><b>additions (13)</b> 26:12;27:2,6,11; 41:5;44:3;66:5;70:11; 149:6;150:21;166:10; 168:22;240:24</p>	<p>93:2;101:11;109:15; 113:7;120:15;153:8,9; 155:12,17</p>	<p><b>angry (1)</b> 146:6</p>
<p><b>A1 (10)</b> 24:14,25;25:1,9,15; 26:20;27:1,6;45:14; 170:23</p>	<p><b>accused (2)</b> 95:6,7</p>	<p><b>address (16)</b> 39:5,8,11;57:1;76:7, 9,11,14;79:12,13,16, 22;85:3;87:1,6;119:13</p>	<p><b>agenda (7)</b> 88:16;150:16,17; 156:2,16;202:4;208:3</p>	<p><b>animosity (3)</b> 182:23,25;185:3</p>
<p><b>A2 (4)</b> 25:24,25;26:5;27:6</p>	<p><b>across (12)</b> 41:6;51:4,7;52:3; 60:3;119:24;218:7; 219:22;220:6;222:22; 239:24,25</p>	<p><b>addressed (3)</b> 126:7,10,11</p>	<p><b>aggregate (2)</b> 144:15;145:3</p>	<p><b>announced (1)</b> 121:2</p>
<p><b>A3 (2)</b> 170:25;171:1</p>	<p><b>act (1)</b> 112:19</p>	<p><b>adjoin (1)</b> 247:20</p>	<p><b>ago (8)</b> 37:12;72:1;79:3; 121:4;129:17;136:19; 246:2;247:2</p>	<p><b>annual (12)</b> 87:20;88:4,11;95:16; 98:12;99:4;132:22; 152:3,3,4;202:24; 203:3</p>
<p><b>A4 (21)</b> 14:12;24:9;27:20; 28:11;47:6,13,13,18; 49:4,9,17;218:19; 223:16;224:4,5,6,7,9, 10;226:24;235:8</p>	<p><b>acted (1)</b> 91:19</p>	<p><b>adjourned (1)</b> 247:25</p>	<p><b>agree (9)</b> 49:19;91:16;161:25; 174:6;178:8;224:23, 25;242:21,23</p>	<p><b>answered (3)</b> 49:21;75:18;139:19</p>
<p><b>A5 (17)</b> 36:15,21;41:12;47:6, 13,13,18,24,25;49:4; 171:24;194:11,15; 218:19;223:16;224:5; 231:4</p>	<p><b>acting (5)</b> 154:7;178:9,9,14; 179:2</p>	<p><b>administrative (2)</b> 143:12,16</p>	<p><b>agreed (3)</b> 109:4;129:10,13</p>	<p><b>antagonize (1)</b> 95:9</p>
<p><b>AB (3)</b> 29:13;34:2;194:9</p>	<p><b>action (10)</b> 93:2;111:22;126:21, 23;179:12;183:22; 186:21;189:19;204:3,4</p>	<p><b>admissible (1)</b> 155:16</p>	<p><b>agreement (5)</b> 109:10;121:1,10; 196:3;197:10</p>	<p><b>anticipate (2)</b> 245:2,7</p>
<p><b>AB1 (5)</b> 24:12,21,22;25:7; 27:1</p>	<p><b>actions (11)</b> 101:24;102:24; 133:5;149:1,5,9; 150:18;156:6,13; 176:23;185:4</p>	<p><b>admit (4)</b> 33:6,9;174:19; 180:12</p>	<p><b>Ah (2)</b> 160:14;228:13</p>	<p><b>apart (1)</b> 108:23</p>
<p><b>AB2 (1)</b> 25:25</p>	<p><b>active (2)</b> 82:4;87:18</p>	<p><b>admitted (7)</b> 5:6;6:3;23:2;29:18; 134:9;146:23;172:1</p>	<p><b>ahead (28)</b> 12:14;13:17;18:14; 21:14;22:23;30:18; 34:6;58:16;66:2;74:17; 83:16,17;85:18;95:1; 97:5;102:11;109:2,6; 122:6;126:8;133:12; 143:24;164:13;165:4; 170:6;180:10;218:3; 220:17</p>	<p><b>apparent (1)</b> 94:15</p>
<p><b>AB4 (10)</b> 15:1;24:9;27:17; 28:11,12;47:3,17; 48:19;49:3,9</p>	<p><b>acts (2)</b> 62:15;140:25</p>	<p><b>advised (2)</b> 89:4;97:10</p>	<p><b>Alford (8)</b> 58:15;75:13;81:24; 97:6;186:22;195:22; 196:15;210:18</p>	<p><b>apparently (2)</b> 30:6;162:7</p>
<p><b>AB5 (6)</b> 47:3,17,22;48:2,20; 49:4</p>	<p><b>actual (9)</b> 12:24;22:1;31:7; 45:15;59:24;167:24; 198:10;222:21;246:11</p>	<p><b>affect (3)</b> 61:24,24;182:22</p>	<p><b>alleges (1)</b> 32:1</p>	<p><b>appear (1)</b> 13:19</p>
<p><b>ability (1)</b> 32:5</p>	<p><b>actually (37)</b> 15:21;30:24;35:13, 18;36:2;40:4,19,20; 41:13;42:3;45:20; 47:22;53:24;54:2;61:8; 71:11;85:13;89:6; 90:11;97:5,7;99:4; 101:14,17;110:21; 147:22;152:4,21; 167:14;171:9;174:2; 213:20,21;217:7; 218:17;228:8;244:13</p>	<p><b>affected (1)</b> 64:3</p>	<p><b>allow (2)</b> 32:13;71:20</p>	<p><b>appearing (1)</b> 80:19</p>
<p><b>able (11)</b> 15:12,21;16:3;40:8; 47:18;96:2;109:9; 110:18;115:4;117:9; 198:12</p>	<p><b>affirm (4)</b> 132:24;148:20; 149:1;156:13</p>	<p><b>affirmed (2)</b> 149:6;150:18</p>	<p><b>allowed (2)</b> 21:4;113:10</p>	<p><b>appears (2)</b> 97:15;104:10</p>
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